

Memorandum, clips and video prepared by
Burning Brain Society
on violations of different provisions of
"The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation
of Trade and Commerce, Production, Supply and Distribution) Act, 2003"

For the Kind attention of

"The Government of India"
through the Administrator of Chandigarh
& the Governor of Punjab
His Excellency Justice O. P. Verma



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For the kind attention of;

His Excellency Justice O. P. Verma,
Governor of Punjab and Administrator of Chandigarh,
Raj Bhawan,
Chandigarh

**GLORIFICATION OF TOBACCO PRODUCTS AND ALCOHOLIC
BEVERAGES AND OPEN DISREGARD FOR LAW**

His Excellency,

As a responsible member of the civil society, we at Burning Brain Society share our concern for the young people and issues concerning the public at large.

The issue of tobacco and its advertisement concerns the general public and their health and has long term consequences on the public, the young people and the country as a whole. As tobacco & liquor are also the gateway to other substance and drug abuse so any neglect of established laws is going to have a significant multi-dimensional and complex effect on the future.

Government of India has appreciated the facts relating to the harmful effects and consequences of tobacco use which has resulted in the form of “The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.” In the preamble of the Act itself, it has been mentioned that;

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;

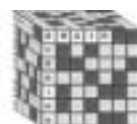
AND WHEREAS, it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health;

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;

India’s commitment on the issue is further strengthened by signing and ratification of the “Framework Convention of Tobacco Control.” The guiding principals of FCTC further mentions as follows;

2.) Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multi-sectoral measures and coordinated responses, taking into consideration:

(a) the need to take measures to protect all persons from exposure to tobacco smoke;



- (b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form;
- (c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives;

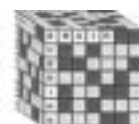
The political commitment, as talked about in FCTC is now more-or-less there, but unfortunately the implementation at the ground level is yet to be achieved.

As a commitment to reduce the use of tobacco and dissuade youngsters from tobacco control a specific ban on any form of advertisement in “The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003” Section 5 and Rule 4 made therein. Section 5 clarifies that 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. Not more than two boards, not exceeding the size of ninety centimeter by sixty centimeter can be used for advertisement for cigarettes and any other tobacco products and which can only be 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.

The emphasis is on the word BOARD and the SIZE OF THE BOARD. It clearly conveys that no other form of advertisement is allowed; but all over the region Cigarette companies are affixing boards much bigger than the specified size and engaging in many other forms of advertisements. Even electrical shops, departmental stores and such like establishments have also affixed boards carrying advertisement of tobacco products. In most of the cases these boards are not affixed at the entrance or inside the establishment but affixed outside on the top of the shop and aided by back lit or neon lighting. This is certainly against the law but still the Government is doing little to book the offenders.

Government of India has also shown its commitment in preventing the young people from taking to the habit of tobacco consumption by specifically banning its sale to young people, but most unfortunately this provision is gallantly ignored and most vendors can be seen selling it to young people and above all children as young as 10-12 years can be seen selling it too. Besides, it has come to our notice that when young people go to buy tobacco products the tobacco vendors have now started charging a premium (Black-marketing) from young people after telling them about the ban. They are not only selling tobacco products openly to young people but also making double the money now by doing so. The authorities have turned a nelson-eye to this too.

It is also important that by law, sale of tobacco products by minors is banned; wherein in the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 the involvement of young people at any stage in manufacturing process is banned but if the sale of the tobacco product by minors is allowed the whole purpose is defeated. It may be mentioned here that the distributor who provides/sells/distribute the product to such young people for further sale can be aptly booked for the violation. Further the Government may also be recommended to amend the act to prohibit the sale of tobacco products by minors.



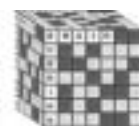
Smoking in public is as prevalent as before the enactment of the said law. All public offices, public places, hotels including Government controlled and run hotels continue to disregard the law in this regard. Even the statutory board to be affixed at public places, as mentioned in Rule 3, which requires that The owner or the manager or in charge of the affairs of a public place display prominently a board of a minimum size of sixty centimeter by thirty centimeter in the Indian languages(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 is missing from each and every establishment of the region. What to say, even the D.C. Office, Secretariat, Bus stand, Police Stations, Citco and other Government controlled hotels too are openly breaking the law in this regard. Shouldn't such officials who are supposed to implement the law be punished much more severely when they themselves commit an offence under the same law?

Shops at most places, under the control of the Government, where people should not smoke, like the bus-stand, educational institutes, courts, etc. are still selling tobacco products actively. Punjab University, ISBT, High Court and other such place continue to have cigarettes shops and other commercial establishments too operating from such place continue to sell tobacco products illegally. How can the ban on smoking be effective if such places, under the control of the government continue to sell tobacco product within their premises? Shouldn't this be stopped immediately?

Same kinds of violations are apparent with liquor products too. Advertisement of liquor products can be seen all over the region. Surrogate advertisements which leave very little to imagine, galore. All wine shops are adorned by scores of hoardings, banners and posters. The glorification and glamorization of liquor products prompt the young people to drink besides conveying that doing so is fashionable. Shouldn't all such advertisements be removed especially when they are against the law?

It is high time to understand that smoking and alcohol consumption is the first step towards drugs and substance abuse. Most drug users graduate into drugs and substance abuser from first being a smoker or alcohol consumer. It is important to pay attention to the basic prevention. We must take care that the young people including school going children do not start the habits of smoking and/or drinking. It is important to enforce with commitment the laws in this regard and we should do everything possible to stop glorification and glamorization of such products. Government spends a large amount of money on de-addiction programmes with little success. Member of the public who do not consume tobacco or liquor also bear the brunt of tobacco and liquor in many ways, passive smoking is just one of them. Public hospitals bear the burden of tobacco and alcohol related ailments and spend lots of resources on such diseases. Law and order problems because of alcohol are very well known. Then why shouldn't we become serious about the issue and put a stop to its further use and at the least enforce the laws in this regard seriously?

Since many among the enforcement agencies and the decision making body themselves are tobacco users so they have a dwindling commitment which dilutes the drive against tobacco. It is important that people who consume tobacco be removed from the chain of command in a drive against tobacco. This may also be considered. Cotinine, which is a



major metabolite of nicotine, can be screened during the annual health checks of the Government officials, this way officials who consume tobacco can be identified and removed from the decision making chain related to enforcement of laws relating to smoking and drug use resulting in increased commitment against laws made in this regard

As our way of contributing on the “Day against drug abuse,” on June 26, 2004, we started video graphing the violations with regard to the display of advertisements of tobacco and liquor products. This 23 minutes raw video film, which we are presenting your good self, is just illustrative in nature. The violations are so open and common that wherever we went, we had something to cover. Violation of the law is everywhere and with very little efforts we could video graph some of the violations. Hundreds of people are knowingly violating the law and can be booked in a single day with lakhs of Rupees as collections in the form of penalties.

We appeal that the future generation and the members of the general public who by choice do not consume such products be protected from the harmful effects of tobacco and other alcoholic products.

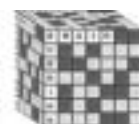
We further appeal your high office to take such necessary steps which help in enforcing the law made by the Union of India and establish the rule of law and not the petty commercial interests of cigarette & liquor companies, who are selling nothing but slow poison.

Yours cordially,



Hemant Goswami
(Chairperson)

On behalf of all the members of “Burning Brain Society” and the members of the civil society.



Boards of sizes much bigger than the prescribed sizes. The number of boards exceed the permitted numbers in most cases. Please note that it is the size of the board and not the print area on the board. A board exceeding the prescribed size is an offence.



Boards of all sizes can be found even at places where there are no paan-bidi or tobacco shops. Board can be found a-top provisional stores, veranda of the market, electrical shops and such other places.



Surrogate advertisements galore. Novel advertising methods can be seen on all shops. Boards with empty cartons pasted on them, sniffing/chewing tobacco packets hanging in a decorative manner, like a dangler or letters announcing a new product, giving it a semblance of legal sanction can be found in all shops of the area.





Inside the Punjab University and outside the university gates. Youngsters openly buying, selling and consuming tobacco products.



Carts, Kiosks, Street/ way-side vendors openly selling tobacco products all over the region. Totally un-authorised. These people can be provided alternate employment opportunities. These people are keen to make an honest living but there has to be an alternate way.



Minors continue to sell and buy tobacco products.

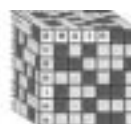


People continue to smoke in public areas.





Innovative ways of promoting tobacco products. Violations at the bus stand; unauthorised shops selling tobacco products (right).



RELEVANT EXTRACTS, FROM THE ACT, RULES & FCTC AGREEMENT

Objective statement of Framework Convention on Tobacco Control (FCTC): Article 3: Objective;

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

From the objective statement of "The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003"

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;

FCTC; Article 4:

Guiding principles;

2.) Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multi-sectoral measures and coordinated responses, taking into consideration:

- (a) the need to take measures to protect all persons from exposure to tobacco smoke;
- (b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form;
- (c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives; and
- (d) the need to take measures to address gender-specific risks when developing tobacco control strategies.



FCTC; Article 13:

Tobacco advertising, promotion and sponsorship

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.
2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory.
4. As a minimum, and in accordance with its constitution or constitutional principles, each Party shall:
 - (a) prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
 - (b) Require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship;
 - (c) Restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public;

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

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 the use or consumption of cigarettes** or any other tobacco products.

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

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

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

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

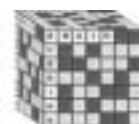
(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

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

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

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

*(Comment:- **Guided by Rule 4 of the Act** which provide only for two boards (& not print area) of specific size, all other forms of advertisement is an offence)*



(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.

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

Rule 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



FCTC; Article 16

Sales to and by minors

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen. These measures may include:

(a) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;

(b) banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves;

(c) prohibiting the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors; and

(d) ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.

2. Each Party shall prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors.

3. Each Party shall endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.

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

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

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

Rule 5 Prohibition of sale to minors. —(1) The owner or the manager or the In-charge 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.



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

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.

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

Rule 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 languages(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;

(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".

