

WHITE PAPER

# TAXING SMOKELESS TOBACCO PRODUCTS IN INDIA



Jointly Presented by:  
India Strategy Group  
Hammurabi & Solomon Partners

## PREFACE

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- i. Vide the present white paper India Strategy Group and Hammurabi & Solomon Partners have undertaken a detailed and elaborate study on the taxation regime in respect of smokeless tobacco products in India. The study seeks to present a holistic overview of: (A) MPOWER obligations of India under the World Health Organizations’ Framework Convention on Tobacco Control; (B) the consumption trends of smokeless tobacco in India; (C) the health implications of different smokeless tobacco products; and (D) the salient features pertaining to the taxation policy of smokeless tobacco in pre and post introduction of Goods and Services Tax in India.
- ii. The present study has been undertaken upon convening necessary research into the demographic, medicinal, policy-based and legal aspects concerning taxation of smokeless tobacco products in India; and where deemed necessary certain aspects concerning other tobacco products have been identified and presented to enable appreciation of the findings of the study.
- iii. Based on the findings and observations of the study, the white-paper presents certain specific recommendations that can enable India to better achieve its MPOWER goals.
- iv. It may also be noted that the Tobacco Control division of the Ministry of Health and Family Welfare, Government of India has constituted an Expert Group on Tobacco Taxation vide notification no. P.16017/23/2019-TC dated 12.10.2021, to, inter-alia, : (i) Analyze the existing tax structure for all forms of tobacco (smoking and smokeless); (ii) Develop a roadmap for tobacco tax policy and recommend immediate steps to be taken for making India MPOWER compliant with regards to ‘R’ component (highest level of achievement); and (iii) Suggest various options/models of tax rates /standards for consideration in the budget 2022-23 and future budget sessions.

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## CHAPTER – I

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# INTRODUCTION TO WORLD HEALTH ORGANISATION'S FRAMEWORK CONVENTION ON TOBACCO CONTROL AND ITS IMPLEMENTATION IN INDIA

### Executive Summary

1. WHO Framework Convention on Tobacco Control (WHO FCTC) devised to protect public health and to manage the consequences of consumption of tobacco on the health, social and economic status of the users. WHO FCTC is governed by the Conference of Parties (COP) which is comprised of all the members to the convention. The COP convenes to decide and discuss new policies to further the objectives of the convention.
2. MPOWER initiative is set up under the WHO FCTC to implement the policies devised by the COP.  
  
M-Monitor tobacco use.  
P-Protect people from tobacco use.  
O-Offer help to quit tobacco use.  
W-Warn about the dangers of tobacco use.  
E-Enforce bans on tobacco advertising and promotion.  
R-Raise taxes on tobacco products.
3. India's score with regard to the implementation of the MPOWER initiative has improved over the years. The following policies have been adopted:
  - a. Smoke-free Policies: Public places have been defined as smoke-free areas.
  - b. Cessation programmes: Tobacco cessation counselling, nicotine replacement therapy and helpline numbers to help those who desire to quit.
  - c. Health warnings on packages.
  - d. Media Campaigns about the consequences of tobacco consumption.
  - e. Advertising bans.
  - f. Increased taxation.

## Brief Outline

This chapter provides an understanding of the MPOWER initiative of the World Health Organization (“WHO”) under the Framework Convention on Tobacco Control. The chapter elucidates on each of the components of the ‘MPOWER’ initiative and the purpose of each of these components. The introduction is followed by an account on the implementation of the MPOWER initiatives in India and the measures taken by the Indian authorities to this end.

## WHO Framework Convention on Tobacco Control

- i. The Convention on Tobacco Control was adopted by the National Health Assembly on 21<sup>st</sup> May, 2003 and was entered into force on 27<sup>th</sup> February, 2005. At the time the Convention had been acceded to, ratified and accepted by 40 States. The membership to the Convention currently stands at 182 States and India ratified the Convention and has been a member since 5<sup>th</sup> February, 2004.
- ii. Essentially, the WHO Framework Convention on Tobacco Control (WHO FCTC) is a global health treaty which was developed by nation States in response to the globalization of the tobacco with the aim to address complex factors having far reaching effects such as trade liberalization and foreign direct investment; advertising, promotion and sponsorship; and increased illegal trafficking/ smuggling of tobacco products.
- iii. The prime objective of the WHO FCTC is to protect public health and to address the concern of the international community pertaining to the consequences of tobacco consumption and exposure to tobacco smoke on the health, social and economic status of the masses; and the environment.<sup>1</sup>
- iv. The Convention has been divided into 38 Articles covering a wide array of issues and directives to help the members achieve the objectives of the Convention. Some of the important articles pertinent to the present white paper are identified as under:
  - a. Article : 4 – Guiding Principles for the members to implement the objectives of the Convention.
  - b. Article: 6 – Price and tax measures to reduce the demand for tobacco.
  - c. Article: 7 – Non-price measures to reduce the demand for tobacco.

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<sup>1</sup> *The WHO Framework Convention on Tobacco Control: an overview.* (2015) Available at: [https://www.who.int/fctc/about/WHO\\_FCTC\\_summary\\_January2015.pdf](https://www.who.int/fctc/about/WHO_FCTC_summary_January2015.pdf)

- d. Article: 8 – Protection from exposure to second-hand tobacco smoke.
  - e. Articles: 9 & 10 – Tobacco content and product regulation
  - f. Article: 11 – Packaging and labelling of tobacco products.
  - g. Article: 12 – Education, communication, training and public awareness.
  - h. Article: 13 - Tobacco advertising, promotion and sponsorship
  - i. Article: 14 – Demand reduction measures concerning tobacco dependence and cessation.
  - j. Article: 15 – Illicit trade in tobacco products.
  - k. Article: 16 - Sales to and by minors;
  - l. Article: 17 - Provision of support for economically viable alternative activities.
- v. The WHO FCTC is governed by the Conference of Parties (COP) and is comprised of all the members to the Convention. The COP reviews the implementation of the Convention and takes the necessary decisions/steps to affect the efficient implementation, to this effect the COP may also adopt protocols, annexes and amendments to the Convention. The functioning of the COP is governed by the Rules of Procedure.
- vi. The COP convened in 2014 adopted guiding principles to support the implementation of Article 6 of FCTC (price and tax measures to reduce the demand for tobacco). The guideline recommends that all tobacco products be taxed in a comparable manner and that a tax regime be set up which does not incentivize the consumer to switch to a cheaper variant of the same product class as a response to increased tax on the products.<sup>2</sup>

## MPOWER

- i. The WHO introduced MPOWER in 2008. MPOWER is essentially a set of six evidence-based and cost-effective measures to facilitate the implementation of the provisions of the WHO FCTC at the ground level.

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<sup>2</sup> Conference of the Parties to the WHO Framework Convention on Tobacco Control:  
[https://apps.who.int/iris/bitstream/handle/10665/145110/FCTC\\_COP6%285%29-en.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/145110/FCTC_COP6%285%29-en.pdf?sequence=1&isAllowed=y)



- ii. The measures correspond to each syllable in MPOWER, as identified herein below:

**M**onitor tobacco use

**P**rotect people from tobacco smoke

**O**ffer help to quit tobacco use

**W**arn about the dangers of tobacco

**E**nforce bans on tobacco advertising and promotion

**R**aise taxes on tobacco products



- iii. The above measures have been explained in a detailed manner,<sup>3</sup> hereunder:

### 1. Monitoring Tobacco Use and Prevention Policies

The WHO FCTC requires its members to regularly collect and share national data on the magnitude, trends, factors and consequences of tobacco use. The WHO Tobacco Free Initiative seeks to enhance the availability of national and global data on tobacco use and related health outcomes. The WHO assists the members by:

- a. Encouraging the use of standards and scientific and evidence-backed protocols to monitor tobacco usage.
- b. Gathers data for national and global monitoring of consumption trends of tobacco and thereby assisting in framing more effective tobacco regulation policies.
- c. Using the collected data to advocate for more stringent policies to regulate the consumption of tobacco.

**Impact:** Number of men using tobacco has started to decline 2018 onwards.

### 2. Protection against Tobacco Smoke

Any amount of exposure to second-hand smoke is detrimental to health. Over the past few years, a sizable number of mortalities have been attributed to second-hand smoke. Exposure

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<sup>3</sup> MPOWER Initiatives of WHO. Available at: <https://www.who.int/initiatives/mpower>

to second-hand smoke can cause lifestyle diseases such as heart conditions and cancer. Studies conducted have indicated that indoor places that allow smoking have a higher level of pollution than on busy roadways. Exposure to second-hand tobacco smoke can cause disease and disability in non-smokers as well. Studies have identified an increased risk of premature birth and low birth weight and increased of Sudden Infant Death Syndrome due to second-hand tobacco smoke.

The creation of completely smoke-free indoor places through smoke-free legislation has been received well wherever it has been implemented and have not hampered the business of such places. A complete ban on smoking in indoor places is the only method to protect people from being exposed to second-hand smoke and help smokers quit.

Guidelines to Article 8 of the FCTC help countries by providing directions to protect the masses from second-hand smoke.

### **3. Offering help to Quit Tobacco**

Among smokers who are aware of the health risks associated with the consumption of tobacco, most want to quit. At the moment only 23 countries provide comprehensive cessation services with full or partial cost coverage to help users quit, this accounts for approximately 32% of the global population.

Studies show that an infinitesimal portion of the population understands the specific health risks associated with the smoking of tobacco which includes lung cancer, heart disease and stroke. It has been noted that advice/warnings from health professionals enhances the quitting success rates by up to 30%, while intensive advice increases the chance of quitting by 84%.

Under WHO FCTC, countries are mandated to treat tobacco use and dependence. WHO provides capacity building and training packages to help governments establish or strengthen their national tobacco cessation systems including integrating brief tobacco interventions into their primary care systems, developing national toll-free quit lines and cessation projects. Offering help to quit is also one of the five key interventions in the MPOWER package of technical measures and resources which WHO introduced in 2007.

#### 4. Warning about the Dangers of Tobacco

Despite overwhelming evidence of the dangers of tobacco, relatively few users fully understand the extent of the harm that tobacco causes and tend to underestimate the risks to themselves and others. The ease and depth of addiction to nicotine for tobacco users makes quitting extremely difficult and perpetuates the cycle of increased addiction, leading to devastating health effects.

Yet tobacco product packaging in most countries provides little or no information to warn consumers of the risks. Tobacco companies use packaging and other advertising techniques to make tobacco seem appealing, while distracting consumers from the harsh reality of how tobacco destroys health.

Health warnings on tobacco packaging directly reach all tobacco users and cost governments nothing. As laid out in guidelines to Article 11 of the WHO Framework Convention on Tobacco Control, warnings should appear on both the front and back of the packaging and be large and clear and describe specific illnesses caused by tobacco. Use of graphic images demonstrating the harm of tobacco use can be especially effective in convincing users to quit. In addition to paid advertising, reaching out to the news media can effectively and inexpensively disseminate anti-tobacco messaging. India is currently ranked **eighth** in the list of countries that have pictorial health warning on tobacco products<sup>4</sup>, with experts here quick to add that the country is making tremendous progress towards creating public awareness on the health hazards of tobacco abuse.

Many countries have far more graphic pictorial warning on cigarette packets compared to smokeless tobacco keeping in mind the principle that the warning should be proportionate to the risks posed. However, in India initially the Cigarette packets used to have specific warning with phrases such as ‘Smoking kills’ which have now been replaced with the warning for ‘Tobacco causes ...’ on both smoking and smokeless due to Cigarettes and other Tobacco

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<sup>4</sup> WHO. (2021). *CIGARETTE PACKAGE HEALTH WARNINGS INTERNATIONAL STATUS REPORT*. [https://cdn.cancer.ca/-/media/files/about-us/media-releases/2021/cigarette-health-warnings-report/ccs-international-warnings-report-2021.pdf?\\_ga=2.79375831.292978362.1643613389-36656194.1643613389](https://cdn.cancer.ca/-/media/files/about-us/media-releases/2021/cigarette-health-warnings-report/ccs-international-warnings-report-2021.pdf?_ga=2.79375831.292978362.1643613389-36656194.1643613389)



Products (Packaging and Labelling) Second Amendment Rules, 2018<sup>5</sup>. The health implications posed by consumption of both products are drastically different and it is an established fact backed by numerous scientific studies that smoking is far more detrimental to the health of the consumer. In India, the word Tobacco is associated more with smokeless products than smoking tobacco products and hence warrants the differentiation in the health warnings on the packaging specifically employing the term ‘Smoking’ so as to better inform the consumers.

**Impact:**

- a. Over half the world’s population is exposed to graphic health warnings on the products.
- b. Less than a quarter of the world population are residents in a country that has aired a tobacco media campaign in the past 2 years.

Unlike rest of world, where single stick sale of cigarettes is not permitted, in India majority sale of cigarettes is in single stick and pictorial warning is missed by single stick buyers. The draft Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill 2020 has proposed prohibition of sale of single stick sale of Cigarette. Moreover, the Government of Maharashtra through its Public Health Department had banned sale of Single stick of Cigarette vide notification dated 24 September 2020<sup>6</sup>, however, the enforcement of the same may be a herculean task considering the number of retailers involved in the sale of cigarettes.

**A. Enforcing Bans on Tobacco Advertising, Promotion and Sponsorship**

As per WHO, each year, the tobacco industry spends huge sums of money to market its products such as tobacco advertising, promotion and sponsorship (TAPS). The tobacco industry aims to link its products with success, fun and glamour. The WHO claims that the results are devastating for public health, with new users ultimately being lured into a

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<sup>5</sup> Cigarettes and other Tobacco Products (Packaging and Labelling) Second Amendment Rules, 2018 - [https://ntcp.nhp.gov.in/assets/document/Acts-Rules-Regulations/GSR-331\(E\).pdf](https://ntcp.nhp.gov.in/assets/document/Acts-Rules-Regulations/GSR-331(E).pdf)

<sup>6</sup> "Notification dated 24th September 2020 issued by Principal Secretary, Government of Maharashtra: <https://www.maharashtra.gov.in/Site/Upload/Acts%20Rules/Marathi/Notification%20for%20sale%20of%20Cigarate.pdf>"

lifetime of addiction; and that many forms of TAPS underplay the impact of tobacco and portray the same being just another consumer product.

TAPS increase smoking initiation among youth, and even contained exposure impacts adolescents harmfully. Needless to say the more campaigning of tobacco leads to youth being led to smoke.

## **B. Raising Taxes on Tobacco**

Studies show that increasing tobacco taxes and prices effectively reduces tobacco use, however, the high rates of taxation has led to evasion and counterfeiting of tobacco products.

Member States of the WHO are ranked on their successful implementation of MPOWER also on the basis of their taxation policies.

The best practices as propounded by WHO in tobacco taxation policies include:<sup>7</sup>

- a) Use or begin transitioning to a simple excise tax structure.
- b) Rely more on specific tobacco excise to drive price increases.
- c) Ensure tobacco taxes decrease affordability by accounting for the impact of inflation and economic growth.
- d) Implement tobacco taxation as part of a comprehensive strategy for reducing tobacco use.

Further numerous studies have been undertaken on various aspects concerning MPOWER and in fact a measure checklist has been devised to determine the implementation of the control policies. The checklist consists of ten indicators, where seven indicators have five options and are scored on a scale of 0 to 4, and three indicators which have four options that can be assigned a score between 0 and 3. The maximum possible score on the checklist is 37.<sup>8</sup>

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<sup>7</sup> Raising Taxes on Tobacco: <https://www.who.int/activities/raising-taxes-on-tobacco>

<sup>8</sup> Heydari G, Talischi F, Algouhmani H, Lando HA, Ahmady AE. WHO MPOWER tobacco control scores in the Eastern Mediterranean countries based on the 2011 report. East Mediterr Health J 2013;19:314-9.

## How India has fared in the Implementation of MPOWER

- i. India's score basis the above-mentioned checklist has been calculated in the WHO – Global Tobacco Epidemic Report (GTER) for the years 2013, 2015, 2017 and 2019. India's score for the aforementioned years are as follows<sup>9</sup>:

Sr. No.	Year	Score
i.	2013	24
ii.	2015	27
iii.	2017	28
iv.	2019	29

- ii. An increasing score represents improvement in implementation of the directives of the WHO FCTC and MPOWER.
- iii. Primarily, the Indian authorities have enacted The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) as the primary legislation in implementing the WHO FCTC, which has led to introduction and implementation of the following measures:

### a. Smoke-Free Policies.

Defined public places which are completely smoke free.

### b. Cessation Programmes.

The authorities have been engaged in the running of programmes including tobacco cessation counselling, nicotine replacement therapy and set up of national quit-line number.

<sup>9</sup> Saxena A, Sharma K, Avashia V. Assessment of Tobacco Control Policy in India: An Evaluation using the World Health Organization MPOWER Framework. Indian J Community Med. 2020 Oct-Dec;45(4):543-545. doi: 10.4103/ijcm.IJCM\_37\_20. Epub 2020 Oct 28. PMID: 33623219; PMCID: PMC7877431.



**c. Health Warnings on Tobacco Packages.**

The Government has mandated the pictorial warnings cover 85% of the area on the front and the back of the packaging along with the quit-line number.

**d. Mass Media Campaigns.**

Under the National Tobacco Control Programme, anti-tobacco campaigns have been launched which were aired on televisions and radios.

**e. Advertising Bans.**

Currently, there is a partial ban on the use of print media, radio and televisions for advertisements and indirect/surrogate advertising has not forbidden yet. There are certain restrictions pertaining to advertisements at the point of sale, however, there are certain gaps with regard to these provisions.

**f. Taxation.**

As per the latest report filed by India with the FCTC repository, it has been indicated that the development of a comprehensive taxation policy is underway to better implement the WHO FCTC. With regard to the progress made in the country pertaining to the implementation of Article 6, it has been indicated that recommendations to introduce ‘Sin Tax’ on demerit goods such as tobacco and alcohol has been proposed by the responsible stakeholders. The taxation structure has undergone reform through the levy of Goods and Services Tax (GST) on all tobacco products and pan masalas and have been classified as ‘demerit goods’ that have been placed in the highest tax slab, attracting 28% tax. Additionally, ‘cess’ is also charged over and above this tax. Importantly, however, there is no cess imposed on bidis in India.<sup>10</sup>

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<sup>10</sup> WHO. (2020). 2020 - CORE QUESTIONNAIRE OF THE REPORTING INSTRUMENT OF WHO FCTC. WHO FCTC. Available at: [https://untobaccocontrol.org/impldb/wp-content/uploads/India\\_2020\\_WHOFCtCreport.pdf](https://untobaccocontrol.org/impldb/wp-content/uploads/India_2020_WHOFCtCreport.pdf)

## Key Takeaways

- i. India’s MPOWER compliance scores have improved over the years; and the same can be further improved by enabling implementation of the WHO FCTC and MPOWER regulations in a strategic manner.
- ii. Evaluation of implementation of the policies at shorter intervals can be undertaken to further monitor compliance and ensure provisioning of increased financial aid and human resources to achieve higher MPOWER compliances.<sup>11</sup>
- iii. The tobacco control policies being implemented and proposed to be implemented by the Government would be required under Article 4(6)<sup>12</sup> of the FCTC to plan and provide financial aid as well as technical aid to the tobacco farmers whose livelihoods are subject to being severely affected by the implementation of policies which aim to curb the sale and consumption of tobacco products.
- iv. The incorporation of the MPOWER measures into the national policies/plans would allow India to be in further compliance with the WHO FCTC.
- v. The graphicness of pictorial warnings prescribed on various tobacco products should be proportionate to the health risk posed and smoking tobacco products should specifically use the term ‘SMOKING’ in the warnings to avoid misinformation.

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<sup>11</sup> Guidelines for implementation of Article 6 of the WHO FCTC. Available at:

[https://apps.who.int/iris/bitstream/handle/10665/145110/FCTC\\_COP6%285%29-en.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/145110/FCTC_COP6%285%29-en.pdf?sequence=1&isAllowed=y)

<sup>12</sup> Article 4 (6) of WHO FCTC provides for an essential Guiding Principle which reads as: *“The importance of technical and financial assistance to aid the economic transition of tobacco growers and workers whose livelihoods are seriously affected as a consequence of the tobacco control programmes in developing country Parties, as well as Parties with economies in transition, should be recognised and addressed in the context of nationally developed strategies for sustainable development.”*

## CHAPTER - II

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# INDIAN TOBACCO INDUSTRY AND CONSUMER TRENDS

### Executive Summary

1. Classification of tobacco products available in India into:
  - a. Smoking Tobacco
  - b. Smokeless Tobacco
2. The sale and consumption of Gutka and “Pan Masala” with nicotine have been banned by the Supreme Court in 2017 and the same was enforced by the Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restriction on Sales) Regulation, 2011, prohibiting the usage of nicotine as an ingredient in consumables. Further, tobacco has been reclassified as no longer being regulated by Food Safety and Standards (Prohibition and Restriction on Sales) Regulation, 2011.
3. Consumption trends of the masses have been analysed. Overall consumption of smoking tobacco is more prevalent in urban regions as opposed to rural regions. Average expenditure on tobacco products is higher in urban regions as opposed to rural regions.
4. According to GATS 2016-17, sale of loose cigarettes has increased over the years and nearly 2/3<sup>rd</sup> consumers of cigarettes prefer to purchase loose cigarettes, rendering them more accessible and affordable. Measures have been proposed to curtail sale of loose cigarettes.
5. The Government has proposed the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020, which would prohibit the sale of single stick cigarettes. The sale of single stick cigarettes has already been banned by the Government of Maharashtra through its Public Health Department.
6. As per the studies conducted for GATS 2016-17, the number of tobacco consumers in India has reduced especially in the age group of 15-24. It has also been noted that the most amount of money is spent on cigarettes followed by beedis. It is also pertinent to note that students spend the most amount of money to purchase cigarettes.

## Brief Outline

The purpose of this chapter is to provide a brief background to the tobacco industry in India. For the purposes of this chapter, we have identified the origins of the tobacco trade in India and its form in the earlier period; and the types of tobacco products manufactured and consumed in the Indian market. The chapter also aims to elucidate on the key demographic consuming the various kinds of tobacco products and the socio-economic as well as socio-cultural factors that affect the user trends and the average expenditure on tobacco products by members of different social classes. The chapter further attempts to illustrate the effect of the MPOWER initiative on the consumption of tobacco products in India.

## Introduction

- i. The introduction of tobacco as a cash crop in India can be attributed to the Portuguese merchants in the 17<sup>th</sup> Century AD. Sebastian Marquez, a Portuguese friar noted the tobacco cultivation in Bengal which was primarily sold in Burma. However, through much of the 17<sup>th</sup> century the tobacco cultivation trade was predominantly based out of Gujarat and Andhra Pradesh.<sup>13</sup>
- ii. Indian tobacco in today's economy is an incredibly high valued commodity in the global tobacco market and is used by multiple cigarette manufacturers across the globe. India is currently the second largest tobacco producer and exporter in the world. The industry primarily exports unmanufactured tobacco to Belgium, Korea, Nigeria, Egypt, Nepal and several countries in Western Europe.<sup>14</sup>
- iii. Currently Foreign Direct Investment is not permitted in manufacturing of cigars, cigarettes and other tobacco products. However, in 2020 a parliamentary panel recommended permitting regulated FDI in the industry and establishing export only tobacco farms to boost outward shipping to benefit the tobacco farmers. The panel also

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<sup>13</sup> Gokhale, B. G. (1974). Tobacco in Seventeenth-Century India. *Agricultural History*, 48(4), 484–492. <http://www.istor.org/stable/3741385>

<sup>14</sup> *Tobacco Exports From India: Stats & Trivia by Tobacco Board | IBEF*. (2021). IBEF. <https://www.ibef.org/exports/tobacco-industry-india.aspx>

recommended export incentives to promote the production of tobacco specifically for export.<sup>15</sup>

- iv. The tobacco industry currently provides employment to 45.7 million citizens in India<sup>16</sup> and as per Associated Chambers of Commerce and Industry of India (ASSOCHAM) the tobacco industry contributed a total of Rs. 11,79,498/- Crores to the Indian economy, making it one of the significant contributors<sup>17</sup>.

### Types of Products Available in the Indian Market:

- i. The tobacco products currently available in the Indian market can be categorized in to two broad categories, i.e., smokeless tobacco and smoking tobacco.
- ii. Some of the widely consumed smokeless tobacco products available in the market are as under<sup>18</sup>:
  - a. Unmanufactured tobacco: Tobacco leaves are powdered by various steps of size reduction and cleaning such as cutting, beating, sieving etc. and packed in packets with or without brand name and sold. The user applies slacked lime paste on it and sucks it by keeping it in between lips and gums. Unmanufactured tobacco has been assigned HSN Code – 240120:

*“The term ‘unmanufactured tobacco’ includes many forms. It could be tobacco supplied as whole plants or leaves in the natural state, or as cured or fermented leaves. It also includes tobacco which has been stemmed/ stripped, trimmed or untrimmed, broken or cut, including pieces cut to shape. Tobacco leaves which have been blended, stemmed/ stripped and ‘cased’ (‘sauced’ or ‘liquored’) with a liquid of appropriate composition, mainly in order to prevent mould and drying and also to preserve the*

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<sup>15</sup> 154TH REPORT ON EXPORT OF AGRICULTURAL & MARINE PRODUCTS, PLANTATION CROPS, TURMERIC AND COIR. Available at: [https://rajyasabhadhindi.nic.in/document/Press\\_ReleaseFile/OTHER/1/318P\\_2020\\_8\\_15.pdf](https://rajyasabhadhindi.nic.in/document/Press_ReleaseFile/OTHER/1/318P_2020_8_15.pdf).

<sup>16</sup> The Tobacco Institute of India. (2018, May 21). *Livelihood*. TIIONline. <https://www.tiionline.org/facts-sheets/livelihood/>

<sup>17</sup> TARI and ASSOCHAM Report, 2019: Economic Value of the Tobacco Sector in India.

<sup>18</sup> IARC. (2018). *Smokeless Tobacco*. <https://monographs.iarc.who.int/wp-content/uploads/2018/06/mono89-6.pdf>

*flavour, are also covered in this heading. However, it doesn't include tobacco which is ready for smoking."*

- b. Khaini: Sun-dried or fermented coarsely cut tobacco leaves mixed with slaked lime and other additives. It is also called Manufactured Tobacco. Widely consumed in North India and Karnataka. Khaini is not chewed but sucked by keeping it in between lips and gums.
- c. Manipuri Tobacco: Mixture of finely cut betel nut and small pieces of tobacco leaves treated in slaked lime and flavouring agents such as powdered cloves, cardamom, Kewara (extract from the fragrant flower of Pandanus odoratissimus) and sandalwood powder. Catechu is sometimes used. Commonly used in Uttar Pradesh. The major ingredient is area nut. As per clause 2.3.4 of FSSAI, this product is prohibited.
- d. Mishri: Tobacco that is dark, roasted and in a powdered form. Applied to teeth and gums as tooth powder.
- e. Zarda: Flavoured chewing tobacco flakes mixed with aromatic spices, menthol, herbs, fragrances, saffron, raw kiwam, silver flakes, sandalwood oil etc. Lime may be provided separately by the manufactures. When flavoured with saffron it is called "Zafrani Zarda". It is often used as an ingredient in betel quid.
- g. Khiwam: Thick paste prepared from tobacco leaf extract, spices (e.g., saffron, cardamom, aniseed) and additives such as musk. Can be used as a paste or in the form of granules.
- h. Gudakhu: Paste like tobacco preparation made using fine tobacco leaf dust, sheera (molasses), lime and gerumati (red soil). Preferred by women in Bihar.
- i. Shammah: Mixture of Tobacco, slaked lime, ash, black pepper, oil, flavouring, bombosa (sodium carbonate).

Besides Manipuri Tobacco mentioned above there are several other Areca nut based product such as Gutkha, Kharra, Mawa, etc. where tobacco is added as one of the many ingredients. Clause 2.3.4 of Food Safety and Standards (Prohibition and Restriction on Sales) Regulation, 2011 prohibits use of tobacco and nicotine as



ingredients in any food products, the sale of these products are prohibited pan India. Taking into account the composition of ‘Gutka’ and ‘Pan masala’ they should be removed from schedule of tobacco products given in COTPA, 2003 as Pan masala is not a tobacco product but a food product and Gutka is Pan masala with tobacco, which has been banned.

- iii. It would be relevant to note that in 2017, the Hon’ble Supreme Court of India banned sale of ‘Gutka’ and ‘Pan Masala with Nicotine’. The same was enforced by Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restriction on Sales) Regulation, 2011, which effectively prohibits the use of tobacco and nicotine as ingredients in any food product and upholds the ban on sale and manufacture of the products ordered by the Hon’ble Supreme Court. The Food Safety and Standards Authority of India (“FSSAI”) implemented the above by issuing a necessary directive in 2017.<sup>19</sup> It is also important to note that addition of tobacco and nicotine to food items is prohibited and by the FSSAI. Tobacco has been reclassified as no longer being food and as per Clause 2.3.4 of the Food Safety and Standards (Prohibition and Restriction on Sales) Regulation, 2011, it cannot be added in any food. Even though tobacco has been eliminated from FSSAI Act and has been categorised as not being food, there remains certain ambiguity around the phrase ‘tobacco is not food’ and the same has led to several litigations wherein contradictory orders have been passed by various Courts resulting in further ambiguity leaving room for further litigation. As seen in “*Omkar Agency v. Food Safety and Standards Authority of India*” bearing Civil Jurisdiction Nos. 3805, 18244, 18282 and 18351 of 2015, wherein the Court opined on the applicability of statutes due to the overlapping nature of tobacco products.

The Hon’ble High Court of Madras in WP No. 21 of 2017 and WMP No. 18 of 2017 titled “*Jayavilas Tobacco Traders LLP vs. The Designated Officer, The Food Safety & Drugs Control Dept.*” held vide Order dated 09.06.2017 that chewing tobacco is not a food product as defined under Section 3(j) of the FSSAI Act and tobacco/tobacco

<sup>19</sup> FSSAI directive dated 10.10.2017. Available at: [https://archive.fssai.gov.in/dam/jcr:d6d7eb3d-692b-4b53-a435-771a897c7f78/Letter\\_Prohibition\\_PAN\\_Masala\\_Tobacco\\_10\\_10\\_2017.pdf](https://archive.fssai.gov.in/dam/jcr:d6d7eb3d-692b-4b53-a435-771a897c7f78/Letter_Prohibition_PAN_Masala_Tobacco_10_10_2017.pdf)

products are to be manufactured and sold strictly in accordance with the provisions of COTPA and the Rules framed thereunder.

The aforesaid decision was reiterated by the Hon'ble High Court of Andhra Pradesh in *Sri Jaganath Enterprises vs. State of Andhra Pradesh* bearing Criminal Petition No. 5421 of 2019 whereby a First Information Report was registered against a tobacco manufacturer and the same was quashed vide Order dated 18.12.2019 on the ground that tobacco products are governed solely by the provisions of COTPA and do not fall under the definition of a food product under FSSAI. To avoid unnecessary litigations on issue of whether tobacco is food or not, it should be clarified that tobacco contains nicotine naturally and is not food and not allowed to be mixed in other food items.

- iv. Smoking tobacco products that are heavily consumed in the Indian market are as under<sup>20</sup>:
  - a. Cigarettes
  - b. Beedis
  - c. Cigars
  - d. Cheroots
  - e. Tobacco used for hookahs and pipes

### Consumption Trends<sup>21</sup>

- i. The overall consumption of smoking tobacco is greater in urban regions as opposed to rural regions. Beedis and hookahs are smoking tobaccos of choice in rural regions and are consumed at a greater volume in comparison with urban regions.

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<sup>20</sup> Mohan, P., Lando, H. A. and Panneer, S. (2018) 'Assessment of Tobacco Consumption and Control in India', Indian Journal of Clinical Medicine, 9. doi: 10.1177/1179916118759289.

<sup>21</sup> WHO. Tobacco Free Initiative. Global Adult Tobacco Survey (GATS) India report 2009–2010. Geneva, Switzerland: World Health Organization; 2011.

- ii. 63% of cigarette smokers smoke at least one cigarette daily whereas 81% of bidi smokers smoke every day. In rural India the prevalence of daily smoking of cigarettes is currently at 3% as opposed to 5% in urban regions; and the prevalence of daily smoking of beedis in rural regions is at 9% and at 5% in urban regions.
- iii. According to Global Adult Tobacco Survey (“GATS”) (2009-2010), 57% smokers purchased loose cigarettes. This number has grown over the years. GATS (2016-17) reported that 66.67% of cigarette smokers purchase cigarettes in unpackaged form. The single stick sales of cigarettes makes them more accessible and affordable. Such unpackaged sale of cigarettes defeats the purpose of the graphic warnings on the packets which single stick users are not be exposed to.<sup>22</sup> The Government has proposed the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020, which would prohibit the sale of single stick cigarettes. The sale of single stick cigarettes has already been banned by the Government of Maharashtra through its Public Health Department vide notification dated 24 September 2020.<sup>23</sup>
- iv. Approximately 26% of all adult Indians consume smokeless tobacco by way of chewing/applying to teeth/sniffing. The consumption of smokeless tobacco is far more than smoking tobacco.
- v. Of the 26% adult Indians consuming smokeless tobacco, approximately 21% consume smokeless tobacco on a regular basis, the remaining 5% are occasional users.
- vi. The use of smokeless tobacco is more prevalent in males at 33% as opposed to 18% for females.

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<sup>22</sup> Kapoor, S., Mehra, R., Yadav, A., Lal, P., & Singh, R. (2021). Banning Loose Cigarettes and Other Tobacco Products in India: A Policy Analysis. *Asian Pacific Journal of Cancer Prevention*, 22(S2), 51–57. <https://doi.org/10.31557/apjcp.2021.22.s2.51>

<sup>23</sup> Notification as available on the website of Government of Maharashtra, accessible at: <https://www.maharashtra.gov.in/Site/Upload/Acts%20Rules/Marathi/Notification%20for%20sale%20of%20Cigarate.pdf>

- vii. As per GATS 2016-17 the number of tobacco users in India have declined, especially in the age range of 15-24.<sup>24</sup>

### Impact of Socioeconomic Factors on Tobacco Consumption

- i. Socioeconomic indicators relied on to decipher the tobacco consumption and expenditure trends vary from study to study. The most commonly relied on factors are education; occupation; and income generated.
- ii. These factors need to be examined in conjunction with each other to get a more comprehensive understanding of the impact of socioeconomic factors on tobacco usage trends.
- iii. Education has been identified as one of the most telling factor which determines the socioeconomic status of individuals, given that it is easily quantifiable and is applicable to all classes of individuals. The education level of the consumers has been shown to have a direct correlation with tobacco usage.<sup>25</sup>

Studies have indicated the propensity to consume tobacco is higher amongst individuals who are poor, lesser educated, and belong to a disadvantaged caste/tribe. The variations in consumption is attributable to the implementation of tobacco control policies at various levels in the country.

### Impact of Sociocultural Factors on Tobacco Consumption

- i. Wide sociocultural differences can be observed in India due to the vast differences between the population in urban and rural setups; regions; age groups; gender disparities; and education.
- ii. The acceptance or rejection of tobacco is hugely influenced by the constant interplay of the above-mentioned factors. For example the family dynamics in erstwhile India

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<sup>24</sup> GATS-II India (2017). [http://www.searo.who.int/india/mediacentre/events/2017/gats2\\_india.pdf?ua=1](http://www.searo.who.int/india/mediacentre/events/2017/gats2_india.pdf?ua=1).

<sup>25</sup> Sorensen G, Gupta PC, Pednekar MS. Social disparities in tobacco use in Mumbai, India: The roles of occupation, education, and gender. *Am J Public Health* 2005;95:1003-8.

prohibited the younger members of a family from consuming tobacco within the premises of the family home.

- iii. Some of the major determinants of acceptance or rejection of tobacco are as under:
  - a. Gender
  - b. Income
  - c. Peer pressure
  - d. Advertisements
  - e. Lack of awareness
  - f. Exposure to individuals consuming tobacco.

### Effect of Implementation of Stringent Tobacco Policies

The change in prevalence data compiled by way GATS 2009-10 and GATS 2016-17 quite clearly indicates the effect of the implementation of the WHO FCTC regulations and guidelines in India. The statistical representation of impact are presented as below:<sup>26</sup>

	Tobacco Usage			Smoking Tobacco Usage			Smokeless Tobacco Usage		
	2009-10	2016-17	Relative change	2009-10	2016-17	Relative change	2009-10	2016-17	Relative change
<b>Overall</b>									
Current user	34.6	28.6	-17.3**	14.0	10.7	-23.6**	25.9	21.4	-17.4**
Daily user	29.1	24.9	-14.4**	10.7	8.6	-19.6**	21.4	18.2	-15.0**
Occasional user	5.4	3.7	-31.5**	3.3	2.1	-36.4**	4.5	3.1	-31.1**
<b>Men</b>									
Current user	47.9	42.4	-11.5**	24.3	19.0	-21.8**	32.9	29.6	-10.0**
Daily user	40.8	36.9	-9.6**	18.3	15.2	-16.9**	27.4	25.1	-8.4**
Occasional user	7.1	5.5	-22.5**	5.9	3.8	-35.6**	5.4	4.5	-16.7**
<b>Women</b>									
Current user	20.3	14.2	-30.0**	2.9	2.0	-31.0**	18.4	12.8	-30.4**
Daily user	16.7	12.4	-25.7**	2.4	1.7	-29.2**	14.9	11.1	-25.5**
Occasional user	3.5	1.8	-48.6**	0.5	0.3	-40.0**	3.5	1.7	-51.4**
<b>Urban</b>									
Current user	25.3	21.2	-16.2**	11.2	8.3	-25.9**	17.7	15.2	-14.1**
Daily user	21.1	17.9	-15.2**	8.4	6.3	-25.0**	14.7	12.8	-12.9**
Occasional user	4.2	3.3	-21.4**	2.8	1.9	-32.1**	3.0	2.5	-16.7**
<b>Rural</b>									
Current user	38.4	32.5	-15.4**	15.1	11.9	-21.2**	29.3	24.6	-16.0**
Daily user	32.5	28.6	-12.0**	11.6	9.8	-15.5**	24.2	21.1	-12.8**
Occasional user	5.9	3.9	-33.9**	3.5	2.2	-37.1**	5.1	3.5	-31.4**

Note: \*p<0.05 \*\*p<0.01

<sup>26</sup> Tata Institute of Social Sciences (TISS), Mumbai and Ministry of Health and Family Welfare, Government of India. Global Adult Tobacco Survey GATS 2 India 2016-17.

The above presented Overall change in usage of Tobacco Products denotes the significant effect and impact of economic regulations on tobacco consumption trends.

However, though high rates of taxes increases price and decrease affordability, the high rates of taxes, especially in unorganised sector, are leading to tax evasion and encouraging counterfeiting of products.<sup>27</sup> Unlike the Cigarette Industry, where no new licences are issued for new cigarette manufacturing now, in smokeless tobacco industry there are no such controls and hence fly-by-night units end up mushrooming in every nook and corner and thereby evade regulations and adversely impact the legitimate units. It is also understood that the illegitimate revenues of such unregulated fly-by-night units is several times higher than legal traders, and therein is an exponential loss of revenue for the government, especially due to evasion of taxes by the illegitimate manufacturers; which effectively ends up harming the smokeless tobacco industry severely.

### Average Expenditure on Tobacco<sup>28</sup>

- i. The average expenditure incurred for purchase of tobacco products by a consumer from an urban setup is greater than what is incurred by someone from a rural setup.<sup>29</sup>
- ii. Studies have indicated that across individuals of all educational backgrounds with regard to expenditure towards tobacco products, **the most amount is spent on cigarettes followed by smokeless tobacco and then beedis.** Individuals with education level higher than secondary level incur more expenses for procurement of cigarettes.
- iii. **Students spend the most amount of money to purchase cigarettes** when compared with individuals from other occupational categories.*(ibid)*
- iv. Homemakers, on the other hand incur the most expenditure to procure smokeless tobacco.

<sup>27</sup>John RM, Rao RK, Rao MG, Moore J, Deshpande RS, Sengupta J, Selvaraj S, Chaloupka FJ, Jha P. The Economics of Tobacco and Tobacco Taxation in India. Paris: International Union Against Tuberculosis and Lung Disease; 2010.

<sup>28</sup> Mehta, T., Shah, S., Dave, B., Shah, R., & Dave, R. (2018). Socioeconomic and cultural impact of tobacco in India. *Journal of Family Medicine and Primary Care*, 7(6), 1173. [https://doi.org/10.4103/jfmpc.jfmpc\\_36\\_18](https://doi.org/10.4103/jfmpc.jfmpc_36_18)

<sup>29</sup> Agrawal S, Karan A, Selvaraj S, Bhan N, Subramanian SV, Millett C. Socio-economic patterning of tobacco use in Indian states. *Int J Tuberc Lung Dis*. 2013;17:1110-7.



## Key Takeaways

- i. The overall usage statistics of tobacco consumers in GATS 2016-17 have exhibited a downswing in tobacco consumption trends which is indicative of the WHO FCTC directives being implemented and having an effect on the consumers.
- ii. The disparity in the usage of tobacco per gender is indicative of the role societal norms play in the formation of user trends in India.
- iii. Students and younger Indians consistently spend higher amounts on smoking tobacco products as compared to smokeless tobacco.
- iv. The rampant single stick sale of cigarettes defeats the Government's efforts to curb consumption by making the cigarettes more accessible and cheaper to procure. The consumers of single stick cigarettes would not be exposed to the pictorial warnings and would not be deterred by the graphic images.
- v. As per the findings of GATS 2016-17, the increase in taxation of tobacco products may be the most effective method of curbing the consumption by making them less affordable, especially for the younger members of the population. However, at the same time the increased rate of taxation in the unorganised smokeless tobacco sector has led to tax evasion and the influx of counterfeit smokeless products which is effectively evading regulation and taxation and thereby necessitating appropriate regulations.

## CHAPTER – III

# HEALTH IMPLICATIONS OF CONSUMPTION OF TOBACCO PRODUCTS

### Executive Summary

1. Areca Nut is not smokeless tobacco, rather the two are often combined to provide products. The two are quite distinct. Areca nut is highly addictive and is one of the most commonly consumed psychoactive substance. Despite being highly carcinogenic, areca nut products are not subject to pictorial warnings.
2. A study conducted to determine the presence and concentration of nitrosamines (carcinogens that increase propensity of cancer) in different smokeless tobacco products found that concentration of nitrosamines was much higher in areca nut based smokeless tobacco products. Whereas, certain smokeless tobacco products that did not contain significant amounts of nitrosamines.
3. As per GATS 2016-17 Report, consumption of smoking tobacco directly caused nearly 930,000 deaths in India. Studies conducted by WHO determined that individuals consuming smoking tobacco were 1.6 times more likely to contract Tuberculosis. Consumption of smoking tobacco has been determined to have a direct causal relation with occurrence of cancer of the throat, lungs, mouth, stomach, pancreas, etc. by the IARC monograph. Consumption of smokeless tobacco led to 350,000 deaths as opposed to 930,000 deaths caused by the consumption of smoking tobacco.
4. Studies have also established that exposure to second-hand smoke can result in cardiovascular diseases; lung cancer and other cancers; asthma; ear infections; and sudden infant death syndrome.
5. Smokeless tobacco such as snus have been employed as substitutes in certain Scandinavian countries resulting in reduction of the problem of second-hand smoke to a great extent.
6. The IARC has identified the carcinogens associated with various cancers and their prevalence in smoking and smokeless tobacco. Most of the identified carcinogens were absent in smokeless tobacco; however, all the identified carcinogens were found to be present in smoking tobacco.
7. Tobacco when inhaled is far more carcinogenic as opposed to when it is consumed orally.

## Brief Outline

This chapter sets out to identify the differential health implications posed by the consumption of tobacco products. The chapter aims to identify in detail the addictiveness of these products and the direct correlation between the consumption of these products and the increase in lifestyle disorders in the groups consuming the products. We further conduct a comparative study of the health implications of consumption of smokeless tobacco as opposed to the use of smoking tobacco and Areca nut.

## Introduction

In the previous chapter we identified the key product groups consumed by Indians across various socioeconomic and sociocultural groups, namely smoking tobacco, smokeless tobacco, and areca nut products. There are multiple health risks associated with the consumption of certain products under these broad product groups which have been identified through presentation of acclaimed studies on the said products.

## Health Implications of Areca Nut Consumption

- i. To begin with, there exists a misconception pertaining to areca nut being a type of smokeless tobacco product. Areca nut and smokeless tobacco are often combined to provide products; however, the ingredients are not the same and are quite distinct.
- ii. Areca nut is highly addictive and is amongst the most commonly consumed psychoactive substance along with alcohol, nicotine and caffeine.<sup>30</sup>
- iii. Areca Nut is rated as a Group 1 Carcinogen by IARC monograph and has lot more health hazards including cause of Oral Submucous Fibrosis (OSMF) which has high malignant potential.

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<sup>30</sup> S. Warnakulasuriya, P. Chaturvedi, and P. C. Gupta, "Addictive behaviours need to include areca nut use," *Addiction*, vol. 110, p. 1533, 2015.

- iv. Areca nut is consumed in raw or processed forms with or without tobacco. Areca nut is commonly used as an ingredient in gutka and pan masala; and it is also used in the preparation of mawa and betel quid.
- v. The International Agency for Research on Cancer (IARC) has classified betel quid with or without tobacco as a Group I carcinogen.<sup>31</sup>
- vi. It has been noted by relevant studies that individuals consuming Areca nut have a higher propensity to contract oral cancer.<sup>32</sup>
- vii. Studies have also indicated that occurrence of cancer in the oesophagus, liver, pancreas, larynx and lungs are also prevalent in consumer groups indulging in the consumption of Areca nut.<sup>33</sup>
- viii. Compounds such as alkaloids, tannins and a few polyphenols present in Areca nut are proven carcinogens; however, the presence of alkaloids has been observed to be the primary carcinogen.<sup>34</sup>
- ix. Arecoline, a compound found in chewing areca nut, can cause placental damage and neonatal withdrawal syndrome if used by pregnant women.<sup>35</sup>
- x. Arecoline can also interfere with adipose cell metabolism which may lead to metabolic disorders.<sup>36</sup>
- xi. Additionally, it has been noted that consumption of Areca nut can also cause bronchoconstriction and could lead to severe bouts of asthma.<sup>37</sup>

<sup>31</sup> IARC Working Group on the Evaluation of Carcinogenic Risks to Humans, "Betel-quid and areca-nut chewing and some areca-nut derived nitrosamines," *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, vol. 85, pp. 1–334, 2004.

<sup>32</sup> International Agency for Research on Cancer, "Personal habits and indoor combustions, IARC monographs on the evaluation of carcinogenic risks to humans," *E A Review of Human Carcinogens*, vol. 100, International Agency for Research on Cancer, Lyon, France, 2012 <https://monographs.iarc.fr/wp-content/uploads/2018/06/mono100E.pdf>.

<sup>33</sup> C. P. Wen, M. K. Tsai, W. S. Chung et al., "Cancer risks from betel quid chewing beyond oral cancer: a multiple-site carcinogen when acting with smoking," *Cancer Causes & Control: CCC*, vol. 21, no. 9, pp. 1427–1435, 2010.

<sup>34</sup> G. Shah, P. Chaturvedi, and S. Vaishampayan, "Areca nut as an emerging etiology of oral cancers in India," *Indian Journal of Medical and Paediatric Oncology: Official Journal of Indian Society of Medical & Paediatric Oncology*, vol. 33, no. 2, pp. 71–79, 2012.

<sup>35</sup> O. Garcia-Algar, O. Vall, F. Alameda et al., "Prenatal exposure to arecoline (areca nut alkaloid) and birth outcomes," *Archives of Disease in Childhood*, vol. 90, no. 3, pp. F276–F277, 2005.

<sup>36</sup> H. F. Hsu, T. C. Tsou, H. R. Chao et al., "Effects of arecoline on adipogenesis, lipolysis, and glucose uptake of adipocytes—A possible role of betel-quid chewing in metabolic syndrome," *Toxicology and Applied Pharmacology*, vol. 245, no. 3, pp. 370–377, 2010.

<sup>37</sup> R. F. Taylor, N. Al-Jarad, L. M. John, D. M. Conroy, and N. C. Barnes, "Betel-nut chewing and asthma," *Lancet*, vol. 339, no. 8802, pp. 1134–1136, 1992.

- xii. Studies have reported arecoline ingestion can exacerbate periodontal diseases and impair attempts at periodontal reattachment.<sup>38</sup>
- xiii. Betel chewing can also cause brownish-red discoloration of the oral mucosa accompanied by encrustation of the affected mucosa with quid particles, with a tendency for desquamation and peeling which is known as chewer’s mucosa.<sup>39</sup>

With regard to the mandatory requirement for pictorial warnings on the packets of tobacco products, there is a need for a similar set of guidelines to be issued for the packaging of areca nut products considering they are a known/identified carcinogen.

## Health Implications of Smoking Tobacco

- i. As per GATS 2016-17 and studies relied upon during the survey, it has been determined that an estimated 930,000 adult deaths in India were directly attributable to the consumption of smoking tobacco.<sup>40 41</sup>
- ii. According to the studies conducted by the WHO, individuals who consume smoking tobacco were 1.6 times more likely to contract tuberculosis. In 2020, 0.73 million tuberculosis cases were attributable to smoking.<sup>42</sup>
- iii. Pertinently, as per the Global TB Report 2016, India has the highest number of cases of tuberculosis in the world.<sup>43</sup>
- iv. According to the IARC monograph, there is sufficient data that smoking tobacco causes cancer of the lungs; oral cavity; naso- , oro-, and hypo-pharynx, nasal cavity,

<sup>38</sup> M.C.Chang,M.Y.Kuo,L.J.Hahn,C.C.Hsieh,S.K.Lin,and J. H. Jeng, “Areca nut extract inhibits the growth, attachment, and matrix protein synthesis of cultured human gingival fi- broblasts,” *Journal of Periodontology*, vol. 69, no. 10, pp. 1092–1097, 1998.

<sup>39</sup> C. R. Trivedy, G. Craig, and S. Warnakulasuriya, “The oral health consequences of chewing areca nut,” *Addiction Biology L*, vol. 7, pp. 115–125, 2002.

<sup>40</sup> Tata Institute of Social Sciences (TISS), Mumbai and Ministry of Health and Family Welfare, Government of India. Global Adult Tobacco Survey GATS 2 India 2016-17.

<sup>41</sup> Jha P, Jacob B, Gajalakshmi V, Gupta PC, Dhingra N, Kumar R, et al. A nationally representative case–control study of smoking and death in India. *New England Journal of Medicine*. 2008 March; 358(11):1137–1147.

<sup>42</sup> *Tuberculosis (TB)*. (2021, October 14). Who.Int. Retrieved January 27, 2022, from <https://www.who.int/news-room/fact-sheets/detail/tuberculosis>

<sup>43</sup> Central TB Division, Directorate General of Health Services, MoHFW , ‘TB India 2017 – Revised National Tuberculosis Control Programme: Annual Status Report’ March 2017. Accessible at: [http:// www.tbcindia.gov.in/](http://www.tbcindia.gov.in/).

and paranasal sinuses; larynx; oesophagus; stomach; pancreas; liver; kidney; uterus; urinary bladder; uterine cervix; and bone marrow.

- v. Colorectal cancer has also been linked with cigarette smoking. Nearly 90% of all cancer deaths in men and 80% of all cancer deaths in women can be attributed to smoking tobacco. Research clearly indicates a direct correlation between smoking tobacco and adverse reproductive outcomes, increased pulmonary conditions and cardiovascular disease.<sup>44</sup>
- vi. Nearly 30.2% of the adult population in India is exposed to second-hand smoke, the exposure to second-hand smoke in urban regions is 25.3% and in rural areas it affects approximately 34.3% of the adults.<sup>45</sup> Even though the percentage of actual smokers in India is lesser than smokeless tobacco users, because of second-hand smoke it affects a much larger population compared to smokeless tobacco users. As per GATS India, 52% of adults were exposed to second-hand smoke at home which does not include innocent children.
- vii. More than 4000 chemicals have been identified in tobacco smoke of which at least 250 are known to be harmful. Toxins from second-hand smoke cling to fabrics and other surfaces and are sometimes referred to as “third hand smoke”.<sup>46</sup>

The evidence links passive smoking to increased risk diseases, including but not limited to:<sup>47</sup>

- a. Cardiovascular diseases,
- b. Lung Cancer and other Cancers,
- c. Asthma and other respiratory diseases,
- d. Ear infections, and
- e. Sudden infant death syndrome

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<sup>44</sup> Mishra GA., Pimple SA, Shastri SS. An overview of the tobacco problem in India. Indian J Med Paediatric Oncol 2012;33:139-45.

<sup>45</sup> Tata Institute of Social Sciences (TISS), Mumbai and Ministry of Health and Family Welfare, Government of India. Global Adult Tobacco Survey GATS 2 India 2016-17.

<sup>46</sup> WHO Report on The Global Tobacco epidemic, 2009. Implementing smoke-free environments. fresh and alive mpower, WHO 2009.

<sup>47</sup> WHO Report on The Global Tobacco epidemic, 2009. Implementing smoke-free environments. fresh and alive mpower, WHO 2009.



## Comparison of Health Implications of Smoked Tobacco Products and Smokeless Tobacco Products

- i. It is pertinent to note that GATS 2016-17 and the studies relied upon whilst conducting the study have identified the number of fatalities associated with the consumption of the different variants of tobacco. The findings of the survey directly attributed 930,000 deaths to the consumption of smoking tobacco as opposed to 350,000 deaths attributable to the consumption of smokeless tobacco.<sup>48</sup> The disparity in the numbers exhibited above clearly indicate that the consumption of smoking tobacco is far more detrimental to the health of the consumer than smokeless tobacco. However, it is also pertinent to note that the study determining the deaths attributable to the consumption of smokeless tobacco does not differentiate between the various types of products with varying level of carcinogenic properties and clubs all the products whether carcinogenic or not into the same category. Such indiscriminate clubbing of smokeless tobacco products has led to unfair and out of proportion of taxation of certain smokeless tobacco products that are completely devoid of carcinogens.
- ii. The International Classification of Diseases (WHO) and the American Psychiatric Association Diagnostic and Statistical Manual<sup>49</sup> have propounded the following observations pertaining to smokeless tobacco:
  - Smokeless tobacco does not increase the risk of myocardial infraction.
  - Smokeless tobacco does not cause pulmonary diseases that are usually prevalent in the groups that consume smoking tobacco.
- iii. There have been studies emanating from Scandinavian countries wherein smoking tobacco products have been substituted with smokeless tobacco product (such as snus). The studies have concluded that whilst the substitution of smoking tobacco with snus may not completely eliminate consumption of tobacco it does however get rid of

<sup>48</sup> Sinha DN, Palipudi KM, Gupta PC, Singhal S, Ramasundarahettige C, Jha P, et al. Smokeless tobacco use: a meta-analysis of risk and attributable mortality estimates for India. *Indian Journal of Cancer*. 2014;51(Suppl 1):S73–S77.

<sup>49</sup> American Psychiatric Association. (2013). *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*. <http://repository.poltekkeskaltim.ac.id/657/1/Diagnostic%20and%20statistical%20manual%20of%20mental%20disorders%20-%20D5%2028%20PDFDrive.com%20%29.pdf>

the problem of second-hand smoke arising from smoking which affected not only the consumers but by-standers as well.<sup>50 51</sup>

- iv. The epidemiology of snus indicates that it has substantially lesser impact on the health of the consumers.<sup>52</sup> The health benefits exhibited by snus users are comparable to those who completely ceased to consume tobacco.<sup>53</sup>
- v. The prevalence of cancer that is so strongly linked with tobacco usage is caused due to presence of carcinogens in these products. The IARC in its handbook has identified the carcinogens responsible for the different kinds of cancers and the presence of said carcinogens in smoking tobacco and smokeless tobacco. They have been identified as under:<sup>54</sup>

Sr. No.	Cancer Site	Smokeless Tobacco	Smoking Tobacco
1.	Oral Cavity	Present	Present
2.	Pharynx	Absent	Present
3.	Nasopharynx	Absent	Present
4.	Oesophagus	Present	Present
5.	Stomach	Absent	Present
6.	Colon/Rectum	Absent	Present
7.	Liver and Bile Duct	Absent	Present
8.	Pancreas	Present	Present
9.	Nasal Cavity	Absent	Present
10.	Larynx	Absent	Present
11.	Lung	Absent	Present
12.	Uterine cervix	Absent	Present
13.	Ovary	Absent	Present
14.	Kidney	Absent	Present
15.	Urinary Bladder	Absent	Present
16.	Leukaemia and/or Lymphoma	Absent	Present

<sup>50</sup> Scientific Committee on Emerging and Newly Identified Health Risks. Health effects of smokeless tobacco products. 2008. [http://ec.europa.eu/health/ph\\_risk/committees/04\\_scenihr/docs/scenihr\\_o\\_013.pdf](http://ec.europa.eu/health/ph_risk/committees/04_scenihr/docs/scenihr_o_013.pdf).

<sup>51</sup> Royal College of Physicians. Nicotine without smoke: tobacco harm reduction. 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotinewithout-smoke-tobacco-harm-reduction-0>.

<sup>52</sup> Scientific Committee on Emerging and Newly Identified Health Risks. Health effects of smokeless tobacco products. 2008. [http://ec.europa.eu/health/ph\\_risk/committees/04\\_scenihr/docs/scenihr\\_o\\_013.pdf](http://ec.europa.eu/health/ph_risk/committees/04_scenihr/docs/scenihr_o_013.pdf)

<sup>53</sup> Ramström L, Borland R, Wikmans T. Patterns of smoking and snus use in Sweden: implications for public health. Int J Environ Res Public Health. 2016;1

<sup>54</sup> [https://monographs.iarc.who.int/wp-content/uploads/2019/07/Classifications\\_by\\_cancer\\_site.pdf](https://monographs.iarc.who.int/wp-content/uploads/2019/07/Classifications_by_cancer_site.pdf)

- vi. From the table above it is clear that the prevalence of carcinogens in smoking tobacco is substantially higher than those present in smokeless tobacco products. Therefore, it can be inferred that tobacco tends to be more carcinogenic when inhaled post combustion.
- vii. Additionally, even studies conducted with animals as subjects have linked continuous usage of smoking tobacco to contribute to an increased risk to the user to contract oral squamous cell carcinoma.<sup>55</sup> The findings of these studies ought to be taken into account since the neurological make-up of rats is similar to that of humans and therefore, the effects of tobacco seen in rats could very well be observed in humans too. The study also surmised that products within the same sub-category have varying compositions and the level of carcinogenic presence in these products may vary due to the same. (*ibid*)
- viii. As per extracts from book “Oral and Maxillofacial Pathology” by Dr. Robert E. Stern (DDS) & Dr. Diane Stern (DDS) University of Miami, School of Medicine<sup>56</sup>:

*“In order for electrophilic intermediated that damages DNA or become bound to DNA to be generated from tobacco products, the tobacco must be combusted (smoked). Thus, these epoxides of tobacco tars, not nicotine, are the actual DNA-damaging agents (i.e. carcinogens). Nicotine is the addictive agent and not by itself carcinogenic. Therefore, because these epoxides are not formed in “smokeless” tobacco, such tobacco products are not significantly carcinogenic and despite the claims of several organisations, do not produce higher incidence of oral squamous cell carcinoma than that which spontaneously occurs in the non-smoking, nonusers of smokeless tobacco population. However, 9% of all squamous cell carcinomas in our major cancer centre occurred in individuals with no direct tobacco history, indicating that “smokeless tobacco” history is coincidental rather than causative.”*

<sup>55</sup> Schwartz JL, Brunnemann KD, Adami AJ, Panda S, Gordon SC, Hoffmann D, Adami GR. Brand specific responses to smokeless tobacco in a rat lip canal model. J Oral Pathol Med. 2010 Jul;39(6):453-9. doi: 10.1111/j.1600-0714.2010.00892. x. PMID: 20642753.

<sup>56</sup> Marx, R. E., & Stern, D. (2012). *Oral and Maxillofacial Pathology: A Rationale for Diagnosis and Treatment, 2 Volume Set, 2nd Edition* (2nd ed.). CBS.

## Key Takeaways

- i. Consumption of smoking tobacco is significantly more harmful than the consumption of smokeless tobacco and there is a direct causal relation with consumption of smoking tobacco and fatalities recorded. The same has been substantiated by the GATS Report 2016-17 and the studies relied upon therein.
- ii. Multiple studies have arrived at the conclusion that smoking tobacco is excessively injurious to the consumers as well as by-standers due to the second-hand smoke generated.
- iii. Scientific studies have confirmed that the risk of cancer prevalence amongst smokers is substantively higher as compared to consumers of smokeless tobacco products.
- iv. Due to studies which have established the fact that the consumption of smokeless tobacco products over smoking tobacco products may pose lesser health implications, policies aimed at substituting smoking tobacco with smokeless tobacco have been applied in certain Scandinavian countries. The substitution has helped quell the consumption of smoking tobacco products, however, it has not resulted in the overall decrease in consumption of tobacco products in general.
- v. Tobacco when consumed by way of inhalation is more carcinogenic, causing the onset of a whole array of cancers in its user groups as opposed to smokeless tobacco consumers.

## CHAPTER – IV

# TAXATION FRAMEWORK PERTAINING TO SMOKELESS TOBACCO IN INDIA

### Executive Summary

1. Taxation policies and laws are required to be in conformity with the Constitution of India and cannot be discriminatory or biased in nature.
2. In the pre Goods and Services Tax ('GST') regime, Central Excise Duty ('Excise Duty') was levied vide Compounded Levy Scheme, for manufacturers that used machines for packing. In other cases i.e. for manual packing, Excise Duty was levied on ad-valorem (at value) basis. The Excise Duty was a single point levy and was levied at a single point i.e. at manufacturer level only. There was no Excise Duty on the subsequent supply chain i.e. on distributors as well as retailers ('distributor/ retailer level').
3. The National Calamity Contingent Duty was introduced and imposed from 01.03.2001. For the purpose of calculation of excise, abatement @ 55% on the retail sale price had been granted on manufactured smokeless tobacco products. But NCCD on Cigarettes is specific on 1000 sticks so not linked to price and doesn't increase with inflation/ price rise.
4. Similarly, respective State Value Added Tax (VAT) was levied on tobacco products on ad-valorem basis. Effectively, in the pre-GST regime Excise Duty, NCCD and VAT was levied on tobacco products at manufacturer level; and at distributor/retailer level only VAT was levied on ad valorem basis.
5. In the GST Regime, the tobacco products attract GST and the GST Compensation Cess ('Cess'). For Smoking and Smokeless tobacco, GST is levied on ad-valorem basis but Compensation Cess on Smokeless tobacco is levied on ad-valorem basis on the value addition taking place at each stage of supply in the supply chain. Additionally, Cess is levied on different tobacco products at different rates such as 71% or 160%. There is no Compensation Cess on Bidi and on Cigarette since the major component of cess is specific on 1000 sticks and hence it doesn't apply on value addition in supply chain.
6. Post GST, even though all indirect taxes have been subsumed under the new Act, Basic Excise Duty and NCCD have continued to be imposed on tobacco products.

7. In post GST, the abatement level of 55% on MRP fixed for manufactured smokeless tobacco product has not been increased in spite of multifold increase in levies. This abatement level has led to rise in fly-by night manufacture of smokeless tobacco and with exorbitantly high tax rates of 200% plus amongst all tobacco products the smokeless tobacco has become the most susceptible to tax evasion /counterfeits.

## Brief Outline

This chapter presents an overview on the taxation policy for the sale and consumption of tobacco products in India. This chapter outlines a complete roadmap deriving the different taxation heads/duties levied on tobacco products, analytical comparison of the taxation regime pre/post the introduction of the Goods and Services Tax, a comparative analysis between taxes on different tobacco products using data points and outlining the tax incidence implications for trade in the industry.

## Introduction

Before entering into the chapter in detail, it would be useful to enhance the understanding of the various taxation heads/duties that are levied on various products in the tobacco industry. Needless to say, the concerned tax heads have been identified from the applicable legal framework which primarily comprises the following legislations:

- 1) Central Excise Act, 1944
- 2) Central Excise Rules, 2017
- 3) Finance Act, 2001
- 4) Goods and Services Tax Act, 2017
- 5) Goods and Services Tax (Compensation to States) Act, 2017



**The concerned Tax-Heads are presented as below:**

Sr. No.	Tax Head	Object and Purpose of Levy
1.	Basic Excise Duty (BED)	Excise duty is a form of tax imposed on goods for their production, licensing and sale. An indirect tax paid to the Government of India by producers of goods. Excise duty is the opposite of Customs duty in that it applies to goods manufactured domestically in the country, while Customs is levied on those coming from outside of the country. BED was levied on goods that were classified under the first schedule of the Central Excise Tariff Act, 1985. This duty was levied under Section 3 (1) (a) of the Central Excise Act, 1944. <sup>57</sup>
2.	National Calamity Contingent Duty (NCCD)	As per the Union Budget Speech of Shri Yashwant Sinha dated 28th February, 2001 <i>“The Eleventh Finance Commission has recommended a special levy for the replenishment of the National Calamity Contingency Fund.<sup>58</sup> As an ad hoc measure, this was provided for in the current year through a special surcharge on corporate taxes. I propose to establish this funding on a regular basis through a special <b>surcharge of excise</b> on a range of products the use of which should be discouraged on health grounds. I propose to levy a surcharge of 15% on cigarettes. The duty on biris would increase from Rs 6 to Rs 7 per thousand biris. The total duty on pan masala would be 55%/60%. Miscellaneous tobacco products like chewing tobacco would be charged to a total duty of 60%.”</i>
3.	Value Added Tax (VAT)	Value-added tax (VAT) is a type of indirect tax levied on goods and services for value added at every point of production or distribution cycle, starting from raw materials and going all the way to the final retail purchase. VAT was introduced on April 1, 2005. Under it, the amount of value addition is first identified at each stage, and then tax is levied on the same. Ultimately, the end consumer has to pay the complete VAT while

<sup>57</sup> The Central Excise Act, 1944<https://www.cbic.gov.in/htdocs-cbec/excise/cx-act/cx-act-ch2-june16#:~:text=Remission%20of%20duty%20on%20goods,to%20be%20deficient%20in%20quantity><sup>58</sup> Inserted Section 136 in the Finance Act, 2001 received the assent of the President on 11-5-2001 and published in the Gazette of India, Extraordinary, Part II, Section 1; <https://egazette.nic.in/WriteReadData/2020/218938.pdf>

		buying goods; buyers at earlier stages of production receive reimbursements of tax they have paid. Because the consumer bears the entire tax, VAT is also a consumption tax. Each state has its own VAT laws for proper implementation and levying. Different states apply different VAT rates according to their implied laws. The main aim behind the introduction of VAT was to eliminate the presence of double taxation and the cascading effect from the then existing sales tax structure. A cascading effect is when there is tax levied on a product at every step of the sale. The tax is levied on a value which includes tax paid by the previous buyer, so the consumer ends up paying tax on already-paid tax.
4.	Goods and Services Tax (GST)	The purpose to roll out GST <sup>59</sup> is to reduce the cascading effect of tax on the cost of goods and services and create a common, cooperative and undivided Indian market to make economy stronger and powerful.
5.	Compensation Cess (Cess)	The purpose of Compensation Cess <sup>60</sup> is to provide for compensation to the States for the loss of revenue arising on account of implementation of the Goods and Services Tax.

### Jurisprudential Principles on Taxation Policies:

Before delving into the taxation aspects of specific tobacco products, it would be beneficial to note the underlying jurisprudential principles that have been evolved and confirmed by the Hon'ble Supreme Court of India. The underlying principles have been categorically identified, as below:

- 1) The Hon'ble Supreme Court, by virtue of its judgment in ***Union of India (UOI) and Ors. Vs. A. Sanyasi Rao and Ors.***<sup>61</sup> has enumerated that Article 14<sup>62</sup> of the Constitution of India

<sup>59</sup> The Central Goods And Services Tax Act, 2017

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/CGST%20Act%20Updated%20as%20on%2031.08.2021.pdf>

<sup>60</sup> The Goods And Services Tax (Compensation To States) Act, 2017

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/gst-compensation-to-states-act.pdf>

<sup>61</sup> AIR1996 SC 1219

<sup>62</sup> Article 14 of the Constitution of India reads: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"

applies to tax laws as well. The relevant portion has been extracted herein below for ready reference:

*“It is, of course, true that the validity of tax laws can be questioned in the light of the provisions of Articles 14, 19 and Article 301 if the said tax directly and immediately imposes a restriction on the freedom of trade”*

- 2) In ***Khandige Sham Bhat v. Agri Income-tax Officer and Anr***<sup>63</sup>, the Hon’ble Supreme Court elucidated that the Legislature shall abide by the fundamental principles of law while fixing the rates of taxation and classification of products.

*“ in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways.”*

- 3) The Hon’ble Supreme Court in ***East India Tobacco Co. v. State of A.P.***<sup>64</sup>, has held that the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.

- 4) In ***K.T. Moopil Nair v. State of Kerala***<sup>65</sup>, the Apex Court discusses in what cases a taxing statute can be struck down as being unconstitutional. The relevant portion has been extracted herein below for ready reference:

*“...the said Act imposed unreasonable restrictions on the fundamental rights of the citizens, conferred unbridled power on the appropriate authorities, introduced unconstitutional discrimination and in consequence, amounted to a colourable exercise of legislative power. It is in regard to such a taxing statute which can properly be regarded as purely confiscatory that the power of the Court can be legitimately invoked and exercised.”*

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<sup>63</sup> AIR (1963) SC 591

<sup>64</sup> (1963) 1 SCR 404

<sup>65</sup> (1961) 3 SCR 77

It is essential to keep the above principles in hindsight to enable appreciation of the aspects concerning tobacco taxation in India, which have been elaborated upon in the following segments of the present chapter.

- 5) The aforesaid decisions were further discussed by a Constitution Bench of the Hon'ble Supreme Court in **S.K. Dutta, ITO v. Lawrence Singh Ingty**<sup>66</sup> whereby it held:

*“It is not in dispute that taxation laws must also pass the test of Article 14. That has been laid down by this Court in Moopil Nair v. State of Kerala: [1961]3SCR77. But as observed by this court in East India Tobacco Co. v. State of Andhra Pradesh: [1963]1SCR404, in deciding whether the taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax and that a statute is not open to attack on the ground that it takes some person or objects and not others; it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts objects, persons, methods and even rates for taxation if it does so reasonably.”*

- 6) In **Aashirwad Films vs. Union of India & Ors.** Appeal (Civil) No. 709 of 2004 as decided on 18<sup>th</sup> of May, 2007, the Hon'ble Apex Court held that Taxation laws must pass test of Article 14 of Constitution of India and that there should be a reasonable classification, which should be bear, a nexus with object sought to be achieved. The relevant portion has been extracted herein below for ready reference:

*“It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decision of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly there is a rider operating on this wide power to tax and even discriminate in taxation: that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute.”*

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<sup>66</sup> (1968)68 ITR 272(SC)

From the aforesaid decisions, it is clearly elucidated that taxation policies and laws are required to be in conformity with the Articles of the Constitution of India and cannot be discriminatory or biased in nature. Even though the State has a wide discretion to impose tax upon particular product/service and even classify certain categories, such classification shall be justified only if done so reasonably and based on rationale evidence.

### Taxation Policy in India Pre-GST Regime:

- f. In the pre-GST regime, Central Excise Duty ('Excise Duty') was levied under Section 3A of Central Excise Act, 1944 ('Excise Act') read with Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 normally referred to as the Compounded Levy Scheme, for manufacturers that used machines for packing. In other cases i.e. for manual packing, Excise Duty was levied on ad-valorem (at value) basis under Section 4 of Central Excise Act. The Excise Duty was a single point levy and was levied at a single point i.e. at manufacturer level only. There was no Excise Duty on the subsequent supply chain i.e. on distributors as well as retailers ('distributor/ retailer level'). The relevant provisions are quoted herein below:

*“Section 3A: Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods.— (1) Notwithstanding anything contained in Section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.”*

*“Section 4: Valuation of excisable goods for purposes of charging of duty of excise  
(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—*

*(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*  
*(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.”*

- ii. The National Calamity Contingent Duty (NCCD) was introduced and imposed under Section 136 of the Finance Act, 2001 w.e.f. 01.03.2001 as per the recommendations of the Eleventh Finance Commission which was in the form of a surcharge duty. The relevant provision is quoted as below:

*“136. National Calamity Contingent duty—*

*(1) In the case of goods specified in the Seventh Schedule, being goods manufactured or produced, there shall be levied and collected for the purposes of the Union, by surcharge, a duty of excise, to be called the National Calamity Contingent duty (hereinafter referred to as the National Calamity duty), at the rates specified in the said Schedule.*

*(2) The National Calamity duty chargeable on the goods specified in the Seventh Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944) or any other law for the time being in force.”*

- iii. As per the Notification No. 49/2008-CE (NT) dated 24.12.2008<sup>67</sup> issued under section 4A the Excise Act and amended by Notification No.9/2010-CE (NT) dated 27.02.2010<sup>68</sup>, for the purpose of calculation of excise, abatement @ 55% on the retail sale price had been granted on all kinds of manufactured smokeless tobacco products.

*“Section 4A: Valuation of excisable goods with reference to retail sale price.—*

*(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required,*

<sup>67</sup> Notification No. 49/2008-Central Excise (NT) dated 24.12.2008 issued by the Central Government, Ministry of Finance [http://www.ieport.com/2008/excise\\_not\\_nt/not49.htm](http://www.ieport.com/2008/excise_not_nt/not49.htm)

<sup>68</sup> Notification No.9/2010-Central Excise (NT) dated 27.02.2010 issued by the Central Government, Ministry of Finance <https://www.cbic.gov.in/resources/htdocs-cbec/excise/cx-act/notifications/notfns-2010/cx-nt2010/cent09-2k10.pdf>

*under the provisions of the [Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.*

*(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in Section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.”*

- iv. Similarly, respective State Value Added Tax (VAT) was levied on tobacco products on ad-valorem basis. The all India average rate of VAT on the unmanufactured tobacco was 16 percent and on manufactured tobacco i.e. chewing tobacco, jarda, filter khaini was 22.50 percent. VAT was applicable on the entire supply chain including the manufacturer. Due to the above, the major duty and tax incidence was borne by the manufacturer by way of Excise Duty and VAT and limited tax incidence by way of only VAT on value addition was applicable at distributor/ retailer level.
- v. From the above, it is established that in the Pre-GST regime, on tobacco products, Excise duty, NCCD and VAT was levied at manufacturer level and only VAT was levied on ad valorem basis i.e. on value addition at distributor/retailer level.

## Taxation Policy in India during the GST Regime:

- i. In the GST Regime, the tobacco products attract Goods and Services Tax ('GST') and for the smokeless tobacco GST Compensation Cess ('Cess'). Both GST and Cess is levied on ad-valorem basis on the value addition taking place at each stage of supply of said Products in the supply chain. Tobacco products are classified under Schedule IV of Notification No 1/2017-Central Tax (Rate)<sup>69</sup> dated 28 June 2017 as amended from time to time attracting Central GST ('CGST') of 14 percent. Similarly, under respective State Government's rate notifications, the tobacco products are classified under Schedule

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<sup>69</sup> Notification No.1/2017-Central Tax (Rate) issued by the Central Government, Ministry of Finance (Revenue Department)  
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-for-CGST-rate-Schedule.pdf>



IV attracting State GST ('SGST') of 14 percent. Whereas in case of inter-State supply of such products, Integrated GST ('IGST') is applicable at the rate of 28 percent as per Notification No 1/2017-Integrated Tax (Rate)<sup>70</sup> dated 28 June 2017.

- ii. Further, as per Section 8(2) of the Goods and Services Tax (Compensation to States) Act, 2017 ('GST Compensation Cess Act') read with Schedule and Notification No 1/2017- Compensation Cess (Rate) dated 28 June 2017<sup>71</sup>, Cess would be levied on smokeless tobacco products at different rates such as 71 percent or 160 percent depending on the product.

*"8. Levy and collection of cess.*

*(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify:*

*Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both."*

- iii. As per the Minutes of the 12th GST Council Meeting<sup>72</sup> held on 16th March 2017, Joint Secretary (TRU-I) explained the rationale behind the various ceiling rates for compensation cess. He stated that *"the proposed ceiling rate for Pan Masala (135%) was arrived at by summing up the existing rate of Central Excise and the highest existing rate of VAT, subtracting from it the GST rate of 28% and then adding to it an additional 25% as a cushion. He stated that for Tobacco products, the ceiling rate (Rs. 4,170 per thousand sticks or 290% ad valorem or a combination thereof) was arrived*

<sup>70</sup> Notification No.1/2017-Integrated Tax (Rate) issued by the Central Government, Ministry of Finance (Revenue Department)  
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/Notification%20for%20IGST%20rate%20Schedule-1.pdf>

<sup>71</sup> Notification No 1/2017- Compensation Cess (Rate) dated 28 June 2017 issued by the Central Government, Ministry of Finance (Revenue Department)  
<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-1-compensation-cess-english.pdf>

<sup>72</sup> Minutes of the 12th GST Council Meeting held on 16th March 2017  
<https://gstcouncil.gov.in/sites/default/files/gst%20rates/Signed%20Minutes%20-%2012th%20GST%20Council%20Meeting.pdf>



*at by taking into account the highest prevailing specific rate and the ad valorem rate and subtracting from each the GST rate of 28%. He added that as the rates were already very high, no cushion had been kept while proposing the ceiling rate of cess on Tobacco products.”*

- iv. In the GST regime, GST and Cess is levied on ‘ad-valorem’ basis especially for smokeless tobacco. Therefore, GST and Cess is applicable across the supply chain from manufacturer to the small retailers. This fact of supply chain taxation on smokeless tobacco because of heavy Cess escaped the attention while comparing pre and post GST taxation. .
- v. Post, the introduction of GST, even though all indirect taxes have been subsumed under the new Act, Basic Excise Duty and NCCD have continued to be imposed on products like tobacco and petroleum. In the GST regime, Retail Sale Price (RSP) or Maximum Retail Price (MRP) based valuation has not been adopted for any product except for manufactured smokeless tobacco products. Post the introduction of GST, the abatement level of 55% on MRP fixed for manufactured smokeless tobacco product has not been increased in spite of multifold increase in taxation on the distribution chain and also the increase in the rates of NCCD going up from 10% to 25% in Budget 2020. This abatement level has made it very difficult for the legal sale of manufactured smokeless tobacco and with exorbitantly high tax rates of 200% plus amongst all tobacco products the smokeless tobacco has become the most susceptible to tax evasion /counterfeits.
- vi. The Department of Revenue under the Ministry of Finance has issued a Circular bearing No. 1082/03/2022 – CX dated 01.02.2022 whereby it has clarified the valuation of tobacco and tobacco products for the purposes of payment of Basic Excise Duty and National Calamity Contingent Duty (NCCD). As per the clarification, the manufacturer is free to maintain his sale price, as appropriate, taking into account the relevant factors of costing and profit. Also, the abated value (used only as measure for computation of basic excise duty and NCCD) is not relevant for computation of GST and Compensation Cess. Under the respective Acts, GST and Compensation Cess is payable on transaction value, that is price actually paid or payable for the supply of

goods including duties like basic excise duty and NCCD. Therefore, the value for the purposes of GST computation will be the transaction value plus basic excise duty, NCCD and any other amount as prescribed in section 15 of GST Act, 2017 [i.e., in the above example, Value for computation of GST and Compensation Cess “V” = Transaction value as per the GST Act, 2017 + (basic excise duty +NCCD)]. Hence, consequent to an increase in NCCD rate (like in the year 2020), a manufacturer of tobacco product had an option to raise his retail sale price so as to retain the transaction value at a level that he wishes to recover from the consumer. Accordingly, in a regular transaction, at arm’s length, the sale price of tobacco product would be value “V” plus GST and compensation cess.<sup>73</sup>

Tobacco products are presently taxable to, both, GST+Cess and excise duty. Significant complexity is created for manufacturers of smokeless tobacco by virtue of NCCD excise duty being charged on the RSP, whereas GST is being charged on the basis of transaction value. The aforesaid clarification does not intend to bring about a change in the complexity of the tax structure; as rather the same creates more competition amongst the manufacturers and difficulty in trade in terms of increase in the retail sale price despite the same not being linked to the health implications of tobacco products.

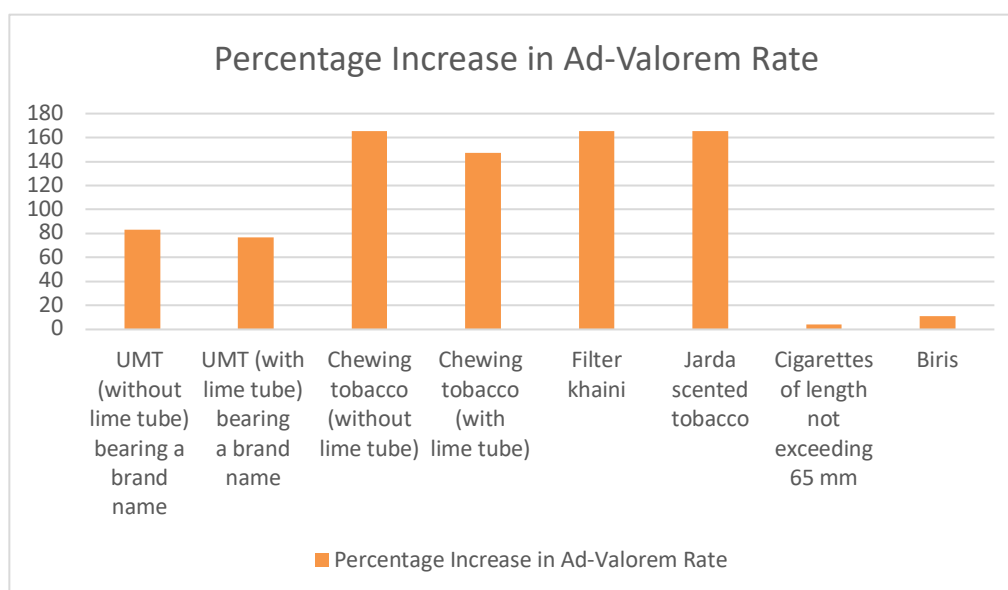
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<sup>73</sup> Circular dated 01.02.2022 is accessible at: [https://www.cbic.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2022/Circular\\_No\\_1082\\_03\\_2022-CX.pdf](https://www.cbic.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2022/Circular_No_1082_03_2022-CX.pdf)

**Comparative Analysis on Taxation Implications between different products in the tobacco industry:-**

**Table No.1:- Percentage Increase in Ad Valorem Rate in respect of Distribution Chain (Excise was not applicable on the chain but Cess is made applicable):**

A.	B.	C.	D.	E. (D-C)	F.	G. (F-C)	H. (D+F)	I. (H-C)
Sr. No.	Product	VAT Rate	GST Rate	Increase from VAT to GST	Cess Rate	Increase from VAT to CESS	Total GST + Cess	Increase in Ad valorem rate
1.	Unmanufactured tobacco (without lime tube) – bearing a brand name	16%	28%	12%	71%	55%	99%	83%
2.	Unmanufactured tobacco (with lime tube) – bearing a brand name	16%	28%	12%	65%	49%	93%	77%
3.	Chewing tobacco (without lime tube)	22.50%	28%	5.5%	160%	137.50%	188%	165.50%
4.	Chewing tobacco (with lime tube)	22.50%	28%	5.5%	142%	119.50%	170%	147.50%
5.	Filter khaini	22.50%	28%	5.5%	160%	137.50%	188%	165.50%
6.	Jarda scented tobacco	22.50%	28%	5.5%	160%	137.50%	188%	165.50%
7.	Cigarettes containing tobacco other than filter cigarettes, of length not exceeding 65 mm	28.70%	28%	-(0.70)%	5%	-(23.70)%	33%	4.30%
8.	Biris	16.65%	28%		----	---	28%	11.35%



Upon a perusal of the Table No.1 as illustrated above, it is observed that there is a substantial

variance/increase in Ad Valorem rate in respect of the distribution chain for different categories of products in the tobacco industry in terms of smokeless and smoking tobacco products.

For the category of products at Serial Nos. 1 to 6 being smokeless tobacco products, it is observed that the increase in Ad Valorem rate varies from 83% to 165.50%, whereas for products at Serial No. 7 and 8 being smoking tobacco products, the increase in Ad Valorem rate varies from 4.30% to 11.35% which is significantly low in comparison to that of smokelesstobacco products. The same is in contradistinction with the findings of the Chapter III that the health implications of smoking tobacco are in fact much severe as compared to smokelesstobacco.

In furtherance of the above, it is also essential to appreciate the comparative of the different tax headings for tobacco products as presented below:

**Table No.2: Comparison of Excise + VAT with GST + Compensation Cess:**

A.	B.	C.	D.	E.	F. (D+E)	G.	H.	I. (G+H)
Sr. No.	Product	Tariff Heading	Excise Rate + Health Cess	VAT	Total Excise & VAT	Rate for GST	Compensation Cess	Total GST & Cess
1.	Unmanufactured tobacco(without lime tube) – bearing a brand name	2401	64%+8.30%	16%	88.30%	28%	71%	99%
2.	Chewing tobacco (without lime tube)	2403 99 10	81%+12%	22%	115%	28%	160%	188%
3.	Filter Cigarettes - Not exceeding 65 mm	2402 20 30	Rs. 1280 + Rs. 311 per thousand	28.7%	28.7% + Rs.1280+ Rs.311 per thousand	28%	5% + Rs. 2076 per thousand	33% + Rs. 2076 per thousand

Upon perusal of the table as illustrated above, it is clearly derived that there is a substantial increase in taxes for smokeless tobacco products at Serial Nos. 1 and 2 vis-à-vis smoking tobacco products like cigarettes, biris etc. It is pertinent to note that compensation cess for products like biris is Nil which creates a huge disparity within the industry. Additionally, the fact that the levy of Compensation Cess and NCCD in relation to cigarettes is determined on a yardstick of per thousand cigarette sticks essentially immunizes cigarettes from inflation oriented impacts on such levies as a certain component of the levy remains consistent regardless of the appreciation or depreciation of the cost of production of cigarettes.

Table showing Comparative Increase in Tax Incidence Pre/Post GST (assuming the value of the products to be the same)

Table No. 3

Sr.	Particulars	Calculation Ref.	Unmanufactured tobacco (without lime tube) - bearing a brand name		Chewing tobacco (without lime tube)		Filter cigarettes Not exceeding 65mm	
			D	E	F	G	H	I
			Pre-GST	GST	Pre-GST	GST	Pre-GST	GST
1	Transaction Value - for Manufacturer		2,513	2,513	2,513	2,513	2,513	2,513
2	Add: Excise Duty (Please refer notes for the duty rates)	1 * Duty rate	1,817	-	2,337	-	1,591	-
3	Sub total	1 + 2	4,330	2,513	4,850	2,513	4,104	2,513
4	Add: VAT / GST (Please refer notes for VAT and GST rates)	3 * VAT/ GST rate	693	704	1,091	704	1,178	704
5	Add: GST Cess (please refer notes for Cess rate)	3 * Cess rate	-	1,784	-	4,021	-	2,202
6	Subtotal of VAT/ GST + Cess	4 + 5	693	2,488	1,091	4,724	1,178	2,905
7	Selling price of the manufacturer	3 + 6	5,023	5,001	5,941	7,237	5,282	5,418
8	Total Duty and Tax collection at manufacturer	2 + 6	2,510	2,488	3,428	4,724	2,769	2,905
9	Incremental tax incidence at manufacturer level	E8 - D8; G8 - F8; I8 - H8		(22)		1,296		136
10	Percentage increment in tax incidence at manufacturer level	E9/D8*100; G9/F8*100; I9/H8*100		-1%		38%		5%
11	Distributor Margin (margin + cost) amount (assumed)		980	980	980	980	980	980
12	Add: Net VAT/ GST	11 * VAT / GST rate	157	274	221	274	281	274
13	Add: Net Cess	11 * Cess rate		696		1,568		49
14	Subtotal of VAT/ GST + Cess	12 + 13	157	970	221	1,842	281	323
15	Selling price of the distributor	7 + 11 + 14	6,159	6,951	7,142	10,060	6,543	6,722
16	Total Duty and Tax collection at distributor level	14	157	970	221	1,842	281	323
17	Incremental tax incidence at distributor level	E16 - D16; G16 F16; I16 - H16		813		1,622		42
18	Percentage increment in tax incidence at distributor level	E17/D16*100		519%		736%		15%
19	Retailer Margin (cost + margin) amount (assumed)		1,250	1,250	1,250	1,250	1,250	1,250
20	Add: Net VAT/ GST	19 * VAT / GST rate	200	350	281	350	359	350
21	Add: Net Cess	19 * Cess rate		888		2,000		63

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22	Subtotal of VAT/ GST + Cess	20 + 21	200	1,238	281	2,350	359	413
23	Selling price of retailer	15+19+22	7,609	9,439	8,673	13,660	8,152	8,384
24	Total Duty and Tax collection at retail level	22	200	1,238	281	2,350	359	413
25	Incremental tax incidence at retailer level	E24 - D24; G24 -F24; I24-H24		1,038		2,069		54
26	Percentage increment in tax incidence at retailer level	E25/D24*100		<b>519%</b>		<b>736%</b>		<b>15%</b>
27	Overall duty and tax collection in supply Chain	8 + 16 + 24	2,866	4,696	3,930	8,917	3,409	3,641
28	Incremental tax incidence at supply chain	E27-D27; G27-F27; I27-H27		1,829		4,987		232
29	Percentage increment in tax incidence at supply chain	E28/D27		64%		127%		7%

\*The incremental tax incidence is calculated by subtracting Total tax collected at retailer/distributor level Pre GST from the Total tax collected at retailer/distributor level Post GST

\* Percentage increment in tax incidence is calculated by dividing the Incremental tax incidence by the Total tax collected at retailer/distributor level Pre GST multiplied by hundred

Upon perusal of Table No. 3 as illustrated above, it is clear that there is a substantial disparity in the overall tax incidence amongst the smoking tobacco and smokeless tobacco products. In case of the Smokeless Tobacco Products, there is a huge percentage increment in tax incidence (at Serial No. 26) compared to pre-GST regime. For example, in Row No./Serial No. 26 at Column 'E' it is identified that in case of unmanufactured tobacco the increase is 519%; and in case of chewing tobacco at Column 'G' it is 736%; whereas for cigarettes at Column 'I' it is 15% at the distributor/retailer level.

Further, it can be observed that in the overall supply chain, there is a percentage increase in tax incidence (at Serial No. 29) by 64% in case of unmanufactured tobacco as seen in Column 'E'; 127% in case of chewing tobacco as seen in Column 'G'; and 7% in case of filter cigarettes as seen in Column 'I'.

Table No. 4 Showing Disparity amongst Tax Percentage of value and MRP amongst Smokeless and Smoking Tobacco Products

\*Please note that the aforesaid products have been compared together in order to bring out each category of products in the tobacco industry.

\*Please note that the Sale Value includes the distribution margins.

\*Please note that the Tax % of Value is calculated by dividing total tax by the Sale Value and multiplying by hundred.

S.No.	Description of Goods	LOW COST TOBACCO PRODUCTS				HIGH COST TOBACCO PRODUCTS							
		Unmanufactured tobacco		Biris		Jarda scented tobacco		Filter Cigarette length 64 mm		Filter Cigarette length 69 mm		Filter Cigarette length 84 mm	
	HSN	24012090		2403		24039930		24022030		24022040		24022090	
	Tobacco Brand (Representativ)	Swagat Gold Unmfg.Tobacco		Sable Bidi (25Nos Pack)		BABA 120		Bristol (10 sticks pack)		Gold Flake Prem (10 sticks pack)		Gold Flake HS (10 sticks pack)	
	Particulars	Tax Rate	Amount	Tax Rate	Amount	Tax Rate	Amount	Tax Rate	Amount	Tax Rate	Amount	Tax Rate	Amount
1.	Sale Value		4.02		15.63		60.44		29.96		46.32		67.73
2.	Basic Excise on MRP	0.00%	-	0.00%	-	0.50%	0.59						
3.	Basic Excise Fixed Per 1000							5.00	0.05	5.00	0.05	10.00	0.10
4.	NCCD on MRP	0.00%	-	0.00%	-	25.00%	29.25						
5.	NCCD Fixed Per 1000							250.00	2.50	440.00	4.40	735.00	7.35
6.	Value for GST & Cess	-	<b>4.02</b>	-	<b>15.63</b>		<b>90.28</b>		<b>32.51</b>		<b>50.77</b>		<b>75.18</b>
7.	GST	28.00%	1.13	28.00%	4.38	28.00%	25.28	28.00%	9.10	28.00%	14.22	28.00%	21.05
8.	Cess on Value	71.00%	2.85	0.00%	-	160.00%	144.45	5.00%	1.63	5.00%	2.54	36.00%	27.06
9.	Cess Fixed Per 1000							2,076.00	20.76	2,747.00	27.47	4,170.00	41.70
10.	<b>MRP</b>		<b>8.00</b>		<b>20.00</b>		<b>260.00</b>		<b>64.00</b>		<b>95.00</b>		<b>165.00</b>
11.	<b>Total Tax</b>		<b>3.98</b>		<b>4.38</b>		<b>199.56</b>		<b>34.04</b>		<b>48.67</b>		<b>97.27</b>
12.	<b>Tax % of Value</b>		<b>99.00%</b>		<b>28.00%</b>		<b>330.16%</b>		<b>113.61%</b>		<b>105.08%</b>		<b>143.61%</b>
13.	<b>Tax % of MRP</b>		<b>49.75%</b>		<b>21.88%</b>		<b>76.75%</b>		<b>53.18%</b>		<b>51.24%</b>		<b>58.95%</b>

\*Please note that the Tax % of MRP is calculated by dividing total tax by the MRP and multiplying by hundred.

Upon perusal of the Table No.4 as illustrated above, it is derived that:

- a. As seen @ Serial No.12, for low cost tobacco products consumed in case of unmanufactured tobacco the tax percentage on Value is 99%, and in the case of biris it is 28%; where as in case of chewing tobacco, the tax percentage on Value is 330% and in case of cigarettes it is 113.61% to 143.61%
- b. As seen @ Serial No.13, in case of - unmanufactured tobacco the tax percentage on MRP is 50%, and in the case of biris it is 21.88%. Whereas in case of chewing tobacco, the tax percentage on MRP is 76%, in case of cigarettes it is 51.24% to 58.95%.

The above observations clearly denote the existence of substantial disparity in the percentage of tax on value and tax on MRP amongst the smokeless tobacco products and smoking tobacco products in both low cost and premium class high cost categories.



### Key Takeaway

As demonstrated above in the previous chapters, potent carcinogen chemicals are either absent in smokeless products or comparatively much lesser than smoking tobacco products. Smoking tobacco products are major carcinogens causing a whole array of cancers and other health issues in its user groups as opposed to smokeless tobacco. However, there is still a substantial disparity in the tax percentage and incidence between the two categories, with the smoking tobacco products despite being far more harmful and with severe health implications are taxed much lesser in comparison with smokeless tobacco products

## CHAPTER – V

# KEY ISSUES CONCERNING THE TAXATION FRAMEWORK PERTAINING TO SMOKELESS TOBACCO IN INDIA

### Executive Summary

1. Evasion of Tax/Increase in Illegitimate Business:
  - a) Due to the sudden increase in tax incidence at distributor/retailer level, distributors/retailers insist on invoices of the amount below rupees fifty thousand with payment in cash to avoid recordings in GST returns.
  - b) A recent report estimates that 52% to 70% of all beedis consumed in India have no taxes paid either due to non-compliance or due to small producer exemptions from excise duty for manufacturers producing less than two million beedis in a financial year.
  - c) More than half of untaxed beedis are estimated to escape taxation through tax evasion.
  - d) In pre-GST regime, since the Excise Duty was collected on compounded levy basis, all manufacturers were at par; however in GST regime, account based levy has removed deterrent for unscrupulous manufacturers.
2. Overall Increase in Tax Incidence on The Smokeless Products and The Same is Not Revenue Neutral Compared to Cigarettes: During the course of implementation of GST, it was clarified and assured that GST rate structure would be revenue neutral structure. In other words, the tax incidence would remain the same in GST regime as it was there in the pre-GST regime on all the goods/products. However, in case of the Smokeless Tobacco Products, there is a huge increase in tax incidence compared to pre-GST regime.
3. Increase in Working Capital Requirements: The increased tax incidence has impacted the working capital management at distributor/ retailer level. In order to do the business in legitimate way there is an additional requirement of working capital in order to pay GST and Cess on timely basis.
4. Loss to Government Revenues:
  - a) Due to reduction in the number of legitimate dealers, the Government is losing out on the tax revenue which should be generated from this industry.
  - b) The increased tax incidence at the distributor/ retailer level, would lead to further loss of revenue to the Government as the distributors/ retailers would try to avoid incidence of tax.

## Brief Outline

This chapter outlines the issues concerning the current taxation regime followed through the policies of the State with respect dual taxation assessable values, counterfeiting, loss of revenue, and also carving out the tax incidence implications for trade in the industry.

### **Issues prevalent in the taxation regime:**

Based on the discussions and a comparative analysis in the previous chapters, we note down the key issues that are being faced in the tobacco industry hereunder:

#### **1. EVASION OF TAXES DUE TO INCREASE IN ILLEGITIMATE BUSINESS**

- a) Due to the sudden increase in tax incidence at distributor/ retailer level, distributors/ retailers are insisting on invoices of the amount below fifty thousand with payment in cash so that the sales details are not recorded in GST returns. The members who insist on cheque payments do not agree to breaking up of invoice to less than fifty thousand lose business to manufacturers who are willing to do the same. Further, there is increase in bogus manufacturers as well as duplicators as they are having edge over the legitimate manufacturers in terms of pricing of the products.
- b) A report indicates that smuggling might be on the rise in India with a rise in illegal imports from Bangladesh and Nepal, and smuggled cigarettes entering from China or Indonesia.<sup>74</sup> The market for contraband tobacco products, in contrast, primarily results from tax evasion within India. A recent report estimates that 52% to 70% of all bidis consumed in India have no taxes paid either due to non-compliance or due to small producer exemptions from excise duty for manufacturers producing less than two million bidis in a financial year. Non-compliance typically takes the form of bidi manufacturers underreporting their sales. More than half of untaxed bidis are estimated to escape taxation through tax evasion.<sup>75</sup> It is the same position in smokeless tobacco as both these industries are unorganised with no stringent license controls like in the cigarette industry.

<sup>74</sup> ERC Statistics International PLC. World Cigarettes 2005. Newmarket, UK: ERC Statistics International PLC; 2005

<sup>75</sup> ASSOCHAM. Combating Counterfeiting: Brand Protection. New Delhi; 2007.

- c) In pre-GST regime, since the Excise Duty on smokeless tobacco was collected on compounded levy basis, all manufacturers were at par, however in GST regime, account based levy removed deterrent for unscrupulous manufacturers. Due to increase in such illegitimate activities, there has been increase in tax evasion in GST regime. Therefore, there is need to rationalize the levy of Cess in order to improve the legitimate business as well as stop the evasion of taxes.

## **2. OVERALL INCREASE IN TAX INCIDENCE ON THE SMOKELESS PRODUCTS AND THE SAME IS NOT REVENUE NEUTRAL COMPARED TO CIGARETTES**

- a) During the course of implementation of GST, it was clarified and assured that GST rate structure would be revenue neutral structure. In other words, the tax incidence would remain the same in GST regime as it was there in the pre-GST regime on all the goods/products. However, in case of the Smokeless Tobacco Products, there is a huge increase in tax incidence compared to pre-GST regime specially on the distribution network. For example, in case of unmanufactured tobacco the increase is 518 % and in case of chewing tobacco it is 735 % at distributor/ retailer level. The same can be seen from the Table No.3 as provided above in Chapter 4 of the White Paper.
- b) Further, from the computation it can be observed that in the overall supply chain there is a net increase in tax incidence by 64 % in case of unmanufactured tobacco and 127% in case of chewing tobacco.
- c) Furthermore, in case of cigarettes, it can be observed that there is no major increase in the tax incidence in GST regime at the distributor/ retailer level compared to pre-GST regime. In case of cigarettes, there is little increase in the tax incidence of 15 % at distributor/ retailer level, whereas in case of the Smokeless Tobacco Products it is as high as 518 % to 735%.

## **3. INCREASE IN WORKING CAPITAL REQUIREMENTS**

The increased tax incidence has impacted the working capital management at distributor/retailer level. In order to do the business in legitimate way there is an additional requirement of working capital in order to pay GST and Cess on timely basis. Upon perusal of Table No.3,

it is noted that unmanufactured tobacco, the tax incidence in pre-GST regime at distributor level was Rs. 157, whereas in GST regime it is Rs. 970. Therefore, in rupee terms there is increase of Rs. 813 i.e. 518 percent increase. The said percentage further increases in case of chewing tobacco. In pre-GST regime on chewing tobacco the tax incidence was Rs. 221 at distributor level, whereas in GST regime it is Rs. 1,842. Therefore, in rupee terms there is increase of Rs. 1,622 i.e. 735 percent. From the said computation it can be seen that there is huge increase in working capital requirements which in turn increase the cost of running the business at distributor/ retailer level. This is another reason why distributor/ retailer level is attracted towards illegitimate business thereby resulting into loss to exchequer.

#### 4. LOSS TO GOVERNMENT REVENUES

- a) Another major implication of higher tax incidence at distributor/ retailer level is that there is a huge impact on the Government revenues. Due to reduction in the number of legitimate dealers, the Government is losing out on the tax revenue which should be generated from this industry. Even though, there is an overall increase in tax rates compared to pre-GST regime at the distributor/ retailer level, the same increase is appearing only on papers and in reality the Government may not be in position to collect the desired revenue.
- b) Further, the increased tax incidence at the distributor/ retailer level, would lead to further loss of revenue to the Government as the distributors/ retailers would try to avoid incidence of tax. The Government does not have any mechanism in place to monitor and assess such distributors/ retailers in order to collect the correct tax as the number of such small dealers would be huge and such dealers would be in millions located across India.
- c) In pre-GST regime, major revenue was generated from manufacturers and the Government could monitor and assess the correct tax revenue due to limited number of manufacturers. Hence, even if there was some avoidance of tax at distributor/ retailer level in the pre-GST regime, there was no major impact on the Government revenues.

From the above presented analysis and findings it is very well demonstrated that while framing the tax structure under GST regime, due consideration towards Smokeless Tobacco Products is much needed.

## Key Takeaways:

- i. The above identified complexity in the current taxation regime has become an obstacle in achieving the prime goal behind the introduction of the Goods and Services Tax that is ease in doing business and uniformity in the taxation policies.
- ii. As presented above, there is a major loss in government revenues due to counterfeiting and hindrance in compliance of taxation policies.
- iii. Additionally, from the tabular analysis presented in the erstwhile chapters, it is derived that:
  - a. There is an overall increase in tax incidence on the smokeless tobacco products and the same is not revenue neutral compared to cigarettes.
  - b. There is a huge increase in working capital requirements which in turn increases the cost of running the business at the distributor/ retailer level. This is another reason why distributor/ retailer level is attracted towards illegitimate business thereby resulting into loss to the exchequer.

## CHAPTER VI

### RECOMMENDATIONS & WAY FORWARD

#### Executive Summary

1. Given that Compensation Cess is not levied on Bidis manufactured in the country, the disparity that arises in the smokeless tobacco industry owing to levy of exorbitant amounts of compensation cess needs to be checked
2. Moreover, since the rate of Compensation Cess for cigarettes is in part levied on a per 1000 sticks basis, the increase in price of cigarettes or inflation does not substantially affect the tax burden on the supply chain of cigarettes.
3. Even NCCD that is charged on Cigarettes is on 1000 sticks but for manufactured smokeless product, the same is based on MRP. NCCD was increased in Budget 2000 as there was a need to give inflation correction to specific rates. However, the increase in NCCD rates on manufactured smokeless tobacco from 10% to 25% which anyways goes up with price increase (inflation), with the same abatement rate of 55% on MRP remains unchanged has led to a cascading effect.
4. As per the GST Council meetings held at regular intervals for implementation of the GST Act and GST (Compensation to States) Act the rationale given for not taxing Bidis at a higher rate is to encourage employment in the lower strata of the country. However, no such observation is given effect for Smokeless Tobacco manufacturers who also fall under the Low Cost product categories and are mainly produced by the lower income population. Bidi and unmanufactured branded tobacco, both, are low cost products and are produced/consumed by lower income group hence the same should be at par for taxation (though smoking tobacco is far more harmful).
5. It is the duty of the Government to levy taxes in uniformity for similar category of products and moreover as enumerated in the chapters above, it is clearly noted that the health implications between smokeless tobacco and smoking tobacco products is poles apart which confers a responsibility on the Government to levy taxes for such categories in a reasonable manner.
6. In order to reduce tax evasion and to encourage small tobacco manufacturers to pay tax it is very much required to address the tax hesitancy. Hence, it is necessary to reintroduce the compounded levy scheme or any similarly placed taxation model for smokeless tobacco products which can successfully lessen the tax hesitancy by small manufacturers and ensure increase in revenue generation while also addressing the concerns pertaining to unregulated and untaxed tobacco production and cash or unaccounted sales at distribution level.

Based on the above analysis and presentation of scientific studies, the present white paper concludes with the following recommendations in respect of the tobacco taxation regime pertaining to smokeless tobacco products:

- I. Given that Compensation Cess is not levied on Biris manufactured in the country, the disparity that arises in the smokeless tobacco industry owing to levy of exorbitant amounts of compensation cess needs to be checked.

Moreover, since the rate of Compensation Cess for cigarettes is in part levied on a per 1000 sticks basis, the increase in price of cigarettes or inflation does not substantially affect the tax burden on the supply chain.

Even NCCD that is charged on Cigarettes is on 1000 sticks but for manufactured smokeless product, the same is based on MRP. This NCCD was increased in Budget 2000 as there was a need to give inflation correction to specific rates. However, the increase in NCCD rates on manufactured smokeless tobacco from 10% to 25% which anyways goes up with price increase (inflation), with the same abatement rate of 55% on MRP which remains unchanged has subjected this sector to a cascading effect.

The comparative analysis as presented in the above chapters makes a strong case for amendments to the compensation cess levies on smokeless tobacco products, which should be calculated in conjunction with the health implications, which are significantly lower when compared with smoking tobacco products.

The Expert Group on Tobacco Taxation as formulated by the Ministry of Health and Family Welfare, Government of India should consider the above while formulating the taxation policies in India in the coming years.

- II. As per the GST Council meetings held at regular intervals for implementation of the GST Act and GST (Compensation to States) Act the rationale given for not taxing Biris at a higher rate is to encourage employment in the lower strata of the country. However, no such observation is given effect for Smokeless Tobacco manufacturers who also fall under the Low Cost product categories and are mainly produced by the lower income population.



The GST Council should take the same into consideration before formulating the rates and policies in respect of smokeless tobacco products.

- III. Upon perusal of the previous chapters, particularly Chapter III it is well established that the health implications of smoking tobacco is far greater than that of the smokeless tobacco.

Even second-hand smoke plays a major role in contracting various diseases.

These studies are recommended to be considered during formulation of the rates and policies for taxing tobacco products by the Expert Group on Tobacco Taxation.

- IV. It is the duty of the Government to levy taxes in uniformity for similar category of products and moreover as enumerated in the chapters above, it is clearly noted that the health implications between smokeless tobacco and smoking tobacco products is poles apart which confers a responsibility on the Government to levy taxes for such categories in a reasonable manner.

However, after the introduction of Goods and Services Tax, which has been adopted to ease the tax burden in trade, the authorities need to take further steps to ensure that there is no unreasonable bias in classification of products while determining their rates.

- V. COMPOUNDED LEVY SCHEME:

- i) Motivation for Compounded Levy Scheme- In exercise of the powers conferred by sub-sections (2) and (3) of section 3A of the Central Excise Act, 1944 (1 of 1944), the Central Government came up with “Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010” which came into force from 8th March, 2010<sup>76</sup>. Rule 7 of the same provides that duty payable will be calculated on the basis of the number of operating packing machines in the factory during the month.

An excerpt of the budget speech of 2010-11 delivered on 26th February, 2010 by the then Finance Minister Mr. Pranab Mukherjee is extracted below:

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<sup>76</sup> Notification No. 11/2010-C.E.(N.T.), dated 27.02.2010, <https://www.cbic.gov.in/htdocs-cbec/excise/cxrules/cx-chewing-tobacco-rules>

*“Since I quit smoking many years ago, I would urge others to also follow suit, as smoking is injurious to health. To this end, I am making some structural changes in the excise duty on cigarettes, cigars and cigarillos coupled with some increase in rates. I also propose to enhance excise duty on all non-smoking tobacco such as scented tobacco, snuff, chewing tobacco etc. In addition, I propose to introduce a compounded levy scheme for chewing tobacco and branded unmanufactured tobacco based on the capacity of pouch packing machines.<sup>77</sup>”*

- ii) **Functionality Framework-** Compounded levy scheme was the method of calculating tax on the basis of production capacity whereas the duty was levied on the basis of actual output in the standard process of indirect tax calculations. Production capacity is calculated based on the elements that affect production. Under the scheme, tax was calculated on the basis of no. of manufacturing plants available. Rule 5 of the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 specified the quantity deemed to be produced in a month from one plant. The government set a specific amount of duty to be paid for operating a single equipment. The scheme also encouraged tax compliances among small taxpayers as it did not require to maintain cumbersome daily records and convening of regular departmental audits and assessments<sup>78</sup>.

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<sup>77</sup> Budget Speech 2010-11, [https://www.indiabudget.gov.in/budget\\_archive/ub2010-11/bs/speecha.htm](https://www.indiabudget.gov.in/budget_archive/ub2010-11/bs/speecha.htm)

<sup>78</sup> Kishore Kumar, Expectations from the Union Budget 2016-17 on Indirect Tax Front

## iii) Key Data Points:

Tabular representation of the data of total Indirect Tax and Tobacco Tax collected in the Financial Year (FY) 2010-11, 2011-12, 2012-13, 2017-18, 2018-19 herein below:

Financial Year	Total Indirect Tax Collected	Total Tobacco Tax Collected	Tobacco tax as % of total Indirect Tax
2010-11	74,1348 crores	15,286 crores	2.06 %
2011-12	8,71,505 crores	17,617 crores	2.02%
2012-13	10,36,732 crores	21,787 crores	2.10 %
2017-18	18,84,397 crores	30,313 crores	1.61%
2018-19	21,96,908 crores	34,830 crores	1.59%

From the aforesaid table, it is evident that there has been a considerable decline in the proportion of tax collected from tobacco after the implementation of GST i.e. in 2017, and one of the reasons for the same is doing away with the compounded levy scheme which was a convenient method to collect tax from tobacco products as there are several small tobacco manufactures from whom collecting and paying tax by compounded levy scheme was more convenient both from the regulator and the manufacturer's point of view.

- iv) According to a recent survey conducted by the Authentication Solution Providers' Association, counterfeiting in India increased by 24% in 2019 compared to 2018<sup>79</sup>. It further stated that counterfeiting costs the Indian economy INR 1 Trillion every year. Tobacco had the largest increase in 2020 compared to 2019 and 2018. Between April 2020 and February 2021, Indian officials recovered illegally imported cigarettes worth INR 1,772 crore, according to an answer to a question raised in the Lok Sabha.

<sup>79</sup> Menace of contraband and counterfeit tobacco products, CNBC TV, 20<sup>th</sup> May, 2021

VI. Hence, in order to reduce tax evasion and to encourage small tobacco manufacturers to pay tax it is very much required to bring down the tax hesitancy. Hence, it is right time to reintroduce the compounded levy scheme or any similarly placed taxation model for smokeless tobacco products which can successfully lessen the tax hesitancy by small manufacturers and will increase the revenue generated from smokeless tobacco taxation while also addressing the concerns pertaining to unregulated and untaxed tobacco production.

The complexity of the regime for traders in the tobacco industry has created an environment that does not allow the entire supply chain to exist and function in synchronicity.

Accordingly, Tobacco Control Board must aim to achieve MPOWER objective by appropriately taxing tobacco products based on scientific studies on the health implications of each such product.

To conclude, the study demonstrates that achievement of the above recommendations shall not only ensure that disparity in terms of tobacco taxation regime in India, especially in the context of smokeless tobacco products is addressed, but also enable strategic achievement of MPOWER Goals.

**SUMMARY OF THE VIRTUAL ROUNDTABLE  
CONFERENCE ON TAXING SMOKELESS TOBACCO  
PRODUCTS IN INDIA  
CONVENED ON 29.05.2022**

On 29<sup>th</sup> May 2022, the India Strategy Group and the Hammurabi & Solomon Partners jointly convened a Virtual Roundtable Conference (“Roundtable”) on Taxing Smokeless Tobacco Products in India.

The Roundtable was convened to discuss the draft white paper “Taxing Smokeless Tobacco Products in India” prepared jointly by the India Strategy Group and the Hammurabi & Solomon Partners, and to invite comments/inputs from a panel of distinguished and eminent stakeholders, comprising of:

1. Dr. Kavita Rao, Director, National Institute of Public Finance and Policy.
2. Mr. Raghunadha Babu Yadlapati, Chairman, Tobacco Board.
3. Mr. B.V. Javare Gowda, President, Federation of All India Farmer Associations.
4. Dr. Priyanka Dixit, Chairperson - Centre for Health and Social Sciences, School of Health Systems Studies, Tata Institute of Social Sciences.
5. Mr. S.L. Rao, Advisor, Fields of View.
6. Mr. Rajesh Malpani, Secretary, All India Tobacco Manufacturers Association.

The Roundtable was moderated by Dr. Manoj Kumar, Founder, India Strategy Group and Founder & Managing Partner, Hammurabi & Solomon Partners.

The following is a brief summary of the deliberations at the Roundtable:

**Why is it important to regulate the consumption of Tobacco Products in India?**

India is the second-largest consumer of tobacco in the world, second only to China. Tobacco products are consumed by individuals across various socio-economic and socio-cultural

groups. To hem the increased consumption of tobacco across the globe, the World Health Organization formulated the Framework Convention on Tobacco Control (WHO FCTC) which is an evidence-based treaty which consists of demand reduction and supply reduction measures.

In order to curtail the consumption of tobacco products, Article 6 of the WHO FCTC directs the Parties to the Convention to implement stringent tax policies, price policies, on tobacco products so as to hedge tobacco consumption across the globe.

There are multiple studies which indicate that consumption of tobacco can have an adverse effect on the health of the consumers. It has been noted that different classes of tobacco have varied effects on the health of the consumers is a call for a taxation regime across all types of tobacco products for effective and sustained impact.

### **Tobacco Taxation Policy in India**

It has been noted that increased taxation of tobacco products is the single most consistently effective tool for reducing tobacco use. However, it has been noted that the levying of high tax on tobacco leads to tax evasion and has also resulted in the smuggling and counterfeiting of tobacco products. The white paper has identified the efficiency of a rational tax structure that discriminates between tobacco products on the basis of their health implications being helpful in achievement of the MPOWER goals as identified under the WHO FCTC.

In the current taxation system in India, there exists a disparity in how taxes are levied on smoking tobacco products and smokeless tobacco products which has led to an increased tax burden on the smokeless tobacco industry and the farmers who supply tobacco crops to said industry. Additionally, there exists a disparity in the yardstick/units basis which the taxes are levied, the yardstick for taxation of cigarettes has been fixed at the rate of per thousand sticks which affords protection to the manufacturers from the effects of inflation. It has been noted that different classes of tobacco products cause varying health implications to the consumers and hence certain class of products are more detrimental to the health of the consumers. In view of the same health implications of consumption of said products ought to be taken into consideration whilst determining the taxation of said classes of products.

There are certain studies that indicate that consumption of smoking tobacco is considerably more harmful to the consumers as well as by-standers and the same needs to be taken into consideration whilst taxing smoking tobacco products.

### **Farmers’/Tobacco Industry Workers’ Livelihoods**

The adverse impact of increased taxation on the livelihoods of workers in the tobacco sector, particularly tobacco farmers has been noted. A significant increase in tobacco taxes despite being aimed at deterring farmers from engaging in tobacco farming only harms the farmers due to lack of a policy that transitions the crops. In the absence of such a policy and the absent parameters for effectively implementing the same in the present day, it is pertinent to note that the differential taxation of smoking tobacco and smokeless tobacco products also affects the suppliers to the respective industries since the differential taxation leads to the manufacturers having higher/lower tax incidence which in turn affects their paying power for the raw material.

Under the WHO FCTC, the authorities are required to provide ways and means to individuals employed in the tobacco industry to transition into other means of earning a livelihood. However, the implementation of such schemes/programmes to assist such individuals would have to be extremely well thought out and could prove to be an arduous task. The need of the hour is therefore to tax tobacco products much more rationally to enable achievement of the MPOWER goals despite the underlying circumstances.

The draft white paper “Taxing Smokeless Tobacco Products in India” has been appropriately updated per the deliberations as summarized above.

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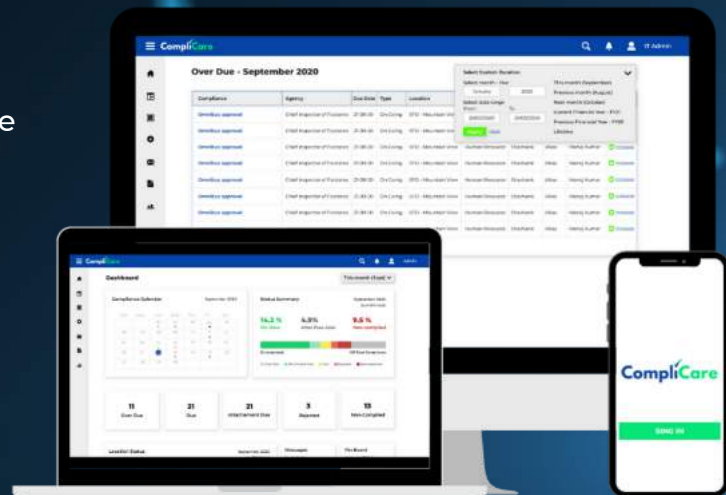
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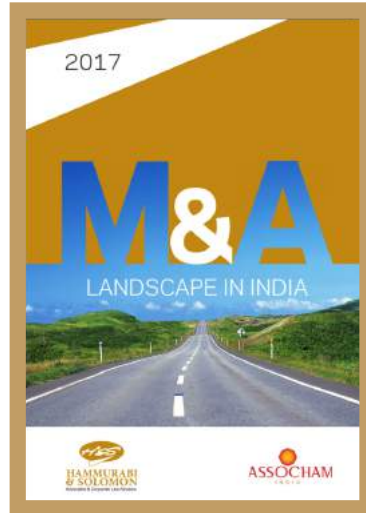
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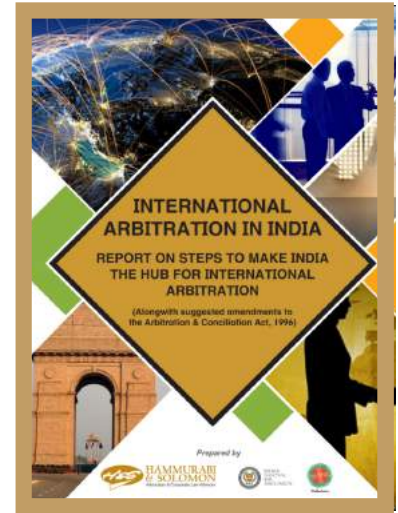
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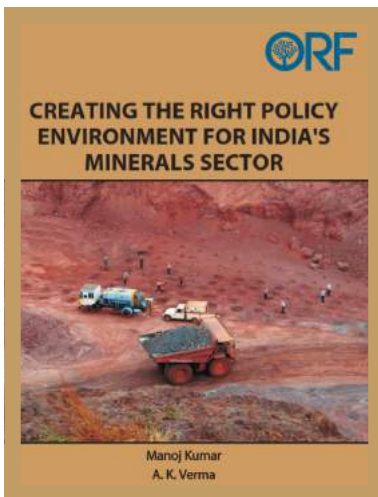
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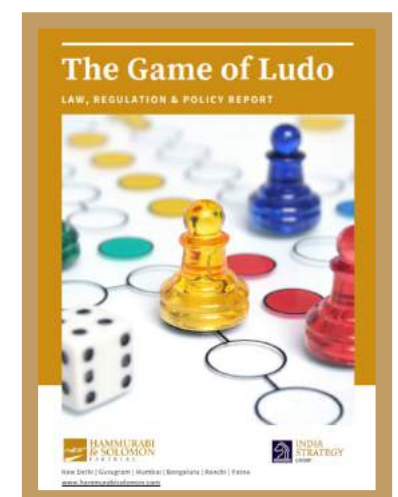
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# ABOUT THE AUTHOR



**Dr. Manoj Kumar**

Conferred the prestigious Mahatma Gandhi Samman at the House of Lords, London, Dr. Kumar is a top-tier name in Public Policy & Regulation space, Construction Law, Conflict Management, ADR & Mediation, Energy-Environmental-Natural Resources, Infra & Real Estate, Corporate M&A. An alum of the prestigious Harvard Business School and the National Law School of India, Dr. Kumar is a distinguished author, teacher, arbitration expert, mediation expert, strategist, columnist, thought leader, is called upon by government bodies and top-of-the-line Indian and international institutions and is acknowledged for his outstanding leadership, strategy and ability to find alternate solutions to the most critical and complex challenges across geographies.

In addition to driving Hammurabi & Solomon Partners (ranked among the top 20 Indian law firms by Asian Legal Business), Dr. Kumar is also:

- Vice-President of the Society of Indian Law Firms (SILF),
- Vice-Chair of the Inter-Pacific Bar Association (IPBA) Energy & Natural Resources Committee,
- Vice-President of the Society of Construction Law UK – India (SCL-India),
- Visiting Fellow with Asia's top-ranking think tank – Observer Research Foundation (ORF),
- Expert with the UNESCO Inclusive Policy Lab,
- Visiting Professor at the Indian Institute of Management (IIM),
- Member of the India taskforce of the International Chamber of Commerce (ICC) and the legal services committee of the Confederation of Indian Industry (CII),
- Chairman of (a) Lexxo – a top tier LawTech Group (Lexxo) & (b) India Strategy Group (ISG),
- Founder of India Unites Foundation, a non-profit committed to providing financial and non-financial support to the needy & distressed,
- Editorial board member of Thinkers 50 India,
- Guest Editor of the American Bar Association's India Law Journal.
- Honorary Professor of the Academic Union of Oxford, UK for business & economy.