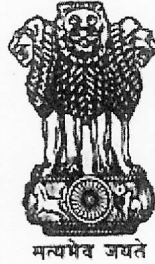


**FIFTY-SEVENTH REPORT
COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

MINISTRY OF HEALTH & FAMILY WELFARE

(Presented to Lok Sabha on 19.12.2023)



**LOK SABHA SECRETARIAT
NEW DELHI**

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COMPOSITION OF THE COMMITTEE ON PETITIONS

Shri Harish Dwivedi - Chairperson

MEMBERS

2. Shri Anto Antony
3. Shri Hanuman Beniwal *
4. Prof. Sanjay Sadashivrao Mandlik
5. Shri P. Ravindhranath
6. Dr. Jayanta Kumar Roy
7. Shri Brijendra Singh
8. Shri Sunil Kumar Singh
9. Shri Sushil Kumar Singh
10. Shri Manoj Kumar Tiwari
11. Shri Prabhubhai Nagarbhai Vasava
12. Shri Rajan Baburao Vichare
13. Shri Bharat Ram Margani
14. Vacant
15. Vacant

SECRETARIAT

1. Shri Raju Srivastava - Joint Secretary
2. Shri Tenzin Gyaltsen - Deputy Secretary
3. Shri Raghubir Singh - Under Secretary

* Resigned his Lok Sabha seat w.e.f. 15.12.2023.

**FIFTY-SEVENTH REPORT OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

INTRODUCTION

I, the Chairperson, Committee on Petitions, having been authorised by the Committee to present on their behalf, this Fifty-Seventh Report (Seventeenth Lok Sabha) of the Committee to the House on the Action Taken by the Government on the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Forty First Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Sanjay Bechan regarding proposed amendments to the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and other matter connected therewith or incidental thereto.

2. The Committee considered and adopted the draft Fifty-Seventh Report at their sitting held on 18 December, 2023.

3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;

HARISH DWIVEDI
Chairperson,
Committee on Petitions

18 December, 2023

27 Agrahayana, 1945 (Saka)

REPORT

ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS MADE BY THE COMMITTEE ON PETITIONS (SEVENTEENTH LOK SABHA) IN THEIR FORTY FIRST REPORT ON THE REPRESENTATIONS OF S/SHRI RAJNIKANT P. PATEL & SUDHIR SABLE AND SHRI SANJAY BECHAN REGARDING PROPOSED AMENDMENTS TO THE CIGARETTES AND OTHER TOBACCO PRODUCTS [PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE & COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION] ACT, 2003 (COTPA) AND OTHER MATTER CONNECTED THEREWITH OR INCIDENTAL THERETO.

The Committee on Petitions (Seventeenth Lok Sabha) presented their Forty First Report to Lok Sabha on 13 December, 2022 which had dealt with the representations of S/Shri Rajnikant P. Patel & Sudhir Sable of All India Bidi Industry Federation and Shri Sanjay Bechan of Smokeless Tobacco Federation (India) regarding proposed amendments to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) and other matter connected therewith or incidental thereto.

2. The Committee made certain observations/recommendations in the matter and the Ministry of Health & Family Welfare were asked to implement the recommendations and requested to furnish their action taken replies thereon for further consideration of the Committee.

3. Action Taken Replies have been received from the Ministry of Health & Family Welfare in respect of all the observations/recommendations contained in the aforesaid Report. The recommendations made by the Committee and the replies furnished thereto by the Ministry of Health & Family Welfare are detailed in the succeeding paragraphs.

4. In paragraphs 6, 7, 8, 9, 10, 11 and 12 of the Report, the Committee had observed/recommended as follows:-

"Consultation process vis-à-vis COTPA (Amendment) Bill, 2020

The Committee note that the draft Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 was placed in the public domain on the website of the Ministry of Health & Family Welfare [ntcp.nhp.gov.in and mohfw.gov.in] on 1 January, 2021 as a part of pre-legislative consultative process. Pursuant to this, 89,000 objections through electronic mode besides, more than two lakh representations, letters, etc., in physical form by bringing out various grievances and suggestions, have been received in the Ministry.

While examining the representations of S/Shri Rajnikant P. Patel & Sudhir Sable as well as that of Shri Sanjay Bechan, it was also came to the notice of the Committee that a similar exercise for Amendment to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act of 2003 (COTPA) was taken up by the Ministry in the year 2015 and on that occasion also, suggestions of public were invited as a part of pre-legislative consultation process. However since no tangible progress was made by the Ministry in regard to Amendment Bill of 2015 and after a lapse of around 6 years, another draft proposal for amendment has been placed in the public domain, the Committee could easily draw an inference that the Amendment Bill of 2015 was subsequently withdrawn by the Ministry of Health & Family Welfare.

The Committee also acknowledge the endeavour of the Ministry to prepare an effective Amendment Bill after taking into account the various suggestions received and also achieving the target of 30 per cent relative reduction in the prevalence of tobacco use by the year 2024-25 (from the levels of 2009-10) as set out under the National Health Policy of the year 2017. In this sequence, the Committee also wish to remind the Ministry about the inalienable 'objects and reasons' set out by them while formulating a composite and comprehensive piece of legislation in the form of 'The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 with a view to prohibiting the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco

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products and for matters connected therewith as well as implementing Article 47 of the Constitution which inter alia requires the State to endeavour to improve public health of the people.

Since the proposed Amendment Bill was in the stage of pre-legislative consultations and in the midst of this, the Committee on Petitions received the aforementioned representations, they got an opportunity to ponder on the nuances involved in the entire exercise, beginning with the objective of bringing COTPA in the year 2003, exercise undertaken by the Ministry for carrying out amendments in the year 2015 and the current attempt in the form of COTPA (Amendment) Bill, 2020. It is against this backdrop that the Committee formulated detailed List(s) of Points connected with the subject for easy discernment of contradictions, if any, in a sequential manner, and forwarded the same to the Ministry. However, pursuant to the detailed List(s) of Points, the Ministry preferred to evade and did not reveal the institutional intent of bringing the proposed Bill for amending the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

In this chronology, the Committee on Petitions urged the Ministry to give their considered view on inter alia amending the following Sections of the Bill, which were of determining nature so that the Committee would be able to appreciate the reasons for altering these Sections contained in COTPA, 2003:-

Sl. No.	Sections contained in COTPA (Amendment) Bill	Brief details
1.	Amendment to Section 3	Definition of 'Advertisement' and 'Production'.
2.	Amendment to Section 7	Deletion of proviso relating to 'nicotine and tar contents'.
3.	Amendment to Section 10	Deletion of words "or indication of nicotine and tar contents'.
4.	Amendment to Section 11	Deletion of 'testing and regulating the contents and

		<i>emissions in cigarettes and any other tobacco products'.</i>
5.	<i>Amendment to Section 15</i>	<i>Deletion of words 'and indication of nicotine and tar contents'.</i>
6.	<i>Amendment to Section 30</i>	<i>Re-wording of words 'add any other tobacco product' as 'add to, or, omit from'.</i>
7.	<i>Amendment to Section 31</i>	<i>Deletion of sub-section(2) for specifying the maximum permissible nicotine and tar contents in cigarettes or other tobacco products.</i> <i>Deletion of words of sub-section (d), i.e., or to indicate the nicotine and tar contents'.</i>

The Committee were, however, shocked that for most of the aspects contained in the List(s) of Points, the Ministry gave a terse reply, as under:-

"The draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment, Bill, 2020. Aspect of the enforcement of applicability will be duly considered at the time of the finalization of the COTPA Amendment, Bill, 2020."

The Committee do not subscribe to such distractionary ways of officers of the Tobacco Control Division of the Ministry of Health & Family Welfare in dealing with a Parliamentary Committee in view of the fact that all the Parliamentary

Committees, in general, and the Committee on Petitions, Lok Sabha, in particular, are taking up various aspects which are invariably connected with the wider public interests. Whenever, institutional clarifications are sought on some important aspects connected with the subject matter under examination of the Committee, it is the bounden duty of the Ministry/Department concerned of the Government of India, to furnish a sustainable and legally tenable reply, thereby, enabling the Parliamentary Committee to form their opinion on the relevant issue(s). The Committee, therefore, recommend the Ministry to appropriately sensitize their officers to ensure that the queries raised by any Parliamentary Committee are resolved by them in an unambiguous and time-bound manner and also explaining key legal provisions connected with the subject in a simple language. The Committee would like to be apprised of the action taken by the Ministry of Health & Family Welfare in this regard at the earliest."

5. The Ministry of Health & Family Welfare, in their action taken replies, have submitted as under:-

"A draft Amendment Bill was hosted in public domain for pre-legislative consultations in the year 2015, whereby suggestions of the public were invited on the same.

It is submitted that both the drafts put in public domain for pre-legislative consultations, have been prepared after extensive consultations with domain experts and legal experts.

It is the endeavor of the Ministry to prepare an effective amendment Bill after taking into account the various suggestions received and as well as the target for 30% relative reduction in prevalence of Tobacco use by the year 2024-25 (from the levels in 2009-10), as set out under the National Health Policy 2017.

It is submitted that the draft Bill of 2015 is now revised in the form of the revised draft Bill of 2020. Due consideration has also been given to the provisions contained in the draft Bill of 2015, while preparing the draft Bill of 2020.

It is also submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill is yet to be finalized.

It is submitted that the factual position has been communicated to the Committee and also so far draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

Suggestions of the Committee are noted. It is submitted that factual positions are submitted to the Committee in a comprehensive manner. Also instructions given by the committee have been noted and officers have been sensitized."

6. In paragraphs 13, 14, 15 and 16 of the Report, the Committee had observed/recommended as follows:-

"Non-adherence to the policy on pre-legislative consultation

The Committee note that the Government of India had formulated a detailed policy on pre-legislative consultation. In this regard, the Secretary, Ministry of Law & Justice, Legislative Department had also issued revised policy on 5 January, 2014 which is applicable in the process of principal as well as subordinate legislation. As a matter of fact, all the Ministries/ Department of the Central Government have also been directed to invariably follow the policy on pre-legislative consultation.

The Committee also note that the details of such legislative process inter alia makes it mandatory for all the Ministries/Department of the Central Government to publish/place in public domain the draft legislation, wherein, brief justification for such legislation, essential elements of the proposed legislation, and estimated assessment of the impact of such legislation on the lives and livelihoods of the concerned/affected people have to be incorporated.

Juxtaposition of the said policy formulation of the Government of India on pre-legislative consultation with the current exercise of the Ministry of Health & Family Welfare relating to placing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce,

Production, Supply and Distribution) [Amendment] Bill, 2020 in the public domain with a view to eliciting the comments/views of public, the Committee are unhappy to find that none of the process has been followed by the Ministry of Health & Family Welfare. The Committee are constrained to express that either the higher officials of the Tobacco Control Division were not aware of any such policy guidelines issued by the Government of India or they had intentionally ignored such an important policy guideline of the Government of India for reasons incomprehensible to the Committee. The Committee are of considered opinion that, on both these counts, the Tobacco Control Division of the Ministry of Health & Family Welfare should have exercised restraint and at the same time exhibited congruence for attaining the legitimate and growing expectation of the people for transparent and better informed Government.

Though the Committee would discuss all the aspects contained in the Amendment Bill, 2020 in the succeeding paragraphs, the Committee also recommend that whenever any substantive issue - having legal connotations - as it is in the present case of carrying out amendments in the Act is taken up for effecting amendment(s)/modification(s), while putting up the draft proposal in the public domain as a part of pre-legislative consultations, a new column containing the reasons for addition/deletion/substitution in the existing Sections of the Act should also be included. The said suggestion should also be taken into consideration by the Ministry of Health & Family Welfare with reference to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020. It is, thus, expected that urgent action for the above-stated suggestion for procedural improvement, which would enable the public to understand the subject-matter in a better way, should also be initiated by the Ministry, under intimation to the Committee on Petitions."

7. The Ministry of Health & Family Welfare, in their action taken replies, have submitted as under:-

"It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that the provisions of the draft Amendment Bill have not yet been finalized. As and when the draft bill would be finalized, all due procedures of pre-legislative consultation would be followed.

It is submitted that India is Party to the World Health Organization Framework Convention for Tobacco Control (WHO FCTC) and is fully committed to implement various demand and supply reduction erasures for tobacco control.

The preamble to WHO FCTC recognizes that countries "need to be alert to any efforts by the tobacco Industry to undermine or subvert tobacco control efforts and need to be informed of activities of tobacco industry that have negative impact on tobacco efforts". Further Article 5.3 of the WHO FCTC reads as: In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law....

The guidelines for implementation of the said Article (5.3) states that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests and, therefore, parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent. Guidelines further recommend that Parties should establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur. Parties should avoid conflicts of interest for government officials and employees and not give preferential treatment to the tobacco industry.

With the view to protect public polices from tobacco industry interference the 'Code of Conduct for Public Officials' has been developed by this Ministry, with the inclusion of a comprehensive protocol to deal with any interaction with tobacco industry or its representative. This Code of Conduct has already been shared with all the Divisions of this Ministry to further circulate among autonomous bodies/institutions under the MoHFW.

This Ministry with due cognizance of Article 5.3 of WHO FCTC, has been altering the States/UTs, NITI Aayog, stakeholder Ministries/Departments and various institutes to not to engage with Tobacco industry funded entities.

In addition, the 139th Report of Rajya Sabha Department-Related Parliamentary Standing Committee on Health and Family Welfare, following text of para(s) related to tobacco use is reproduced as –

"1.1 Cancer can affect any part of the human body, though in India, highest number of lives lost is due to oral cancer caused by tobacco followed by cancer of the lungs, esophagus and stomach."

"1.6.4 The Committee is of the firm view that there is an urgent need to disincentivize the consumption of tobacco and alcohol in the country. The Committee accordingly recommends the Government to formulate effective policies on alcohol and tobacco control. The Committee also notes that India has one of the lowest prices for tobacco products and there is a need to increase taxes on tobacco products. The Committee accordingly recommends the Government to raise taxes on tobacco and utilize the additional revenue gained for cancer prevention and awareness."

1.6.6 Taking into consideration that oral cancer being the highest contributor to the total cancer cases, the Committee observes that there is a need to implement the provisions of Cigarettes and Other Tobacco Products Act 2003 (COTPA) more universally. The Committee notes that COTPA is the principal anti - tobacco law in India that encompasses a ban on smoking in public places, advertising and sponsorship, sales to minors, and warnings on packs. The Committee further notes that India's National Health Policy 2017 has set out to achieve a relative reduction in the prevalence of current tobacco use by 30% in 2025. The Committee believes to achieve the SDG target, the Ministry must take effective measures to contain the sale of Tobacco products. The Committee recommends the Government to abolish designated smoking areas in airports, hotels, and restaurants and encourage a smoke free policy in organizations. The Committee further recommends the Government to prohibit single stick sales of cigarettes and lay stringent penalties and fines on offenders."

2.3.4 The Committee notes that in India tobacco use in different forms accounts for nearly 50% of all cancers, these are called tobacco related cancers, so these cancers are preventable. The Committee expresses its concern to note the fact that while thousands of crores are spent by both Central and State Governments on treatment of Cancer, however, the desired focus is not given to its root cause i.e. tobacco consumption."

The Committee has been given to understand that majority of tobacco addicts start in their teens. Therefore, the Committee recommends the Government to focus campaign against tobacco consumption by youth and since the "quit-rate" in India is very low, the Government should formulate strategies to stop the teen-population from falling prey to the tobacco addiction.

Hence, Government is well aware about the repercussion of draft amendments and the legitimate and growing expectation of the people for transparent and better informed Government. Also the Government is committed to take effective steps for reducing tobacco burden in the society."

It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

The Committee's observation has been noted."

8. In paragraph 17 of the Report, the Committee had observed/recommended as follows:-

"Key issues relating to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020

Apart from representations received from S/Shri Rajnikant P. Patel & Sudhir Sable as well as Shri Sanjay Bechan, the Committee on Petitions, Lok Sabha also not only held detailed discussions with the representatives of the Ministry of Health & Family Welfare but also relied upon various documents/papers, etc., available in public domain. Out of these discussions/deliberations, the following key issues, having bearing on the provisions of the Bill, have emerged out:-

- (i) Definition – Amendment in Section 3(k).
- (ii) Prohibition of smoking in a public place – Deletion of Section 4.

- (iii) Prohibition of advertisement of cigarettes and other tobacco products – Substitution of Section 5(1) and deletion of 5(2)(a) & (b).
- (iv) Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area – Substitution of Section 6(a) & (b).
- (v) Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products – Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5).
- (vi) Size of letters and figures – Deletion of words in Section 10 and insertion of new Section as 10(A).
- (vii) Testing laboratory for nicotine and tar contents – Substitution of Section 11.
- (viii) Power to give option to pay costs in lieu of confiscation – Deletion of words in Section 15(2).
- (ix) Power to add any tobacco products in the Schedule – Substitution of Section 30 and insertion of new Section as 30(A) & (B).
- (x) Power of Central Government to make rules – Substitution of Section 31(2)(b) and deletion of Section 31(2)(d).

These are discussed in the succeeding paragraphs.

A. Definition – Amendment in Section 3(k)

A comparative analysis of the Section 3(k) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Definition' is, as under:-

Section 3(k) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
<p><i>'Production' with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, Beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan Masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include –</i></p> <p><i>(i) packing, labelling or re-labelling, of containers;</i></p> <p><i>(ii) re-packing from bulk packages to retail packages; and</i></p> <p><i>(iii) the adoption of any other method to render the tobacco product marketable.</i></p>	<p><i>'Production' with its grammatical variations and cognate expressions, includes the making of tobacco products and shall include –</i></p> <p><i>(i) Packing, labelling or re-labelling, of containers;</i></p> <p><i>(ii) Re-packing from bulk packages to retail packages; and</i></p> <p><i>(iii) The adoption of any other method to render the tobacco product marketable.</i></p>

The Committee note that in the proposed Amendment Bill, 2020, no change has been proposed in sub-sections (i) to (iii) of Section 3(k) of COTPA, 2003. However, the description of 'tobacco products', viz., cigarettes, cigars, cheroots, Beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan Masala or any chewing material having tobacco as one of its ingredients have been substituted by 'Tobacco Products'.

Since the proposed amendment would give rise to ambiguity while describing the 'Tobacco Products', it may result in multiple litigations with the stakeholders. Moreover, it has been an established principle of legislative process that the law should invariably contain even the minute details and also self-contained so that it may not lead to different interpretations by different people. In view of this, the Committee disapprove the proposed amendment to the definition of 'production' as contained in Section 3(k) of the COTPA, 2003 and recommend that status quo should be maintained.

B. Prohibition of smoking in a public place – Deletion of Section 4

Section 4 of the COTPA, 2003 relating to 'Prohibition of smoking in a public place' reads, as under:-

No person shall smoke in any public place:

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

The Committee note that the Ministry, in their submissions, has acknowledged the dangers of second and third hand smoking and its impact on the health of vulnerable sections of the Society, viz., women and children. It is in this context that the Committee feel that the relevant section in COTPA, 2003 should not be deleted and rather made broad-based by including railway platforms, bus stations, sports stadiums, Shopping Mall, besides the Airports. The Committee, therefore, recommend that Section 4 of COTPA, 2003 should not be deleted/omitted.

C. Prohibition of advertisement of cigarettes and other tobacco products – Substitution of Section 5(1) and deletion of 5(2)(a) & (b)

A comparative analysis of the Section 5(1) & (2) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Prohibition of advertisement of cigarettes and other tobacco products' is, as under:-

Section 5(1) & (2)(a) & (b) of COTPA, 2003	Substitution and deletion proposed in COTPA (Amendment) Bill, 2020
5(1). No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no	5(1) No person shall directly or indirectly advertise cigarettes or any other tobacco products through any medium and no person shall take part in any advertisement that directly or indirectly promote the use or consumption of cigarettes or any

<p>person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.</p> <p>(2) No person, for any direct or indirect pecuniary benefit, shall –</p> <ul style="list-style-type: none"> a) display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product; or b) sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or c) distribute, cause to distribute, or permit or authorize to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product. 	<p>other tobacco products.</p>
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The Committee note that in the proposed Amendment Bill, 2020, rewording of Section 5(1) will have same meaning and intent and, therefore, the aforementioned substitution could be retained. However, deletion/omission of Section 5(2)(a) & (b) might propel a person to display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product or sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product,

which would be in conflict with the preamble and the aims and objectives for which COPTA was enacted in the year 2003. The Committee, therefore, disapprove the proposed deletion/omission of Section 5(2)(a) & (b) of the COTPA, 2003 and recommend that status quo should be maintained.

D. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area – Substitution of Section 6(a) & (b)

A comparative analysis of the Section 6(a) & (b) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area' is, as under:-

Section 6(a) & (b) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product -	No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product -
a) to any person who is under eighteen years of age, and	a) to any person who is under twenty-one years of age, and
b) in an area within a radius of one hundred yards of any educational institution.	b) in an area within a radius of one hundred meters of any educational institution.

The Committee note that the proposed substitution of Section 6 (a) & (b) in the Amendment Bill, 2020 is in tune with the National Health Policy of 2017 which envisages the targets for relative reduction in prevalence of current tobacco use as 15 per cent by 2020 and 30 per cent by 2025. Besides, restricting the sale, offer for sale, or permit sale of, cigarette or any other tobacco product to a person below the age of 21 years and within a radius of one hundred meters of any educational institution is a welcome step in the direction of discouraging the consumption of cigarettes or any other tobacco products. The Committee, therefore, recommend that Section 6(a) & (b) of COTPA, 2003 could be substituted in the manner proposed by the Ministry in the Amendment Bill, 2020.

E. Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products – Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5)

A comparative analysis of the Section 7(2), (4) & (5) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products' relating to insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5) is, as under:-

Section 7(2), (4) & (5) of COTPA, 2003	Insertion/substitution proposed in COTPA (Amendment) Bill, 2020
<p>7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.</p>	<p>7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.</p>
	<p>Provided that the trade and commerce in cigarette or any other tobacco product shall be in sealed, intact and original packing.</p>
<p>7(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.</p>	<p>7(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply.</p>
<p>7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label,</p>	<p>7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having</p>

<p><i>the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:</i></p> <p><i>Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.</i></p>	<p><i>minimum quantity as may be prescribed.</i></p>
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The Committee note that the impact of the proposed insertion of proviso in Section 7(2) in the Amendment Bill which relates to carrying out trade or commerce in cigarettes or any other tobacco products in sealed, intact and original packing would be comparatively more on Beedis since this product is produced by unorganised and small scale/cottage/ household, would be at a disadvantageous position. Moreover, ensuring the compliance of this proviso by the Authorities concerned would be a herculean task without any positive outcome. In this context, the Committee are of the considered view that in the process of law making, realistic and easily implementable propositions should be given prominence in place of regressive and theoretical formulations. The Committee, therefore, recommend that status quo should be maintained in regard to Section 7(2) of COTPA, 2003 and no changes be made vide the Amendment Bill, 2020.

The Committee also note that substitution of Section 7(4) & (5) in the Amendment Bill, 2020 is not confined to its re-wording in the Amendment Bill, 2020 but it has connotations in the form of deleting the 'nicotine and tar contents on cigarettes' along with doing away the austere proviso of prescribing the maximum permissible quantity of 'nicotine and tar contents'. In this context, the Committee are of considered view that in case, Section 7 of the COTPA, 2003 is amended in the present form, it would drastically liquidate the regulation of usage of tobacco products, especially, the cigarettes. The Committee, therefore, disapprove re-wording and substitution of Section 7(2),(4) & (5) in the Amendment Bill, 2020 and recommend that status quo should be maintained.

F. Size of letters and figures – Deletion of words in Section 10 and insertion of new Section as 10(A)

A comparative analysis of the Section 10 of the COTPA, 2003 and the proposed insertion of a new Section 10A vide COTPA (Amendment) Bill, 2020 relating to 'Size of letters and figures' is, as under:-

Section 10 of COTPA, 2003	Deletion/Insertion proposed in COTPA (Amendment) Bill, 2020
<p>No specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and indication is less than the height as may be prescribed by rules made under this Act.</p>	<p>No specified warning in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and indication is less than the height as may be prescribed by rules made under this Act.</p> <p><u>Insertion of a new Section 10A</u></p> <p>10A. (1) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of illicit cigarette or any other tobacco product.</p> <p>(2) The manner in which illicit cigarette or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act.</p> <p>Explanation. – For the purpose of this section, the expression, "illicit" means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct</p>

	<p><i>intended to facilitate such activity.</i></p> <p><i>(3) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government."</i></p>
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The Committee are constrained to note that re-wording of Section 10 of COTPA, 2003 is aimed at deleting the words 'nicotine and tar contents' which would further liquidate the overall framework of the existing COTPA, 2003. In this connection, the Committee would like to reiterate that the 'Memorandum regarding Delegated Legislation' attached to COTPA Bill, which was introduced in Rajya Sabha [Bill No. XXIX of 2001], there was a specific mention of '..specifying the form and manner in which warning shall be given in respect of cigarettes, to specify the maximum permissible nicotine and tar contents in cigarettes..'

Now that more than 18 years have elapsed since the formulation of an Act in the form of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act to primarily deal with 'Cigarettes and other Tobacco Products' and also the averments made by the Ministry to the effect that as per the second round of Global Adult Tobacco Survey [GATS-2016-17], 28.6 per cent [26.7 crore] adults in the country, aged 15 and above currently use tobacco in some form and the prevalence of any form of tobacco use has decreased significantly by 6 percentage points from 34.6 per cent [2009-10] to 28.6 per cent [2016-17], the Committee are of firm opinion that any amendment to the COTPA should contain more stringent provisions so that the target for relative reduction in the prevalence of tobacco use, as envisaged in the National Health Policy of 2017, be brought down to 30 per cent by 2025. The Committee, therefore, disapprove the deletion/omission of words

'indication of nicotine and tar contents', as contained in Section 10, in the proposed Amendment Bill.

On the aspect of insertion of a new Section as 10A in the Amendment Bill, the Committee has meticulously considered the objective of said insertion. Though, the proposed insertion has not shaken the basic framework of the COTPA, 2003, the Committee would like to point out that the subject of Section 10 relates to 'Size of Letters and Figures' and the proposed insertion of a new Section primarily deals with illicit cigarette or any other tobacco products. As such, the said insertion, if effected, would be out of context and might lead to misinterpretation by various stakeholders. The Committee, therefore, recommend that the said insertion could find place in the Amendment Bill, under a distinct 'Heading'.

G. Testing Laboratory for nicotine and tar contents – Substitution of Section 11

A comparative analysis of the Section 11 of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Testing Laboratory for nicotine and tar contents' is, as under:-

Section 11 of COTPA, 2003	Substitution in COTPA (Amendment) Bill, 2020
<i>For purposes of testing nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.</i>	<i>For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory or laboratories as the Government may deem necessary.</i>

The Committee note that the proposed substitution of Section 11 of COTPA, 2003 also relates to deleting the aspect of 'nicotine and tar contents in cigarettes' and substituting it with 'contents and emissions in cigarettes'. In this regard, the Committee wish to point out that Section 11 is one of the determining factors for protecting the passive smokers, including women and children. It is also an acknowledged fact that the testing laboratories could

measure 'emission' of cigarettes only when they are able to unambiguously establish the 'nicotine and tar contents'. In the opinion of the Committee, any hasty deletion of 'tar and nicotine contents' and substituting it by 'contents and emissions' would transform the said Amendment Bill and opaque document - fraught with inconsistencies. The Committee, therefore, disapprove the substitution of Section 11 in the Amendment Bill, 2020 and recommend that status quo should be maintained.

(H) Power to give option to pay costs in lieu of confiscation – Deletion of words in Section 15(2)

A comparative analysis of the Section 15(2) of the COTPA, 2003 and the proposed deletion of words vide COTPA (Amendment) Bill, 2020 relating to 'Power to give option to pay costs in lieu of confiscation' is, as under:-

Section 15(2) of COTPA, 2003	Deletion in COTPA (Amendment) Bill, 2020
On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package.	On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and incorporated on each such package.

The Committee note that the words 'nicotine and tar contents' are again proposed to be deleted/omitted in the Amendment Bill. The Committee have systematically analysed all the provisions of COTPA, 2003 vis-a-vis the proposals contained in the Amendment Bill and find that the entire exercise of said amendment seems to have been centred towards deleting the 'tar and nicotine contents', wherever this phrase appears in any of the Sections. The requirement of retaining 'nicotine and tar contents', as analysed in the foregoing paragraphs, therefore, also holds good in the context of Section 11. The Committee, thus, recommend that any re-wording of the relevant Section

by way of deleting 'nicotine and tar contents' in the Amendment Bill should not be carried out and status quo should be maintained.

(I) Power to add any tobacco products in the Schedule – Substitution of Section 30 and insertion of new Section as 30(A)& (B)

A comparative analysis of substitution of Section 30 of the COTPA, 2003 and the proposed insertion of a new Section vide COTPA (Amendment) Bill, 2020 relating to 'Power to add any tobacco products in the Schedule' is, as under:-

Section 30 of COTPA, 2003	Substitution and insertion in COTPA (Amendment) Bill, 2020
<p>The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated under this Act, and thereupon the Schedule shall in its application to such products be deemed to be amended accordingly.</p>	<p>The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to, or, omit from, the Schedule any tobacco products and thereupon the Schedule shall be deemed to have been amended accordingly.</p> <p><u>Insertion of a new Section 30A</u> Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p> <p><u>Insertion of a new Section 30B</u> The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products.</p>

The Committee find that Section 30 of COTPA, 2003 relates to power of the Central Government to add any tobacco products in the Schedule,

whereas, in the Amendment Bill, it has been proposed by the Ministry to omit any tobacco product from the Schedule. The Committee also note that pursuant to Section 2(p) of the COTPA, 2003, a Schedule has been appended, which includes tobacco products, viz., Cigarettes, Cigars, Cheroots, Beedis, Cigarette Tobacco, Pipe Tobacco and Hookah Tobacco, Chewing Tobacco, Snuff, Pan Masala, Gutkha and Tooth Powder containing Tobacco.

In this context, the moot question that the Committee is required to address is whether there should be provisions in the law for giving powers to the executive to delete/omit any tobacco product from the Schedule by way of subordinate legislation. The two principal factors of COTPA, 2003 are adding any other tobacco product and vice versa. Since deletion of a specific tobacco product from the Schedule falls within the domain of Legislature, which is invariably preceded by threadbare discussions, the Committee are not able to comprehend as to why our Executive Authorities, in the 21st century, persist with such an anomalous practice. Moreover, it is a common logic that in case, the Ministry 'omits' any tobacco product from the Schedule, anybody could draw an inference that after such deletion, a specific 'tobacco product' would now be an item of 'food', which could even be consumed by women and children. The Committee, thus, disapprove the relevant amendment to Section 30 of COTPA, 2003 as it gives wide discretion to the Executive Authorities. Accordingly, the proposed substitution of Section 30 should not be effected in the Amendment Bill.

On the aspect of insertion of a new Section(s) as 30A & 30B in the Amendment Bill, the Committee find that the language and contents of the both the proposed new Sections are contradictory. On the one hand, Section 30A emphasises that 'the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained therewith contained in any other law', whereas, on the other hand, Section 30B makes a conflicting clarification that 'the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law...prohibiting trade and commerce, production, supply and distribution of cigarettes and any other products.

In this context, the Committee are able to easily make a guess on the intent of inserting a new Section as 30B which is, perhaps, an attempt to legalize the provisions contained in Regulation 2.3.4 of Food Safety and

Standards (Prohibition and Restriction on Sales) Regulations, 2011, which is presently under active examination by the Committee on Petitions, Lok Sabha. Since the Committee have their own reservations on the aspect of 'excessive delegation by the Executive Authorities' and also the fact that FSS Act/Regulations should be confined to the aspects connected with 'Food' and 'Cigarettes and other Tobacco Products' ought to be dealt with only under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Committee recommend that the a new Section 30A could be inserted by adding the following words:-

"In case of any conflict vis-a-vis any other law in regard to 'cigarettes and other tobacco products, the provisions contained in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act would prevail."

As regards the proposal for insertion of a new Section 30B, the Committee recommend that this should not form part of the Amendment Bill, 2020.

(J) Power of Central Government to make rules – Substitution of Section 31(2) (b) and deletion of words/phrase in Section 31(2)(d)

A comparative analysis of substitution of Section 31(2)(b) of the COTPA, 2003 and the proposed deletion of words/phrase in Section 31(2)(d) vide COTPA (Amendment) Bill, 2020 relating to 'Power of Central Government to make rules' is, as under:-

Section 31(2) of COTPA, 2003	Substitution and deletion of words/phrase in COTPA (Amendment) Bill, 2020
31(2) (b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7.	31(2) (b) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked or traced, under sub-section (2) of section 10A.

<i>(d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10.</i>	<i>(d) specify the height of the letter or figure or both to be used in specified warning in cigarettes or other tobacco products under section 10.</i>
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The Committee note that the proposal to amend Section 31(2) (b) & (d) in the Amendment Bill, 2020 is primarily to delete the words/phrase 'nicotine and tar contents' in cigarettes or other tobacco products. Since the relevant Section in COTPA, 2003 relates to 'Power of Central Government to make rules' and the Committee on Petitions, after due diligence and exhaustive study of the subject under examination, have already impressed upon the Ministry to retain the words/phrase, i.e., 'nicotine and tar contents' in the Amendment Bill, 2020, the Committee recommend that status quo should be maintained."

9. The Ministry of Health & Family Welfare, in their action taken replies, have submitted as under:-

"It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. As already large number of public representations have been received and due consideration will be given to all the representation while finalizing the draft.

Further the observations of the Committee have been noted.

It is also submitted that the recommendations of the Committee will be duly considered as and when the draft Bill is finalized, so as to avoid any ambiguity."

10. In paragraphs 18, 19, 20, 21, 22 and 23 of the Report, the Committee had observed/recommended as follows:-

"COTPA (Amendment) Bill, 2020 – An Overview

The Committee note that the proposed Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce,

Production, Supply and Distribution) [Amendment] Bill, 2020, purportedly, seeks to effectively address the harmful effects of cigarettes and other tobacco products in the country by making substantive changes in the COTPA, 2003, for which it has been hosted in the public domain for pre-legislative consultations, whereby, suggestions of the public were invited on the same. In the midst of this, pursuant to the receipt of representations, the Committee got an opportunity to participate in the said pre-legislative process.

The Committee are happy to note that during the deliberations with the representatives of the Ministry of Health & Family Welfare, especially, with the senior officers, looking after the affairs of Tobacco Control Division, the Secretary, Ministry of Health & Family Welfare was candid to convey that not only the comments and suggestions received from the public on the draft Bill would be given due consideration, but also the guidance and suggestions given by the Committee on Petitions, on this issue, would be appropriately looked into. Encouraged by this, the Committee on Petitions vide their communication dated 17 March, 2021 urged the Ministry of Health & Family Welfare to finalize the proposed Amendment Bill i.e., the pre-legislative consultation only after they are able look into all the aspects/intricacies connected with the regulation of cigarettes and other tobacco products.

It was against this backdrop that the Committee not only invited the representationist to depose before them but also held a series of discussions with the representatives of the Ministry of Health & Family Welfare. This elaborate exercise has set the stage for examining almost all the 'Sections' of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 which are now proposed to be amended/omitted/substituted by way of proposed Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill.

The Committee on Petitions, while undertaking the onerous exercise of threadbare examination of the Amendment Bill, relied upon the perceptions, perspectives, priorities and problems of the affected persons/stakeholders along with the deficiencies, if any in the effective implementation of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and

Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 vis-a-vis weighing the necessity of bringing an amended version of the Act.

The Committee were, therefore, able to identify ten 'key issues' which were incorporated in the Amendment Bill and after meticulously examining each of them in terms of legal provisions, jurisprudence and its implementation at the ground level, suitable observations/recommendations along with cogent reasoning have been given in the preceding paragraphs. However, during the course of examination, the Committee have noticed that the Amendment Bill, 2020 is fraught with various deficiencies and inconsistencies vis-a-vis the existing provisions contained in various Sections of COTPA, 2003. The Committee are apprehensive that in case, the Ministry proceeds further by way of concluding their pre-legislative consultations and get into the second stage of finalizing the Amendment Bill, it would not be termed as a 'good piece of legislation' by the majority of stakeholders and public at large. At that stage, even the Ministry of Law and Justice, Department of Legal Affairs might raise similar aspects which have currently been noticed by the Committee and appropriately dealt with in the preceding paragraphs.

The Committee, therefore, recommend that the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill, 2020 should be withdrawn and thereafter re-examined with a new perspective by invariably following the spirit of 'harmony' and 'balance' in place of 'confrontation' and 'suspicion'. After completion of this exercise, the draft Bill should be re-circulated for eliciting the comments/views of public. While undertaking such re-examination, the Ministry of Health & Family Welfare should also take into account the observations/ recommendations made by the Committee in this Report so that formulation of a new Amendment Bill should not be unnecessarily challenged by the stakeholders/public before the Court of Law for being 'opaque' and 'asymmetrical'. The Committee would like to be apprised of the action taken by the Ministry at the right earnest."

11. The Ministry of Health & Family Welfare, in their action taken replies, have submitted as under:-

"It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. As already large number of public representations have been received and due consideration will be given to all the representation while finalizing the draft.

Further the observations of the Committee have been noted.

It is also submitted that the recommendations of the Committee will be duly considered as and when the draft Bill is finalized, so as to avoid any ambiguity.

As per the Committee on Petitions Branch, Lok Sabha Secretariat's OM No. 11/CPB/2021/R-226 dated 17th March, 2021, it was stated that –

The Committee on Petitions, Lok Sabha, during its sitting held on 17th March, 2021 have, therefore, expressed that consequential action on the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 be initiated by the Ministry of Health & Family Welfare only when the Action Taken Report on the 68th Report (on the representation of Shri Sanjay Bechan is finalized and presented to Lok Sabha.

It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

It is also submitted that this Ministry has been providing the similar replies for the Parliament Assurances on COTPA Amendment [Total 9 in no. - 4 of Lok Sabha and 1 (4 clubbed together) of Rajya Sabha], VIP representations and Parliament Questions. Hence, we may not have different response(s) to the recommendations of Committee's 41st Report against the responses given for Parliamentary questions; assurances and VIP references. It would be premature to frame any different reply to the draft COTPA Amendments proposed in the draft Bill, 2020, which are still in the pre-legislative consultative stage.

Further, considering the mandate of the Ministry to improve public health as a priority the draft bill is essential for bringing suitable changes in the act so as to enhance the tobacco control measures and to reduce the tobacco burden in the country.

Efforts will be made to assimilate valuable suggestions from stakeholders and also to protect tobacco control policies from influence of tobacco industries as per this Ministry's 'Code of Conduct for Public Officials' issued in compliance with the article 5.3 of WHO FCTC."

OBSERVATIONS/RECOMMENDATIONS

Continual disregard on implementing the recommendations of the Committee

12. The 41st Report of the Committee on Petitions on the proposed amendments to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) was presented to Lok Sabha on 13 December, 2022. With a view to implementing the recommendations of the Committee and furnishing the Action Taken Replies, the said Report was forwarded to the Ministry of Health & Family Welfare *vide* Office Memorandum No. 12/CPB/41/2022 dated 16 December, 2022.

13. In the Report, the Committee made several meaningful and unbiased observations/recommendations, under the following headings:-

- (i) Consultation process *vis-à-vis* COTPA (Amendment) Bill, 2020.
- (ii) Non-adherence to the policy on pre-legislative consultation.
- (iii) Key issues relating to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] (Amendment) Bill, 2020:-
 - (a) Definition – Amendment in Section 3(k).
 - (b) Prohibition of smoking in a public place – Deletion of Section 4.

- (c) Prohibition of advertisement of cigarettes and other tobacco products – Substitution of Section 5(1) and deletion of Section 5(2)(a) & (b).
- (d) Prohibition of sale of cigarette and other tobacco products to a person below the age of eighteen years and in particular area – Substitution of Section 6(a) & (b).
- (e) Restriction on trade and commerce in and production, supply and distribution of cigarettes and other tobacco products – Insertion of proviso in Section 7(2) and substitution of Section 7(4) and (5).
- (f) Size of letters and figures – Deletion of words in Section 10 and insertion of new Section as 10(A).
- (g) Testing Laboratory for nicotine and tar contents – Substitution of Section 11.
- (h) Power to give option to pay costs in lieu of confiscation – Deletion of words in Section 15(2).
- (i) Power to add tobacco products in the Schedule – Substitution of Section 30 and insertion of new Section as 30(A) & (B).
- (j) Power of Central Government to make rules – Substitution of Section 31(2)(b) and deletion of words/phrase in Section 31(2)(d).

(iv) COTPA (Amendment) Bill – An Overview.

14. The Ministry of Health & Family Welfare (Tobacco Control Division) *vide* their Office Memorandum No. H – 11013/01/2021 – TC dated 17 February, 2023

[Annexure – I] furnished a ‘three-liner’ action taken replies on all the aforementioned recommendations, as under:-

“It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations and that the provisions of the draft Amendment Bill have not yet been finalized.”

15. The action taken replies were placed before the Committee on Petitions, during its sitting held on 23 March, 2023, whereupon, the Committee *inter alia* made the following observations [Annexure – II]:-

“Upon perusal of the said action taken replies, the Committee were constrained to note that the Ministry have neither considered the observations/recommendations on a serious note nor provided specific and complete replies thereon. In view of such an attitude of the Ministry which amounts to ‘breach of privilege’ of a Parliamentary Committee, the Committee request the Ministry of Health & Family Welfare to furnish a detailed and specific replies to the observations/recommendations contained in the 41st Report of the Committee.”

16. The observations made by the Committee were, accordingly, conveyed to the Ministry of Health & Family Welfare *vide* Office Memorandum No. 12/CPB/41/2022 dated 10 April, 2023 with a request to furnish detailed and unambiguous action taken replies on each observation/recommendation contained in the 41st Report latest by 25 April, 2023 [Annexure – III].

17. In pursuance thereof, the Ministry of Health & Family Welfare (Tobacco Control Division) *vide* their Office Memorandum No. H – 11013/01/2021 – TC dated 19 May, 2023 [Annexure – IV] submitted before the Committee, as under:-

“...to condone if any observation/suggestion of the Hon’ble Committee has been breached. However, it is submitted that as part of the pre-legislative process, the draft Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] (Amendment) Bill, 2020 was placed in public domain and further administrative processes and inter-ministerial consultations have to be done as part of pre-legislative procedure, which is likely to take time. Hence, as requested by the Committee on Petitions, the comprehensive decisions can only be provided once the decision on draft COTPA Amendment Bill, 2020 is taken”.

18. The reply received from the Ministry of Health & Family Welfare were again placed before the Committee on Petitions, during its sitting held on 8 August, 2023 [Annexure – V], whereupon, the Committee *inter alia* made the following observations:-

“On perusal of the replies/submissions made by the Ministry, the Committee express their unhappiness over the non-serious attitude of the Tobacco Control Division of the Ministry of Health & Family Welfare by way of not initiating any exercise of re-formulating their replies on the elaborate, well thought out and legally tenable recommendations made by the Committee on almost all the ‘Sections’ of the proposed COTPA (Amendment) Bill, 2020. The Committee also express that in case, the Ministries/Departments of the Government do not furnish convincing and detailed replies on the recommendations made by the Parliamentary Committee(s) in their Reports, the entire objective of detailed deliberations, based on oral evidence of the representatives of the Ministry, List of Points formulated and sent for eliciting information on aspects under consideration followed by painstaking conduct of sittings of the Committee, etc., are likely to be defeated.

The Committee, therefore, express their desire and once again request the Ministry of Health & Family Welfare (Tobacco Control Division) to

furnish detailed and specific replies to all the observations/recommendations contained in their 41st Report, failing which, the Committee on Petitions may hold further discussion with the Senior Officials of the Ministry of Health & Family Welfare, including the Tobacco Control Division, by way of holding yet another sitting of the Committee on Petitions on the subject.”

19. Pursuant to conveying the observations made by the Committee *vide* Office Memorandum No. 12/CPB/41/2022 (E-242664) dated 23 August, 2023 [Annexure – VI], the Ministry of Health & Family Welfare (Tobacco Control Division) *vide* their Office Memorandum No. H – 11013/01/2021 – TC dated 31 October, 2023 furnished their action taken replies, which would *ipso facto* form the basis of instant Action Taken Report [Annexure – VII].

20. Notwithstanding the above, the Committee are constrained to mention that the latest action taken replies as furnished by the Ministry, which had taken almost a year of sustained follow up and avoidable wastage of valuable time of and resources of the Parliamentary Committee that could have been gainfully utilized for examining/investigating various other petitions of wider public interests. The Committee express their serious concern with reference to the overall working culture and professional commitment of the Tobacco Control Division of the Ministry of Health & Family Welfare, which, by all means appears to be displaying continual disregard towards ensuring the implementation of the recommendations of the Committee. Further, the Committee after examining the reasons for such lackadaisical attitude of the Tobacco Control Division attribute this apathy to the overstaying of certain officials at a specific Division, which could have resulted in developing a ‘domain area’ and

analysing a case as per their own 'cognitive presumptions'. The Committee, therefore, strongly recommend the Ministry to urgently attempt a specific policy formulation towards ensuring rotational and time-bound transfer/ posting of officials, at all levels, dealing with sensitive matters having legal connotations and interplay with the Parliamentary Committees. The Committee would like to be apprised of the concrete action taken in this regard.

Quoting out-of-context material in the Action Taken Replies

21. The Committee note with grave concern that the action taken replies furnished by the Tobacco Control Division of the Ministry of Health & Family Welfare after much persuasion dilly-delaying by the Ministry for almost a year are still fraught with considerable out-of-context material with an intent to mislead the Committee which has nothing to do with the observations/ recommendations made in their 41st Report. To quote an instance, the Committee, in paragraphs 13 to 16 of the Report had recommended, as under:-

While putting up the draft proposal in the public domain as a part of pre-legislative consultations, a new column, containing the reasons for addition/deletion/substitution in the existing Sections of the Act should also be included. The said suggestion should also be taken into consideration by the Ministry of Health & Family Welfare with reference to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020.

22. The aforementioned recommendation of the Committee primarily emphasized upon for adding a new column, containing the reasons for

addition/deletion/substitution in the existing Sections of the Act so that on the one hand, the detailed policy on pre-legislative consultation formulated by the Legislative Department of the Ministry of Law & Justice is followed in letter and spirit and on the other hand, the new piece of legislation in the form of COTPA (Amendment) Bill, 2020 should not yet again meet the same fate as it was in the case of COTPA (Amendment) Bill of 2015 which was placed in public domain for eliciting the comments/views of the stakeholders including the general public and later on, appears to be withdrawn. The Tobacco Control Division of the Ministry of Health & Family Welfare, instead of giving their considered opinion in regard to the relevant recommendation of the Committee, had furnished the following:-

It is submitted that the draft bill of 2020 is still only at the stage of pre-legislative consultations, and that the provisions of the draft Amendment Bill have not yet been finalized. As and when the draft bill would be finalized, all due procedures of pre-legislative consultation would be followed.

It is submitted that India is Party to the World Health Organization Framework Convention for Tobacco Control (WHO FCTC) and is fully committed to implement various demand and supply reduction measures for tobacco control.

The preamble to WHO FCTC recognizes that countries 'need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and need to be informed of activities of tobacco industry that have negative impact on tobacco efforts'. Further, Article 5.3 of the WHO FCTC reads as: In setting and implementing their public control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with National law...

The guidelines for implementation of the said Article (5.3) states that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests, therefore, parties, when dealing with tobacco industry or those working to further its interests, should be accountable and transparent. Guidelines further recommend that Parties should establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur. Parties should avoid conflicts of interest for Government officials and employees and not give preferential treatment to the tobacco industry.

With a view to protect public policies from tobacco industry interference the 'Code of Conduct for Public Officials' has been developed by this Ministry, with the inclusion of a comprehensive protocol to deal with any interaction with tobacco industry or its representative. This Code of Conduct has already been shared with all the Divisions of this Ministry to further circulate among autonomous bodies/institutions under the MoHFW.

This Ministry with due cognizance of Article 5.3 of WHO FCTC, has been altering the States/UTs, NITI Aayog, stakeholder Ministries/Departments and various institutes to not to engage with Tobacco industry funded entities.

In addition, the 139th Report of Rajya Sabha Departmentally Related Parliamentary Committee on Health & Family Welfare, following text of para(s) related to tobacco use is reproduced as –

XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX

Hence, the Government is well aware about the repercussions of draft amendments and the legitimate and growing expectation of the people for transparent and better informed Government. Also, the Government is committed to take effective steps for reducing tobacco burden in the society.

23. After systematic perusal and thorough analysis of the out-of-context material as quoted in the Action Taken Replies, the Committee are unable to decipher and take cognizance of the intent of Article 5.3 of the WHO FCTC *vis-a-vis* establishing the measures to limit interactions with the tobacco industry and also for avoiding conflicts of interest for Government officials and employees and not giving preferential treatment to the tobacco industry. In this connection, the Committee would have appreciated if the Ministry had given some cogent reply/clarification on the moot point of inserting a new column, containing the reasons for addition/deletion/ substitution in the existing Sections of the Act *vide* the COTPA (Amendment) Bill, 2020 or otherwise. The Committee, therefore, strongly recommend and urge the Ministry to again consider the relevant recommendations of the Committee with a new perspective & intent and apprise the Committee of the final outcome within three months from the date of presentation of Action Taken Report in Lok Sabha.

Non-furnishing of cogent replies on 10 'Key Issues' contained in COTPA, 2003 vis-à-vis COTPA (Amendment) Bill, 2020

24. During the course of detailed examination of the representations of S/Shri Rajnikant P. Patel & Sudhir Sable as well as that of Shri Sanjay Bechan in relation to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Amendment Bill, 2022, the Committee also relied upon the COTPA 2003 as well as COTPA (Amendment) Bill, 2015 which was subsequently withdrawn by the Ministry of Health & Family Welfare. With a view to

understanding the wide ranging amendments in the Sections *vide* the COTPA (Amendment) Bill, 2020, the Committee formulated 10 'Key Issues' which were not only based on the detailed interactions with the representatives of the Ministry of Health & Family Welfare but also other documents/papers, etc., available in the public domain. These 'Key Issues' have been detailed at para 13(iii) of the instant Report.

25. The Committee, after threadbare examination of these 'Key Issues', made specific recommendations, which are summarised, as under:-

Sl. No.	Key Issues	Recommendation(s) made by the Committee in their 41 st Report
1.	Section 3(k) <i>[Cigarettes, Cigars, Cheroots, Beedis, Cigarette Tobacco, Pipe Tobacco, Hookah Tobacco, Chewing Tobacco, Pan Masala or any Chewing Material having tobacco as one of its ingredients to be substituted by 'Tobacco Products']</i>	Should not form part of the Amendment Bill.
2.	Section 4 <i>[Deletion of provision regarding smoking in a public place]</i>	Should not form part of the Amendment Bill.
3.	Section 5(2)(a) & (b) <i>[Deletion of provision regarding prohibition of cigarettes and other tobacco products]</i>	Should not form part of the Amendment Bill.
4.	Section 6(a) & (b) <i>[Substitution of proviso regarding prohibition on sale of cigarette or other tobacco products to a person below the age of 18 years and in particular area].</i>	Could form part of the Amendment Bill.
5.	Section 7(2) <i>[Insertion of proviso relating to restriction on</i>	Should not form part of the Amendment Bill.

	<p><i>trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products]</i></p> <p>Section 7(4) & (5) <i>[Re-wording and substitution of proviso in the form of deleting the 'nicotine and tar contents on cigarettes']</i>.</p>	<p>Should not form part of the Amendment Bill.</p>
6.	<p>Section 10 <i>[Re-wording of words 'nicotine and tar contents']</i></p> <p>Section 10-A <i>[Insertion of new Section]</i></p>	<p>Should not form part of the Amendment Bill.</p> <p>Could form part of the Amendment Bill.</p>
7.	<p>Section 11 <i>[Substitution of proviso relating to 'Testing Laboratory for nicotine and tar contents']</i></p>	<p>Should not form part of the Amendment Bill.</p>
8.	<p>Section 15(2) <i>[Deletion of words relating to 'Power to give option to pay costs in lieu of confiscation']</i></p>	<p>Should not form part of the Amendment Bill.</p>
9.	<p>Section 30 <i>[Substitution of proviso relating to 'Power to add or omit any tobacco products in the Schedule]</i></p> <p>Section(s) 30A & 30B <i>[Insertion of new Section]</i></p>	<p>Should not form part of the Amendment Bill.</p> <p>Should not form part of the Amendment Bill.</p>
10.	<p>Section 31(2)(b) <i>[Substitution and deleting the words/phrase 'nicotine and tar contents in cigarettes and other tobacco products]</i></p> <p>Section 31(2)(d) <i>[Substitution and deleting the words/phrase 'nicotine and tar contents in cigarettes and other tobacco products]</i></p>	<p>Should not form part of the Amendment Bill.</p> <p>Should not form part of the Amendment Bill.</p>

26. Since the recommendations made by the Committee on these 'Key Issues' were of unignorable importance, the Committee expected that the Tobacco Control Division of the Ministry of Health & Family Affairs would either consider the recommendations or otherwise furnish appropriate reasoning for not able to accommodate the relevant findings contained in the 41st Report of the Committee on Petitions. However, the Committee are perturbed to note that the Ministry, in their action taken replies, preferred to give a terse response, as under:-

"It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that the provisions of the draft Amendment Bill have not yet been finalized. As already a large number of public representations have been received and due consideration will be given to all the representation while finalizing the draft.

Further, the observations of the Committee have been noted.

It is also submitted that the recommendations of the Committee will be duly considered as and when the draft Bill is finalized, so as to avoid any ambiguity."

27. With a view to emphasising the importance of relevant recommendations as narrated in the foregoing paragraphs, the Committee, yet again, made an effort to categorize the proposal of the Ministry to amend/delete/substitute various Sections of COTPA, 2003 *vide* COTPA (Amendment) Bill, 2020, into three broad categories, as under:-

Category 'A'

Absolute deleting of words/phrase 'Nicotine and Tar Contents' in Section(s) 7(4), 7(5), 10, 11, 15(2) and 31(2) in COTPA (Amendment) Bill, 2020.

Category 'B'

Inherent contradiction in regard to description of 'Tobacco Products' as contained in Section 3(k) *vis-à-vis* Section 5(1), 5(2) (a) & (b) in COTPA (Amendment) Bill, 2020.

Category 'C'

Excessive subordinate delegation in regard to power to 'Omit/Delete' from the Schedule of any tobacco products as contained in Section 30 of COTPA (Amendment) Bill, 2020.

28. As far as deleting of words/phrase 'Nicotine and Tar Contents' in all the relevant Section(s) of the COTPA (Amendment) Bill, 2020 is concerned, the Committee are apprehensive that the said attempt of Tobacco Control Division of the Ministry of Health & Family Welfare would not only cripple the basic objectives of regulating the trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products for which COTPA was enacted in the year 2003 but also defeat the much acclaimed target of 30 percent relative reduction in prevalence of Tobacco use by the year 2023-25 as set up under the National Health Policy of 2017 as well as fulfilling the commitment to implement various demand and supply reduction erasures for tobacco control of the World Health Organisation Framework Convention for Tobacco Control (WHO FCTC) on which India is a Party. In this regard, the Committee are also of firm belief that any attempt to delete the

'Nicotine and Tar Contents' from all the important Sections of COTPA 2003 *vide* COTPA (Amendment) Bill, 2020 could perhaps be termed as favouring the 'Cigarette Lobby' which would also be against the 'Code of Conduct for Public Officials' which deals with comprehensive protocol to deal with any interaction with tobacco industry or its representatives. The Committee, therefore, once again reiterate their earlier recommendation to the effect that Tobacco Control Division of the Ministry of Health & Family Welfare should undertake systematic review on the deletion of words/phrase 'Nicotine and Tar Contents' in Section(s) 7(4), 7(5), 10, 11, 15(2) and 31(2) in COTPA (Amendment) Bill, 2020 in the right earnest, under intimation to the Committee.

29. On the aspect of inherent contradiction in regard to description of 'Tobacco Products' as contained in Section 3(k) *vis-à-vis* Section 5(1), 5(2) (a) & (b) in COTPA (Amendment) Bill, 2020, the Committee wish to mention that in case, the Cigarettes, Cigars, Cheroots, Beedis, Cigarette Tobacco, Pipe Tobacco, Hookah Tobacco, etc., are replaced with 'tobacco products' in the COTPA (Amendment) Bill, 2020, it would contradict the proposed substitution of Section 5(1) and deletion of Section 5(2) (a) & (b) to the effect that 'any other tobacco products' would now be interpreted only as 'Chewing Tobacco', 'Pan Masala' or any chewing material having tobacco as one of its ingredients. As such, the Committee do not wish to agree with the proposed deletion of 'cognate expressions' as exists in Section 3(k) of COTPA, 2003 and now proposed to be deleted/substituted *vide* COTPA (Amendment) Bill, 2020. The

Committee, therefore, once again reiterate their earlier recommendation and strongly advocate the retention of 'cognate expressions' in the relevant Sections. The Committee would like to be apprised of the tangible initiatives of the Tobacco Control Division on this account at the earliest.

30. In regard to substitution of Section 30 and insertion of a new Section as 30(A)&(B) in the COTPA (Amendment) Bill, 2020, the Committee, in their 41st Report, undertook a detailed & meticulous examination and made the following observations/recommendations:-

"The Committee find that Section 30 of COTPA, 2003 relates to power of the Central Government to add any tobacco products in the Schedule, whereas, in the Amendment Bill, it has been proposed by the Ministry to omit any tobacco product from the Schedule. The Committee also note that pursuant to Section 2(p) of the COTPA, 2003, a Schedule has been appended, which includes tobacco products, viz., Cigarettes, Cigars, Cheroots, Beedis, Cigarette Tobacco, Pipe Tobacco and Hookah Tobacco, Chewing Tobacco, Snuff, Pan Masala, Gutkha and Tooth Powder containing Tobacco.

In this context, the moot question that the Committee is required to address is whether there should be provisions in the law for giving powers to the executive to delete/omit any tobacco product from the Schedule by way of subordinate legislation. The two principal factors of COTPA, 2003 are adding any other tobacco product and vice versa. Since deletion of a specific tobacco product from the Schedule falls within the domain of Legislature, which is invariably preceded by threadbare discussions, the Committee are not able to comprehend as to why our Executive Authorities, in the 21st century, persist with such an anomalous practice. Moreover, it is a

common logic that in case, the Ministry 'omits' any tobacco product from the Schedule, anybody could draw an inference that after such deletion, a specific 'tobacco product' would now be an item of 'food', which could even be consumed by women and children. The Committee, thus, disapprove the relevant amendment to Section 30 of COTPA, 2003 as it gives wide discretion to the Executive Authorities. Accordingly, the proposed substitution of Section 30 should not be effected in the Amendment Bill.

On the aspect of insertion of a new Section(s) as 30A & 30B in the Amendment Bill, the Committee find that the language and contents of the both the proposed new Sections are contradictory. On the one hand, Section 30A emphasises that 'the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained therein contained in any other law', whereas, on the other hand, Section 30B makes a conflicting clarification that 'the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law...prohibiting trade and commerce, production, supply and distribution of cigarettes and any other products.

In this context, the Committee are able to easily make a guess on the intent of inserting a new Section as 30B which is, perhaps, an attempt to legalize the provisions contained in Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restriction on Sales) Regulations, 2011, which is presently under active examination by the Committee on Petitions, Lok Sabha. Since the Committee have their own reservations on the aspect of 'excessive delegation by the Executive Authorities' and also the fact that FSS Act/Regulations should be confined to the aspects connected with 'Food' and 'Cigarettes and other Tobacco Products' ought to be dealt with only under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Committee recommend that the a new Section 30A could be inserted by adding the following words:-

"In case of any conflict vis-a-vis any other law in regard to 'cigarettes and other tobacco products, the provisions contained in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act would prevail."

As regards the proposal for insertion of a new Section 30B, the Committee recommend that this should not form part of the Amendment Bill, 2020."

31. In the action taken replies, since this aspect has altogether been ignored by Tobacco Control Division of the Ministry of Health & Family Welfare, the Committee, therefore, strongly recommend that the efficacy of all the 'Key Issues' as examined and reiterated in the instant Report [from para(s) 24 to 30] should again be re-visited by a 'Group of Senior Officers' of the Ministry of Health & Family Welfare. Besides, the Committee would also like to express their serious concern that in case, the recommendations made by the Committee on Petitions in their 41st Report along with the instant Action Taken Report are not considered favourably by the Tobacco Control Division with due diligence and alacrity it deserve, the entire exercise of amending the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 would be fraught with inherent deficiencies and contradiction which may further lead to avoidable litigations. The Committee would like to be apprised of the final outcome in this regard within three months from the date of presentation of Action Taken Report in Lok Sabha.

Need for withdrawal of COTPA (Amendment) Bill, 2020

32. The Committee, during the course of examination of the proposed amendments in the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 conceived by the Tobacco Control Division of the Ministry of Health & Family Welfare, had not only meticulously analysed the actual cause and effect of drastic changes in all the important Section(s) of the existing Act but also made a sincere attempt to gauge the perceptions, perspectives, priorities and problems of the affected persons/stakeholders. Based on said onerous exercise, the Committee noticed that the Amendment Bill, 2020 is fraught with various deficiencies and inconsistencies vis-à-vis the existing provisions contained in various Sections of COTPA, 2003. The Committee were also apprehensive that in case, the Ministry proceed further by way of concluding their pre-legislative consultations and get into the second stage of finalizing the Amendment Bill, it would not be termed as a 'good piece of legislation' by the majority of stakeholders and public at large. The Committee, therefore, recommended that the Amendment Bill, 2020 should be withdrawn and thereafter re-examined with a new perspective by following the spirit of 'harmony' and 'balance' in place of 'confrontation' and 'suspicion'. The Committee also recommended that after completion of this exercise, the draft Amendment Bill should be re-circulated for eliciting the comments/views of public.

33. While making the aforementioned recommendation, the Committee were confident that the Tobacco Control Division of the Ministry of Health & Family Welfare would follow their advice and the draft Amendment Bill, 2020 would be withdrawn forthwith and thereafter, a new Bill would be drafted by appropriately incorporating the amendments, procedure and other legal requirements pointed out by the Committee in their 41st Report.

34. The Tobacco Control Division of the Ministry of Health & Family Welfare, while furnishing their action taken replies, had neither undertaken a comparative analysis of the amendments in relevant Sections proposed by them *vide* the Amendment Bill and the reason-based changes proposed by the Committee in their 41st Report nor expressed their willingness to withdraw the COTPA (Amendment) Bill, 2020 as it was done in the case of COTPA (Amendment) Bill, 2015. However, the Ministry of Health & Family Welfare *vide* their action taken replies dated 31 October, 2023 had given an assurance, as under:-

“The observations of the Committee have been noted. It is also submitted that the recommendations of the Committee will be duly considered as and when the draft Bill is finalized, so as to avoid any ambiguity.”

35. The aforementioned assurance given by the Ministry of Health & Family Welfare have the following two connotations:-

- (i) The observations of the Committee have been noted.

- (ii) The recommendations of the Committee will be duly considered as and when the draft Bill is finalized.

36. On the first assurance given by the Ministry, the Committee would like to apprise that while forwarding the 41st Report on 16 December, 2022, the Committee also shared the 'established procedure' to be followed for communicating information on action taken or proposed to be taken on the observations/recommendations contained in the Report [Annexure – VIII] which *inter alia* includes, as under:-

“Replies to all the recommendations should be comprehensive and not inconclusive, vague or couched in general terms ‘noted’ or ‘accepted’, etc.”

37. Juxtaposition of the above-stated 'established procedure' with the action taken replies furnished by the Tobacco Control Division of the Ministry of Health & Family Welfare, the Committee wish to express their unhappiness that the Ministry had exhibited an avoidable contempt to the Parliamentary Practices and Procedures by way of furnishing inconclusive, vague replies – couched in general terms 'noted', etc.

38. On the second assurance of the Ministry, the Committee would like to candidly express the dilemma being faced by them to the effect that they had undertook a detailed examination on the proposed amendments to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 *vide* COTPA (Amendment) Bill, 2020, which was placed in public domain,

as part of pre-legislative consultations, with a view to eliciting the comments/ views of public on 1 January, 2021.

39. While undertaking the detailed examination of the subject, the Committee not only considered all the substantive point(s) of law in the matter, but also held detailed deliberations with the representatives of the Ministry of Health & Family Welfare. Based on said examination, the Committee formulated a detailed Report, consisting of around 150 pages, and presented it to Lok Sabha on 13 December, 2022. Soon thereafter, a copy of the Report was forwarded to the Ministry of Health & Family Welfare on 16 December, 2022 for furnishing action taken replies on implementation of the recommendations of the Committee.

40. The Tobacco Control Division of the Ministry of Health & Family Welfare finally furnished their action taken replies on 31 October, 2023 wherein, instead of accepting the reason-based changes proposed by the Committee in regard to various Sections of the Amendment Bill, they have now given the assurance of duly considering the recommendations of the Committee as and when the draft Bill is finalized. On this count, the Committee are of considered view that when the Tobacco Control Division have not considered the recommendations/ suggestions of the Committee – which consist of experienced Parliamentarians/ Law Makers – in their 41st Report, there is little possibility that whatever suggestions/views had been received from public/stakeholders, etc., would be taken up in the right perspective and accepted by the Tobacco Control Division of the Ministry of Health & Family Welfare.

41. Furthermore, the Committee would also like to remind the Ministry that whenever deficiencies/shortcomings in the draft Amendment Bill are noticed at the nascent stage of pre-legislative consultations, it would always be preferable to replace the draft Bill with a new one, after carrying out all the 'grey areas' so that there is no room for ambiguity in such a comprehensive exercise which is primarily oriented towards achieving the target for 30 percent relative reduction in prevalence of Tobacco use by the year 2024-25.

42. With a view to obviating such an impasse, the Committee would like to reiterate their earlier recommendation to the effect that the COTPA (Amendment) Bill, 2020 should be withdrawn and thereafter re-examined with a new perspective and thereafter a new Amendment Bill be drafted and re-circulated for eliciting the comments/views of public. The Committee, wish that this time, the relevant recommendation would be considered by the Ministry with the seriousness and urgency, it deserves. The Committee would like to be apprised of the final outcome in this regard within a period of three months from the date of presentation of this report to Lok Sabha.

New Delhi;

18 December, 2023
27 Agrahayana, 1945 (Saka)

HARISH DWIVEDI,
Chairperson
Committee on Petitions

No. H-11013/01/2021-TC
Government of India
Ministry of Health & Family Welfare
(Tobacco Control Division)

Nirman Bhawan, New Delhi-110108
Dated, the 11th February, 2023

OFFICE MEMORANDUM

Subject: - Implementation of the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Forty First Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and other matter connected therewith or incidental thereto- regarding.

The undersigned is directed to refer to the Committee on Petitions Branch's OM No. 12/CPB41//2022 dated 16th December, 2022 on the above captioned subject and to enclose the Action Taken Replies on the recommendations contained in the 41st Report (17th Lok Sabha) of Committee on Petitions, Lok Sabha. Hindi version will be followed.

2. This issues with the approval of the Competent Authority.

Srikala S.
17/2/23

(Srikala S.)
Section Officer (Tobacco Control)
Tel: 23062868

To
Lok Sabha Secretariat,
Committee on Petitions,
(Shri. Tensin Gyaltzen, Deputy Secretary),
Parliament House Annexe, New Delhi - 110001.
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Copy for information to: -

Adviser, Parliament Section, MoHFW, Nirman Bhawan, New Delhi

Action Taken Replies on the Recommendations contained in the 41st Report on the representations of Shri R.P. Patel and Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA)

Observations/ Recommendations of Committee on Petitions	MoHFW remarks
<u>Consultation process vis-à-vis COTPA (Amendment) Bill, 2020</u>	
<p>6. The Committee note that the draft Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 was placed in the public domain on the website of the Ministry of Health & Family Welfare [ntcp.nhp.gov.in and mohfw.gov.in] on 1 January, 2021 as a part of pre-legislative consultative process. Pursuant to this, 89,000 objections through electronic mode besides, more than two lakh representations, letters, etc., in physical form by bringing out various grievances and suggestions, have been received in the Ministry.</p>	
<p>7. While examining the representations of S/Shri Rajnikant P. Patel & Sudhir Sable as well as that of Shri Sanjay Bechan, it was also came to the notice of the Committee that a similar exercise for Amendment to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act of 2003 (COTPA) was taken up by the Ministry in the year 2015 and on that occasion also, suggestions of public were invited as a part of pre-legislative consultation process. However since no tangible progress was made by the Ministry in regard to Amendment Bill of 2015 and after a lapse of around 6 years, another draft proposal for amendment has been 'placed in the public domain, the Committee could easily draw an inference that the Amendment Bill of 2015 was subsequently withdrawn by the Ministry of Health & Family Welfare.</p>	<p>A draft Amendment Bill was hosted in public domain for pre-legislative consultations in the year 2015, whereby suggestions of the public were invited on the same.</p> <p>It is submitted that both the drafts put in public domain for pre-legislative consultations, have been prepared after extensive consultations with domain and legal experts.</p> <p>It is the endeavor of the Ministry to finally prepare an effective amendment Bill after taking in account the various suggestions received and also the target for 30% relative reduction in prevalence of Tobacco use by the year 2024-25 (from the levels in 2009-10), as set out under the National Health Policy 2017.</p>
<p>8. The Committee also acknowledge the endeavour of the Ministry to prepare an effective Amendment Bill after taking into account the various suggestions received and also achieving the target of 30 percent relative reduction in the prevalence of tobacco use by the year 2024-25 (from the levels of 2009-10) as set out under the National Health Policy of the year 2017. In this sequence, the Committee also wish to remind the Ministry about the inalienable 'objects and reasons' set out by them while formulating a composite and comprehensive piece of legislation in the form of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 with a view to prohibiting the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products</p>	<p>It is submitted that the draft Bill of 2015 is now revised in the form of the revised draft Bill of 2020. Due consideration has also been given to the provisions contained in the draft Bill of 2015, while preparing the draft Bill of 2020.</p> <p>It is also submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.</p>

and for matters connected therewith as well as implementing Article 47 of the Constitution which inter alia requires the State to endeavour to improve public health of the people.

9. Since the proposed Amendment Bill was in the stage of pre-legislative consultations and in the midst of this, the Committee on Petitions received the aforementioned representations, they got an opportunity to ponder on the nuances involved in the entire exercise, beginning with the objective of bringing COTPA in the year 2003, exercise undertaken by the Ministry for carrying out amendments in the year 2015 and the current attempt in the form of COTPA (Amendment) Bill, 2020. It is against this backdrop that the Committee formulated detailed List(s) of Points connected with the subject for easy discernment of contradictions, if any, in a sequential manner, and forwarded the same to the Ministry. However, pursuant to the detailed List(s) of Points, the Ministry preferred to evade and did not reveal the institutional intent of bringing the proposed Bill for amending the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

10. In this chronology, the Committee on Petitions urged the Ministry to give their considered view on inter alia amending the following Sections of the Bill, which were of determining nature so that the Committee would be able to appreciate the reasons for altering these Sections contained in COTPA, 2003:-

It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

SL. No.	Sections contained in COTPA (Amendment) Bill	Brief details
1.	Amendment to Section 3	Definition of 'Advertisement and 'Production'.
2.	Amendment to Section 7	Deletion of proviso relating to 'nicotine and tar contents.
3.	Amendment to Section 10	Deletion of words "or indication of nicotine and tar contents'.
4.	Amendment to Section 11	Deletion of testing and regulating the contents and emissions in cigarettes and any other tobacco products'.
5.	Amendment to Section 15	Deletion of words 'and indication of nicotine and tar contents'.
6.	Amendment to Section 30	Re-wording of words 'add any other tobacco product' as 'add to, or, omit from'.
7.	Amendment to Section 31	Deletion of sub-section (2) for specifying the maximum permissible nicotine and tar contents in

	<p>cigarettes or other tobacco products. Deletion of words of sub-section (d), i.e., or to indicate the nicotine and tar contents'.</p>	
<p>11. The Committee were, however, shocked that for most of the aspects contained in the List(s) of Points, the Ministry gave a terse reply, as under:-</p>		
<p><i>"The draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders; while finalization of the COTPA Amendment, Bill, 2020. Aspect of the enforcement of applicability will be duly considered at the time of the finalization of the COTPA Amendment, Bill, 2020."</i></p>		
<p>12. The Committee do not subscribe to such distractionary ways of officers of the Tobacco Control Division of the Ministry of Health & Family Welfare in dealing with a Parliamentary Committee in view of the fact that all the Parliamentary Committees, in general, and the Committee on Petitions, Lok Sabha, in particular, are taking up various aspects which are invariably connected with the wider public interests. Whenever, institutional clarifications are sought on some important aspects connected with the subject matter under examination of the Committee, it is the bounden duty of the Ministry/Department concerned of the Government of India, to furnish a sustainable and legally tenable reply, thereby, enabling the Parliamentary Committee to form their opinion on the relevant issue(s). The Committee, therefore, recommend the Ministry to appropriately sensitize their officers to ensure that the queries raised by any Parliamentary Committee are resolved by them in an unambiguous and time-bound manner and also explaining key legal provisions connected with the subject in a simple language. The Committee would like to be apprised of the action taken by the Ministry of Health & Family Welfare in this regard at the earliest.</p>		
<p><u>Non-adherence to the policy on pre-legislative consultation</u></p>		
<p>13. The Committee note that the Government of India had formulated a detailed on pre-legislative consultation. In this regard, the Secretary, Ministry of Law & Justice, Legislative Department had also issued revised policy on 5 January, 2014 which is applicable in the process of principal as well as subordinate legislation. As a matter of fact, all the Ministries/ Department of the Central Government have also been directed to Invariably follow the policy on pre-legislative consultation.</p>	<p>It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.</p>	

14. The Committee also note that the details of such legislative process inter alia makes it mandatory for all the Ministries/Department of the Central Government to publish/place in public domain the draft legislation, wherein, brief justification for such legislation, essential elements of the proposed legislation, and estimated assessment of the impact of such legislation on the lives and livelihoods of the concerned/affected people have to be incorporated.

15. Juxtaposition of the said policy formulation of the Government of India on pre-legislative consultation with the current exercise of the Ministry of Health & Family Welfare relating to placing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill, 2020 in the public domain with a view to eliciting the comments/views of public, the Committee are unhappy to find that none of the process has been followed by the Ministry of Health & Family Welfare. The Committee are constrained to express that either the higher officials of the Tobacco Control Division not aware of any such policy guidelines issued by the Government of India or they had intentionally ignored such an important policy guideline of the Government of India for reasons incomprehensible to the Committee. The Committee are of considered opinion that, on both these counts, the Tobacco Control Division of the Ministry of Health & Family Welfare should have exercised restraint and at the same time exhibited congruence for attaining the legitimate and growing expectation of the people for transparent and better informed Government.

16. Though the Committee would discuss all the aspects contained in the Amendment Bill, 2020 in the succeeding paragraphs, the Committee also recommend that whenever any substantive issue having legal connotations as it is in the present case of carrying out amendments in the Act is taken up for effecting amendment(s)/modification(s), while putting up the draft proposal in the public domain as a part of pre-legislative consultations, a new column, containing the reasons for addition/deletion/substitution in the existing Sections of the Act should also be included. The said suggestion should also be taken into consideration by the Ministry of Health & Family Welfare with reference to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020. It is, thus, expected that urgent action for the above-stated suggestion for procedural improvement, which would enable the public to understand the subject-matter in a better way, should also be initiated by the Ministry, under intimation to the Committee on Petitions.

It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

Key issues relating to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020

17. Apart from representations received from S/Shri Rajnikant P. Patel & Sudhir Sable as well as Shri Sanjay Bechan, the Committee on Petitions, Lok Sabha also not only held detailed discussions with the representatives of the Ministry of Health & Family Welfare but also relied upon various documents/papers, etc., available in public domain. Out of these discussions/deliberations, the following key issues, having bearing on the provisions of the Bill, have emerged out

It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

(i) Definition-Amendment in Section 3(k).
 (ii) Prohibition of smoking in a public place - Deletion of Section 4.

(iii) Prohibition of advertisement of cigarettes and other tobacco products- Substitution of Section 5(1) and deletion of 5(2)(a) & (b).

(iv) Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area - Substitution of Section 6(a) & (b).

(v) Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5).

(vi) Size of letters and figures - Deletion of words in Section 10 and insertion of new Section as 10(A).

(vii) Testing laboratory for nicotine and tar contents - Substitution of Section 11.

(viii) Power to give option to pay costs in lieu of confiscation - Deletion of words in Section 15(2).

(ix) Power to add any tobacco products in the Schedule - Substitution of Section 30 and insertion of new Section as 30(A) & (B).

(x) Power of Central Government to make rules - Substitution of Section 31(2)(b) and deletion of Section 31(2)(d).

These are discussed in the succeeding paragraphs.

A. Definition- Amendment in Section 3(k)

A comparative analysis of the Section 3(k) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to Definition' is, as under-

Section 3(K) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
Production with its grammatical variations and cognate expressions, includes the making of	Production with its grammatical variations and cognate expressions, includes the making of tobacco products and shall include -

cigarettes, cigars, cheroots, Beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan Masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include-	(i)	Packing, labelling or re- labelling, of containers;
	(ii)	Re-packing from bulk packages to retail packages; and
	(iii)	The adoption of any other method to render the tobacco product marketable.

(i) (packing, labelling or re-labelling, of containers
 (ii) re-packing from bulk packages to retail packages, and
 (iii) the adoption of any other method to render the tobacco product marketable.

The Committee note that in the proposed Amendment Bill, 2020, no change has been proposed in sub-sections (i) to (iii) of Section 3(k) of COTPA, 2003. However, the description of tobacco products', viz., cigarettes, cigars, cheroots, Beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan Masala or any chewing material having tobacco as one of its ingredients have been substituted by Tobacco Products'.

Since the proposed amendment would give rise to ambiguity while describing the Tobacco Products', it may result in multiple litigations with the stakeholders. Moreover, it has been an established principle of legislative process that the law should invariably contain even the minute details and also self-contained so that it may not lead to different by different people. In view of this, the Committee disapprove the proposed amendment to the definition of production' as contained in Section 3(k) of the COTPA, 2003 and recommend that status quo should be maintained.

B. Prohibition of smoking in a public place - Deletion of Section 4

Section 4 of the COTPA, 2003 relating to 'Prohibition of smoking in a public place' reads, as under:-

No person shall smoke in any public place:
 Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.

The Committee note that the Ministry, in their submissions, has acknowledged the dangers of second and third hand smoking and its impact on the health of vulnerable sections of the Society, viz., women and children. It is in this context that the Committee feel that the relevant section in COTPA, 2003 should not be deleted and rather made broad-based by including railway platforms, bus stations, sports stadiums, Shopping Mall, besides the Airports. The Committee, therefore, recommend that Section 4 of COTPA, 2003 should not be deleted/omitted.

C. Prohibition of advertisement of cigarettes and other tobacco products- Substitution of Section 5(1) and deletion of 5(2)(a) & (b)

A comparative analysis of the Section 5(1) & (2) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Prohibition of advertisement of cigarettes and other tobacco products' is, as under:-

Section 5(1) & (2)(a) & (b) of COTPA, 2003	Substitution and deletion proposed in COTPA (Amendment) Bill, 2020
<p>5(1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes any other tobacco or products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products</p> <p>(1) No person, for any direct or indirect pecuniary benefit shall-</p> <p>a) display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product or</p> <p>b) sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or</p>	<p>5(1) No person shall directly or indirectly advertise cigarettes or any other tobacco products through any medium and no person shall take part in any advertisement that directly or indirectly promote the use or consumption cigarettes or any other tobacco products.</p>

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

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

The Committee note that in the proposed Amendment Bill, 2020, re- wording of Section 5(1) will have same meaning and intent and, therefore, the aforementioned substitution could be retained. However, deletion/omission of Section 5(2)(a) & (b) might propel a person to display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product or sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product, which would be in conflict with the preamble and the aims and objectives for which COPTA was enacted in the year 2003. The Committee, therefore, disapprove the proposed deletion/omission of Section 5(2)(a) & (b) of the COTPA, 2003 and recommend that status quo should be maintained.

D. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area - Substitution of Section 6(a) & (b)

A comparative analysis of the Section 6(a) & (b) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area' is, as under:-

Section 6(a) & (b) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
<p>No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product-</p> <p>a) to any person who is under eighteen years of age, and b) in an area within a radius of one hundred yards of any</p>	<p>No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product:-</p> <p>a) to any person who is under twenty-one years of age, and b) in an area within a radius of one hundred</p>

educational institution.

yards of any educational hundred meters of any educational institution.

The Committee note that the proposed substitution of Section 6 (a) & (b) in the Amendment Bill, 2020 is in tune with the National Health Policy of 2017 which envisages the targets for relative reduction in prevalence of current tobacco use as 15 per cent by 2020 and 30 per cent by 2025. Besides, restricting the sale, offer for sale, or permit sale of, cigarette or any other tobacco product to a person below the age of 21 years and within a radius of one hundred meters of any educational institution is a welcome step in the direction of discouraging the consumption of cigarettes or any other tobacco products. The Committee, therefore, recommend that Section 6(a) & (b) of COTPA, 2003 could be substituted in the manner proposed by the Ministry in the Amendment Bill, 2020.

E. Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products - Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5)

A comparative analysis of the Section 7(2), (4) & (5) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products' relating to insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5) is, as under:-

Section 7(2), (4) & (5) of COTPA, 2003	Insertion/substitution proposed in COTPA (Amendment) Bill, 2020
7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.	7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.
7(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or	Provided that the trade and commerce in cigarette or any other tobacco product shall be in sealed, intact and original packing.
	7(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been

supply for a valuable consideration.

7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum

permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

packed for distribution, sale or supply.

7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having minimum quantity as may be prescribed

The Committee note that the impact of the proposed insertion of proviso in Section 7(2) in the Amendment Bill which relates to carrying out trade or commerce in cigarettes or any other tobacco products in sealed, intact and original packing would be comparatively more on Beedis since this product is produced by unorganised and small scale/cottage household, would be at a disadvantageous position. Moreover, ensuring the compliance of this proviso by the Authorities concerned would be a herculean task without any positive outcome. In this context, the Committee are of the considered view that in the process of law making, realistic and easily implementable propositions should be given prominence in place of regressive and theoretical formulations. The Committee, therefore, recommend that status quo should be maintained in regard to Section 7(2) of COTPA, 2003 and no changes be made vide the Amendment Bill, 2020.

The Committee also note that substitution of Section 7(4) & (5) in the Amendment Bill, 2020 is not confined to its rewording in the Amendment Bill, 2020 but it has connotations in the form of deleting the 'nicotine and tar contents on cigarettes' along with doing away the austere proviso of prescribing the maximum quantity of 'nicotine and tar contents'. In this context, the Committee are of

considered view that in case, Section 7 of the COTPA, 2003 is amended in the present form, it would drastically liquidate the regulation of usage of tobacco products, especially, the cigarettes. The Committee, therefore, disapprove re-wording and substitution of Section 7(2),(4) & (5) in the Amendment Bill, 2020 and recommend that status quo should be maintained.

F. Size of letters and figures - Deletion of words in Section 10 and insertion of new Section as 10(A)

A comparative analysis of the Section 10 of the COTPA, 2003 and the proposed insertion of a new Section 10A vide COTPA (Amendment) Bill, 2020 relating to 'Size of letters and figures' is, as under:-

Section 10 of COTPA, 2003	Deletion/Insertion proposed in COTPA (Amendment) Bill, 2020
<p>No specified warning or indication of nicotine and tar contents and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and indication is less than the height as may be prescribed by rules made under this Act.</p>	<p>No specified warning in cigarettes and any in other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and indication is less than the height as may be prescribed by rules made under this Act</p> <p><u>Insertion of a new Section 10A</u></p> <p>10A (1) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of illicit cigarette or any other tobacco product.</p> <p>(2) The manner in which illicit cigarette or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act. Explanation. For the purpose of this section, the expression, "illicit means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct intended to facilitate such activity.</p> <p>(3) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of</p>

cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government."

The Committee are constrained to note that re-wording of Section 10 of COTPA, 2003 is aimed at deleting the words 'nicotine and tar contents' which would further liquidate the overall framework of the existing COTPA, 2003. In this connection, the Committee would like to reiterate that the 'Memorandum regarding Delegated Legislation' attached to COTPA Bill, which was introduced in Rajya Sabha [Bill No. XXIX of 2001], there was a specific mention of ..specifying the form and manner in which warning shall be given in respect of cigarettes, to specify the maximum permissible nicotine and tar contents in cigarettes...

Now that more than 18 years have elapsed since the formulation of an Act in the form of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act to primarily deal with 'Cigarettes and other Tobacco Products' and also the averments made by the Ministry to the effect that as per the second round of Global Adult Tobacco Survey [GATS-2016-17], 28.6 per cent [26.7 crore] adults in the country, aged 15 and above currently use tobacco in some form and the prevalence of any form of tobacco use has decreased significantly by 6 percentage points from 34.6 per cent [2009-10] to 28.6 per cent [2016-17], the Committee are of firm opinion that any amendment to the COTPA should contain more stringent provisions so that the target for relative reduction in the prevalence of tobacco use, as envisaged in the National Health Policy of 2017, be brought down to 30 per cent by 2025. The Committee, therefore, disapprove the deletion/omission of words 'indication of nicotine and tar contents', as contained in Section 10, in the proposed Amendment Bill.

On the aspect of insertion of a new Section as 10A in the Amendment Bill, the Committee has meticulously considered the objective of said Though, the proposed insertion has not shaken the basic framework of the COTPA, 2003, the Committee would like to point out that the subject of Section 10 relates to 'Size of Letters and Figures' and the proposed insertion of a new Section primarily deals with illicit cigarette or any other tobacco products. As such, the said insertion, if effected, would be out of context and might lead to misinterpretation by various stakeholders. The Committee, therefore, recommend that the said insertion could find place in the Amendment Bill, under a distinct 'Heading'.

G. Testing Laboratory for nicotine and tar contents
Substitution Section 11

A comparative analysis of the Section 11 of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to Testing Laboratory for nicotine and tar contents' is, as under:-

Section 11 of COTPA, 2003	Substitution in COTPA (Amendment) Bill, 2020
For purposes of testing nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.	For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory or laboratories as the Government may deem necessary.

The Committee note that the proposed substitution of Section 11 of COTPA, 2003 also relates to deleting the aspect of 'nicotine and tar contents in cigarettes' and substituting it with 'contents and emissions in cigarettes'. In this regard, the Committee wish to point out that Section 11 is one of the determining factors for protecting the passive smokers, including women and children. It is also an acknowledged fact that the testing laboratories could measure 'emission' of cigarettes only when they are able to unambiguously establish the 'nicotine and tar contents'. In the opinion of the Committee, any hasty deletion of 'tar and nicotine contents' and substituting it by 'contents and emissions' would transform the said Amendment Bill and opaque document - fraught with inconsistencies. The Committee, therefore, disapprove the substitution of Section 11 in the Amendment Bill, 2020 and recommend that status quo should be maintained.

(H) Power to give option to pay costs in lieu of confiscation - Deletion of words in Section 15(2)

A comparative analysis of the Section 15(2) of the COTPA, 2003 and the proposed deletion of words vide COTPA (Amendment) Bill, 2020 relating to 'Power to give option to pay costs in lieu of confiscation' is, as under:-

Section 15(2) of COTPA, 2003	Deletion in COTPA (Amendment) Bill 2020
On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get	On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified

the specified warning and indication of nicotine and tar contents incorporated in each such package.

warning and incorporated on each such package.

The Committee note that the words 'nicotine and tar contents' are again proposed to be deleted/omitted in the Amendment Bill. The Committee have systematically analysed all the provisions of COTPA, 2003 vis-a-vis the proposals contained in the Amendment Bill and find that the entire exercise of said amendment seems to have been centred towards deleting the 'tar and nicotine contents', wherever this phrase appears in any of the Sections. The requirement of retaining 'nicotine and tar contents', as analysed in the foregoing paragraphs, therefore, also holds good in the context of Section 11. The Committee, thus, recommend that any re-wording of the relevant Section by way of deleting 'nicotine and tar contents' in the Amendment Bill should not be carried out and status quo should be maintained.

(I) Power to add any tobacco products in the Schedule - Substitution of Section 30 and insertion of new Section as 30(A)& (B)

A comparative analysis of substitution of Section 30 of the COTPA, 2003 and the proposed insertion of a new Section vide COTPA (Amendment) Bill, 2020 relating to 'Power to add any tobacco products in the Schedule' is, as under:-

Section 30 of COTPA, 2003	Substitution and Insertion in COTPA (Amendment) Bill, 2020
<p>The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated</p> <p>under this Act and thereupon the Schedule shall in to application to such products be deemed to be amended accordingly</p>	<p>The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to, or, omit from, the Schedule any tobacco products and thereupon the Schedule shall be deemed to have been amended accordingly</p> <p><u>Insertion of a new Section 30A</u></p> <p>Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p>

Insertion of a new Section 30B

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products.

The Committee find that Section 30 of COTPA, 2003 relates to power of the Central Government to add any tobacco products in the Schedule, whereas, in the Amendment Bill, it has been proposed by the Ministry to omit any tobacco product from the Schedule. The Committee also note that pursuant to Section 2(p) of the COTPA, 2003, a Schedule has been appended, which includes tobacco products, viz., Cigarettes, Cigars, Cheroots, Beedis, Cigarette Tobacco, Pipe Tobacco and Hookah Tobacco, Chewing Tobacco, Snuff, Pan Masala, Gutkha and Tooth Powder containing Tobacco.

In this context, the moot question that the Committee is required to address is whether there should be provisions in the law for giving powers to the executive to delete/omit any tobacco product from the Schedule by way of subordinate legislation. The two principal factors of COTPA, 2003 are adding any other tobacco product and vice versa. Since deletion of a specific tobacco product from the Schedule falls within the domain of Legislature, which is invariably preceded by threadbare discussions, the Committee are not able to comprehend as to why our Executive Authorities, in the 21st century, persist with such an anomalous practice. Moreover, it is a common logic that in case, the Ministry 'omits' any tobacco product from the Schedule, anybody could draw an inference that after such deletion, a specific tobacco product' would now be an item of 'food', which could even be consumed by women and children. The Committee, thus, disapprove the relevant amendment to Section 30 of COTPA, 2003 as it gives wide discretion to the Executive Authorities. Accordingly, the proposed substitution of Section 30 should not be effected in the Amendment Bill.

On the aspect of Insertion of a new Section(s) as 30A & 30B in the Amendment Bill, the Committee find that the language and contents of the both the proposed new Sections are contradictory. On the one hand, Section 30A emphasises that 'the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained therewith contained in any other law, whereas, on the other hand, Section 30B makes a conflicting clarification that 'the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law...prohibiting trade and commerce, production, supply and distribution of cigarettes and any other products.

In this context, the Committee are able to easily make a guess on the intent of inserting a new Section as 30B which is, perhaps, an attempt to legalize the provisions contained in Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restriction on Sales) Regulations, 2011, which is presently under active examination by the Committee on Petitions, Lok Sabha. Since the Committee have their own reservations on the aspect of 'excessive delegation by the Executive Authorities' and also the fact that FSS Act/Regulations should be confined to the aspects connected with 'Food' and 'Cigarettes and other Tobacco Products' to be dealt with only under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Committee recommend that the a new Section 30A could be inserted by adding the following words:-

"In case of any conflict vis-a-vis any other law in regard to 'cigarettes and other tobacco products, the provisions contained in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act would prevail."

As regards the proposal for insertion of a new Section 30B, the Committee recommend that this should not form part of the Amendment Bill, 2020.

(j) Power of Central Government to make rules - Substitution of Section 31(2) (b) and deletion of words/phrase in Section 31(2)(d)

A comparative analysis of substitution of Section 31(2)(b) of the COTPA 2003 and the proposed deletion of words/phrase in Section 31(2)(d) vide COTPA (Amendment) Bill, 2020 relating to 'Power of Central Government to make rules' is, as under:-

Section 31(2) of COTPA, 2003	Substitution and deletion of words/phrase in COTPA (Amendment) Bill, 2020
31(2)(b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7.	31(2) (b) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked or traced, under to sub-section (2) of section 10A.
(d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or tobacco products under section 10.	(d) specify the height of the letter or figure or both to be used in specified warning in cigarettes or other tobacco products under section 10.

The Committee note that the proposal to amend Section 31(2) (b) & (d) in the Amendment Bill, 2020 is primarily to delete the words/phrase 'nicotine and tar contents' in cigarettes or other tobacco products. Since the relevant Section in COTPA, 2003 relates to 'Power of Central Government to make rules' and the Committee on Petitions, after due diligence and exhaustive study of the subject under examination, have already impressed upon the Ministry to retain the words/phrase, i.e., 'nicotine and tar contents' in the Amendment Bill, 2020, the Committee recommend that status quo should be maintained.

COTPA (Amendment) Bill, 2020 - An Overview

18. The Committee note that the proposed Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill, 2020, purportedly, seeks to effectively address the harmful effects of cigarettes and other tobacco products in the country by making substantive changes in the COTPA, 2003, for which it has been hosted in the public domain for pre-legislative consultations, whereby, suggestions of the public were invited on the same. In the midst of this, pursuant to the receipt of representations, the Committee got an opportunity to participate in the said pre- legislative process.

19. The Committee are happy to note that during the deliberations with the representatives of the Ministry of Health & Family Welfare, especially, with the senior officers, looking after the affairs of Tobacco Division, the Secretary, Ministry of Health & Family Welfare was candid to convey that not only the comments and suggestions received from the public on the draft Bill would be given due consideration, but also the guidance and suggestions given by the Committee on Petitions, on this issue, would be appropriately looked into. Encouraged by this, the Committee on Petitions vide their communication dated 17 March, 2021 urged the Ministry of Health & Family Welfare to finalize the proposed Amendment Bill i.e., the pre-legislative consultation only after they are able look into all the aspects/intricacies connected with the regulation of cigarettes and other tobacco products.

As per the Committee on Petitions Branch, Lok Sabha Secretariat's OM No. 11/CPB/2021/R-226 dated 17th March, 2021, it was stated that;

The Committee on Petitions, Lok Sabha, during its sitting held on 16 March, 2021 have, therefore, expressed that consequential action on the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 be initiated by the Ministry of Health & Family Welfare only when the Action Taken Report on the 68th Report (on the representation of Shri Sanjay Bechan is finalized and presented to Lok Sabha.

20. It was against this backdrop that the Committee not only invited the representationist to depose before but also held a series of discussions with the representatives of the Ministry of Health & Family Welfare. This elaborate exercise has set the stage for examining almost all the 'Sections' of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 which are now proposed to be amended/omitted/substituted by way of proposed Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill.

It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

21. The Committee on Petitions, while undertaking the onerous exercise of threadbare examination of the Amendment Bill, relied upon the perceptions, perspectives, priorities and problems of the affected persons/stakeholders along with the deficiencies, if any the effective implementation of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 vis-a-vis weighing the necessity of bringing an amended version of the Act.

22. The Committee were, therefore, able to identify ten 'key issues' which were Incorporated in the Amendment Bill and after meticulously examining each of them in terms of legal provisions, jurisprudence and its implementation at the ground level, suitable observations/recommendations along with cogent reasoning have been given in the preceding paragraphs. However, during the course of examination, the Committee have noticed that the Amendment Bill, 2020 is fraught with various deficiencies and inconsistencies vis-a-vis the existing provisions contained in various Sections of COTPA, 2003. The Committee are apprehensive that in case, the Ministry proceeds further by way of concluding their pre-legislative consultations and get into the second stage of finalizing the Amendment Bill, it would not be termed as a 'good piece of legislation' by the majority of stakeholders and public at large. At that stage, even the Ministry of Law and Justice, Department of Legal Affairs might raise similar aspects which have currently been noticed by the Committee and appropriately dealt with in the preceding paragraphs.

23. The Committee, therefore, recommend that the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 should be withdrawn and thereafter re-examined with a new perspective by invariably following the spirit of 'harmony' and 'balance' in place of 'confrontation' and 'suspicion'. After completion of this exercise, the draft Bill should be re-circulated for eliciting the comments/views of public. While undertaking such re-examination, the Ministry of Health & Family Welfare should also take into account the observations/ recommendations made by the Committee in this Report so that formulation of a new Amendment Bill should not be unnecessarily challenged by the stakeholders/public before the Court of Law for being 'opaque' and 'asymmetrical'. The Committee would like to be apprised of the action taken by the Ministry at the right earnest.

**MINUTES OF THE TWENTY EIGHTH SITTING OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

The Committee met on Thursday, 23 March, 2023 from 1500 hrs. to 1730 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Harish Dwivedi - Chairperson

MEMBERS

2. Shri Hanuman Beniwal
3. Dr. Jayanta Kumar Roy
4. Shri Brijendra Singh
5. Shri Sunil Kumar Singh
6. Shri Sushil Kumar Singh
7. Shri Manoj Kumar Tiwari.

SECRETARIAT

1. Shri Raju Srivastava - Director
2. Shri Tenzin Gyaltzen - Deputy Secretary
3. Shri Harish Kumar Sethi - Under Secretary

WITNESSES

*** *** *** *** ***

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting of the Committee. *** *** *** *** *** ***

3. *** *** *** *** *** ***

4. *** *** *** *** *** ***

5. The Committee, thereafter, discussed the action taken replies furnished by the Ministry of Health & Family Welfare (Tobacco Control Division) *vide* their Office Memorandum dated 17 February, 2023 on the recommendations made by the Committee in their 41st Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) and other matter connected therewith or incidental thereto.

6. Upon perusal of the said action taken replies, the Committee were constrained to note that the Ministry have neither considered the observations/recommendations on a serious note nor provided specific and complete replies thereon. In view of such an attitude of the Ministry which amounts to breach of privileges of a Parliamentary Committee, the Committee directed the Secretariat to once again request the Ministry of Health & Family Welfare to furnish a detailed and specific replies to the observations/recommendations contained in the aforesaid 41st Report of the Committee while conveying them the views/opinion of the Committee.

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The Committee, then, adjourned.

*** Does not pertain to this Report.

FAX: 23010756

COMMITTEE ON PETITIONS BRANCH, PARLIAMENT HOUSE ANNEXE

NEW DELHI-110001

Dated: 10 April, 2023

No.12/CPB/41/2022

(LAFEAS-CP022/4/2023-COPIE-242664)

OFFICE MEMORANDUM

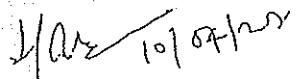
Subject: Implementation of the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Forty First Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Sanjay Bechan regarding proposed amendments to the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and other matter connected therewith or incidental thereto.

The undersigned is directed to refer to this Secretarial O.M. of even number dated 16.12.2022 on the above subject (*read with the Ministry of Health & Family Welfare (Tobacco Control Division) O.M. No. H-11013/01/2021-TC dated 17.02.2023*) *inter alia* forwarding Hindi and English versions of the Forty First Report of the Committee on Petitions (Seventeenth Lok Sabha) presented to the House on 13 December, 2022 for furnishing Action Taken Replies on the observations/recommendations contained therein for consideration of the Committee.

2. In pursuance thereof, the Ministry of Health & Family Welfare (Tobacco Control Division) furnished their Action Taken Replies *vide* O.M. dated 17.02.2023. The said replies were, accordingly, placed before the Committee on Petitions, during its sitting held on 23 March, 2023. On perusal of the Action Taken Replies, the Committee observed that the Ministry have neither considered the observations/recommendations contained in their Forty First Report on a serious note nor provided specific and complete replies thereon which *prima facie* amounts to breach of privilege of the Parliamentary Committee.

3. The Ministry of Health & Family Welfare (Tobacco Control Division) are, therefore, once again requested to furnish detailed and unambiguous Action Taken Replies (Hindi and English versions) on each observation/recommendation contained in Forty First Report of the Committee on Petitions (Seventeenth Lok Sabha) to this Secretariat latest by 25.04.2023, positively for consideration of the Committee.

4. The receipt of this O.M. may please be acknowledged.


(HARISH KUMAR SETHI)
UNDER SECRETARY
Tel: 23035780

Ministry of Health & Family Welfare,
(Shri Rajesh Bhushan - Secretary)
Government of India,
Room No. 156-A, C-Wing,
Nirman Bhawan, New Delhi.
(*email:secyhfw@nic.in*)

No. H-11013/01/2021-TC
Government of India
Ministry of Health & Family Welfare
(Tobacco Control Division)

Nirman Bhawan, New Delhi-110108
Dated, the 19 May, 2023

OFFICE MEMORANDUM

Subject: - Implementation of the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Forty First Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and other matter connected therewith or incidental thereto- regarding.

The undersigned is directed to refer to the Committee on Petitions Branch's OM No. 12/CPB41//2022 dated 10th April, 2023 on the above captioned subject and to condone if any observation/suggestion of the Hon'ble Committee has been breached. However, it is submitted that as part of the pre-legislative process, the draft Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) COTPA (Amendment) Bill, 2020 was placed in public domain and further administrative processes and inter-ministerial consultations have to be done as part of pre-legislative procedure, which is likely to take time. Hence, as requested by Committee on Petitions, the comprehensive decisions can only be provided once the decision on draft COTPA Amendment Bill, 2020 is taken.

2. The Hindi version of the previous comments provided vide OM of even no. dated 17.02.2023 is also enclosed.
3. This issues with the approval of the Competent Authority.

Srikala S.

(Srikala S.)
Section Officer (Tobacco Control)
Tel: 23062868

✓ To
Lok Sabha Secretariat,
Committee on Petitions,
(Shri. Harsh Kumar Sethi, Under Secretary),
Parliament House Annexe, New Delhi - 110001.
Tel: 011-23035780
Email: comm-petitions-iss@sansad.nic.in

Copy for information to: -

Adviser, Parliament Section, MoHFW, Nirman Bhawan, New Delhi

**MINUTES OF THE TWENTY NINTH SITTING OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

The Committee met on Tuesday, 8 August, 2023 from 1500 hrs. to 1715 hrs. in Committee Room No. 3, Parliament House Annexe Extension, New Delhi.

PRESENT

Shri Harish Dwivedi - Chairperson

MEMBERS

2. Shri Hanuman Beniwal
3. Shri Brijendra Singh
4. Shri Sushil Kumar Singh
5. Shri Sunil Kumar Singh
6. Dr. Jayanta Kumar Roy
7. Shri Rajan Vichare

SECRETARIAT

1. Shri Raju Srivastava - Joint Secretary
2. Shri Tenzin Gyaltzen - Deputy Secretary

WITNESSES

*** *** *** *** ***

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting of the Committee. *** *** *** *** *** ***

3. *** *** *** *** *** *** ***

4. The Committee, thereafter, recalled that 41st Report of the Committee on Petitions was presented to Lok Sabha on 13 December, 2022 and the same was subsequently forwarded to the Ministry of Health & Family Welfare on 16 December, 2022 for furnishing the Action Taken Replies on all the 13 recommendations contained therein. Pursuant to this, on 17 February, 2023, the Ministry of Health & Family Welfare [Tobacco Control Division] furnished their Action Taken Replies, as under:-

"It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized."

5. The Action Taken Replies were, accordingly, placed before the Committee on Petitions during its sitting held on 23 March, 2023. On perusal of the Action Taken Replies, the Committee had observed that the Ministry have neither considered the observations/recommendations contained in their 41st Report on a serious note nor provided specific and complete replies which *prima facie* amounts to breach of privilege of the Parliamentary Committee. On the directions of the Committee, on 10 April, 2023, the Committee Secretariat again requested the Ministry of Health & Family Welfare [Tobacco Control Division] to furnish detailed and unambiguous Action Taken Replies on each observations/recommendations latest by 25.04.2023.

6. On 19.05.2023, the Ministry of Health & Family Welfare [Tobacco Control Division] again furnished their Action Taken Replies by merely repeating the similar *phrase* in respect of all the observations/recommendations made by the Committee in their 41st Report.

7. The Committee, thereafter, on perusal of the replies/submissions made by the Ministry, expressed their unhappiness over the non-serious attitude of the Tobacco Control Division of the Ministry of Health & Family Welfare by way of not initiating any exercise of re-formulating their replies on the elaborate, well-thought out and legally tenable recommendations made by the Committee on almost all the 'Sections' of the proposed COTPA (Amendment) Bill, 2020. The Committee also expressed that in case, the Ministries/ Departments of the Government do not furnish convincing and detailed replies based on the recommendations made by the Parliamentary Committee(s) in their Reports, the entire objective of detailed deliberations – based on the oral evidence of the representatives of the Ministry, List of Points formulated and sent for eliciting information on aspects under consideration followed by painstaking conduct of sittings of the Committee, etc. – are likely to be defeated.

8. The Committee, therefore, expressed their desire to once again request the Ministry of Health & Family Welfare [Tobacco Control Division] to furnish detailed and specific replies to all the observations/ recommendations contained in their 41st Report, failing which, the Committee on Petitions may hold further discussion with the Senior Officials of the Ministry of Health & Family Welfare, including the Tobacco Control Division, by way of holding yet another sitting of the Committee on Petitions on this subject.

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The Committee, then, adjourned.

*** Does not pertain to this Report.

LOK SABHA SECRETARIAT

FAX: 23010756

COMMITTEE ON PETITIONS BRANCH

Urgent
Parliamentary Matter

PARLIAMENT HOUSE
NEW DELHI-110001

No.12/CPB/41/2022 (E-242664)

Dated: 23 August, 2023

OFFICE MEMORANDUM

Subject: Implementation of the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their 41st Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Sanjay Bechan regarding proposed amendments to the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and other matter connected therewith or incidental thereto – *Submission of self-contained and logical replies in respect of all the observations/recommendations made by the Committee on Petitions, Lok Sabha.*

The undersigned is directed to refer to the 41st Report of the Committee on Petitions, presented to Lok Sabha on 13 December, 2022 which was subsequently forwarded to the Ministry of Health & Family Welfare *vide* this Secretariat O.M. of even number dated 16 December, 2022 for furnishing the Action Taken Replies on all the 13 recommendations contained therein *[copy enclosed]*.

2. Pursuant to this, the Ministry of Health & Family Welfare [Tobacco Control Division] *vide* their O.M. of even number dated 17 February, 2023 had furnished their Action Taken Replies *(copy enclosed)* in respect of all the recommendations, as under:-

"It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized."

3. The Action Taken Replies were, accordingly, placed before the Committee on Petitions during its sitting held on 23 March, 2023. On perusal of the Action Taken Replies, the Committee *inter alia* observed that the Ministry have neither considered the observations/recommendations contained in their 41st Report on a serious note nor provided specific and complete replies which *prima facie* amounts to breach of privilege of the Parliamentary Committee.

4. On the directions of the Committee on Petitions, this Secretariat *vide* their O.M. of even number dated 10 April, 2023 again requested the Ministry of Health & Family Welfare [Tobacco Control Division] to furnish detailed and unambiguous Action Taken Replies on each observations/recommendations latest by 25.04.2023 *(copy enclosed)*.

5. The Ministry of Health & Family Welfare [Tobacco Control Division] *vide* their O.M. of even number dated 19.05.2023 had again furnished their Action Taken Replies by merely repeating the similar *phrase* as reproduced at Paragraph No. 2 above in respect of all the observations/recommendations made by the Committee in their 41st Report *(copy enclosed)*.

6. The Action Taken Replies were again placed before the Committee on Petitions, during their sitting held on 8 August, 2023. Upon perusal of the replies/submissions made by the Ministry, the Committee expressed their unhappiness over the non-serious attitude of the Tobacco Control Division of the Ministry of Health & Family Welfare by way of not initiating any exercise of re-formulating their replies on the elaborate, well-thought out and legally tenable recommendations made by the Committee on almost all the 'Sections' of the proposed COTPA (Amendment) Bill, 2020. The Committee also expressed that in case, the Ministries/ Departments of the Government do not furnish convincing and detailed replies based on the recommendations made by the Parliamentary Committee(s) in their Reports, the entire objective of detailed deliberations – based on the oral

evidence of the representatives of the Ministry, List of Points formulated and sent for eliciting information on aspects under consideration followed by painstaking conduct of sittings of the Committee, etc. – are likely to be defeated. The Committee, therefore, expressed their desire to once again request the Ministry of Health & Family Welfare [Tobacco Control Division] to furnish detailed and specific replies to all the observations/recommendations contained in their 41st Report, failing which, the Committee on Petitions may hold further discussion with the Senior Officials of the Ministry of Health & Family Welfare, including the Tobacco Control Division, by way of holding yet another sitting of the Committee on Petitions on this subject.

7. It is against this backdrop that the Ministry of Health & Family Welfare (Tobacco Control Division) are, once again, requested to furnish detailed and unambiguous Action Taken Replies (Hindi and English versions) on each of the observation/recommendation contained in 41st Report of the Committee on Petitions (Seventeenth Lok Sabha) to this Secretariat latest by 11.09.2023, positively for consideration of the Committee.

8. This issues with the kind approval of Hon'ble Chairperson, Committee on Petitions.

9. The receipt of this O.M. may please be acknowledged.



(RAGHUBIR SINGH)
UNDER SECRETARY
Tel: 23035780

Ministry of Health & Family Welfare,
(Shri Sudhansh Pant, Secretary)
Government of India,
Room No. 156-A, C- Wing,
Nirman Bhawan, New Delhi.
(email: secyhfw@nic.in)

No H-11013/01/2021-TC
Government of India
Ministry of Health & Family Welfare
(Tobacco Control Division)

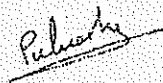
Nirman Bhawan, New Delhi-110108
Dated, the 31st October, 2023

OFFICE MEMORANDUM

Subject: - Implementation of the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Forty First Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and other matter connected therewith or incidental thereto- *Submission of self-contained and logical replies in respect of all the observations/recommendations made by the Committee on Petitions, Lok Sabha- regarding.*

The undersigned is directed to refer to the Committee on Petitions Branch's OM No. 12/CPB/41/2022 dated 23rd August, 2023 on the above captioned subject. Delay in the reply may be condoned. Further it is submitted that as part of the pre-legislative process, draft COTPA Amendment Bill 2020 was placed in public domain for pre-legislative consultation in 2021. A large number of responses were received and as part of the Pre-Legislative Consultative Policy, the administrative processes as well as inter-ministerial consultations needs to be carried out, which is likely to take time. Hence, the provisions of the draft Amendment Bill of 2020 have not yet been finalized. The responses including the representations of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments of COTPA Amendment Bill, 2020 would be duly looked into, as and when the finalization of the draft Bill is considered. Accordingly, the detailed version of Action Taken Replies on the recommendations contained in the 41st Report (17th Lok Sabha) of Committee on Petitions, Lok Sabha is enclosed at Annexure. Hindi version will be followed.

2. This issues with the approval of the Competent Authority.



(Dr. Pulkesh Kumar)
Deputy Secretary
Tel: 23062868

Encl: as above

To
Lok Sabha Secretariat,
Committee on Petitions,
(Shri. Raghubir Singh, Under Secretary),
Parliament House Annexe, New Delhi - 110001.
Tel: 011-23035780
Email: comm-petitions-lss@sansad.nic.in

Copy for information to: -

Adviser, Parliament Section, MoHFW, Nirman Bhawan, New Delhi

Action Taken Replies on the Recommendations contained in the 41st Report on the representations of Shri R.P. Patel and Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 (COTPA)

Observations/ Recommendations of Committee on Petitions	MoHFW remarks
<u>Consultation process vis-à-vis COTPA (Amendment) Bill, 2020</u>	
<p>6. The Committee note that the draft Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 was placed in the public domain on the website of the Ministry of Health & Family Welfare [ntcp.nhp.gov.in and mohfw.gov.in] on 1 January, 2021 as a part of pre-legislative consultative process. Pursuant to this, 89,000 objections through electronic mode besides, more than two lakh representations, letters, etc., in physical form by bringing out various grievances and suggestions, have been received in the Ministry.</p>	
<p>7. While examining the representations of S/Shri Rajnikant P. Patel & Sudhir Sable as well as that of Shri Sanjay Bechan, it was also came to the notice of the Committee that a similar exercise for Amendment to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act of 2003 (COTPA) was taken up by the Ministry in the year 2015 and on that occasion also, suggestions of public were invited as a part of pre-legislative consultation process. However since no tangible progress was made by the Ministry in regard to Amendment Bill of 2015 and after a lapse of around '6 years', another draft proposal for amendment has been 'placed in the public domain, the Committee could easily draw an inference that the Amendment Bill of 2015 was subsequently withdrawn by the Ministry of Health & Family Welfare.</p>	<p>7-9. A draft Amendment Bill was hosted in public domain for pre-legislative consultations in the year 2015, whereby suggestions of the public were invited on the same. It is submitted that both the drafts put in public domain for pre-legislative consultations, have been prepared after extensive consultations with domain experts and legal experts. It is the endeavor of the Ministry to prepare an effective amendment Bill after taking into account the various suggestions received and as well as the target for 30% relative reduction in prevalence of Tobacco use by the year 2024-25 (from the levels in 2009-10), as set out under the National Health Policy 2017.</p>
<p>8. The Committee also acknowledge the endeavour of the Ministry to prepare an effective Amendment Bill after taking into account the various suggestions received and also achieving the target of 30 percent relative reduction in the prevalence of tobacco use by the year 2024-25 (from the levels of 2009-10) as set out under the National Health Policy of the year 2017. In this sequence, the Committee also wish to remind the Ministry about the inalienable 'objects and reasons' set out by them while formulating a composite and comprehensive piece of legislation in the form of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 with a view to prohibiting the</p>	<p>It is submitted that the draft Bill of 2015 is now revised in the form of the revised draft Bill of 2020. Due consideration has also been given to the provisions contained in the draft Bill of 2015, while preparing the draft Bill of 2020. It is also submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill is yet to be finalized.</p>

advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith as well as implementing Article 47 of the Constitution which inter alia requires the State to endeavour to improve public health of the people.

9. Since the proposed Amendment Bill was in the stage of pre-legislative consultations and in the midst of this, the Committee on Petitions received the aforementioned representations, they got an opportunity to ponder on the nuances involved in the entire exercise, beginning with the objective of bringing COTPA in the year 2003, exercise undertaken by the Ministry for carrying out amendments in the year 2015 and the current attempt in the form of COTPA (Amendment) Bill, 2020. It is against this backdrop that the Committee formulated detailed List(s) of Points connected with the subject for easy discernment of contradictions, if any, in a sequential manner, and forwarded the same to the Ministry. However, pursuant to the detailed List(s) of Points, the Ministry preferred to evade and did not reveal the institutional intent of bringing the proposed Bill for amending the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

10. In this chronology, the Committee on Petitions urged the Ministry to give their considered view on inter alia amending the following Sections of the Bill, which were of determining nature so that the Committee would be able to appreciate the reasons for altering these Sections contained in COTPA, 2003:-

10-11. It is submitted that the factual position has been communicated to the Committee and also so far draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized.

SL. No.	Sections contained in COTPA (Amendment) Bill	Brief details
1.	Amendment to Section 3	Definition of 'Advertisement and 'Production'.
2.	Amendment to Section 7	Deletion of proviso relating to 'nicotine and tar contents'.
3.	Amendment to Section 10	Deletion of words "or indication of nicotine and tar contents'.
4.	Amendment to Section 11	Deletion of testing and regulating the contents and emissions in cigarettes and any other tobacco products'.
5.	Amendment to Section 15	Deletion of words 'and indication of nicotine and tar contents'.
6.	Amendment to Section 30	Re-wording of words 'add any other tobacco product' as 'add to, or, omit from'.
7.	Amendment to Section 31	Deletion of sub-section (2) for specifying the maximum

	<p>permissible nicotine and tar contents in cigarettes or other tobacco products. Deletion of words of subsection (d), i.e., or to indicate the nicotine and tar contents'.</p>	
	<p>11. The Committee were, however, shocked that for most of the aspects contained in the List(s) of Points, the Ministry gave a terse reply, as under:-</p> <p><i>"The draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment, Bill, 2020. Aspect of the enforcement of applicability will be duly considered at the time of the finalization of the COTPA Amendment, Bill, 2020."</i></p>	
	<p>12. The Committee do not subscribe to such distractionary ways of officers of the Tobacco Control Division of the Ministry of Health & Family Welfare in dealing with a Parliamentary Committee in view of the fact that all the Parliamentary Committees, in general, and the Committee on Petitions, Lok Sabha, in particular, are taking up various aspects which are invariably connected with the wider public interests. Whenever, institutional clarifications are sought on some important aspects connected with the subject matter under examination of the Committee, it is the bounden duty of the Ministry/Department concerned of the Government of India, to furnish a sustainable and legally tenable reply, thereby, enabling the Parliamentary Committee to form their opinion on the relevant issue(s). The Committee, therefore, recommend the Ministry to appropriately sensitize their officers to ensure that the queries raised by any Parliamentary Committee are resolved by them in an unambiguous and time-bound manner and also explaining key legal provisions connected with the subject in a simple language. The Committee would like to be apprised of the action taken by the Ministry of Health & Family Welfare in this regard at the earliest.</p>	<p>12. Suggestions of the Committee are noted. It is submitted that factual positions are submitted to the Committee in a comprehensive manner. Also instructions given by the committee have been noted and officers have been sensitized.</p>
<p>Non-adherence to the policy on pre-legislative consultation</p>		
	<p>13. The Committee note that the Government of India had formulated a detailed on pre-legislative consultation. In this regard, the Secretary, Ministry of Law & Justice, Legislative Department had also issued revised policy on 5 January, 2014 which is applicable in the process of</p>	<p>13 - 15. It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. As and when the draft bill would be</p>

<p>principal as well as subordinate legislation. As a matter of fact, all the Ministries/ Department of the Central Government have also been directed to invariably follow the policy on pre-legislative consultation.</p>	<p>finalized. all due procedures of pre-legislative consultation would be followed.</p>
<p>14. The Committee also note that the details of such legislative process inter alia makes it mandatory for all the Ministries/Department of the Central Government to publish/place in public domain the draft legislation, wherein, brief justification for such legislation, essential elements of the proposed legislation, and estimated assessment of the Impact of such legislation on the lives and livelihoods of the concerned/affected people have to be incorporated.</p>	<p>It is submitted that India is Party to the World Health Organization Framework Convention for Tobacco Control (WHO FCTC) and is fully committed to implement various demand and supply reduction erasures for tobacco control.</p> <p>The preamble to WHO FCTC recognizes that countries "need to be alert to any efforts by the tobacco Industry to undermine or subvert tobacco control efforts and need to be informed of activities of tobacco industry that have negative impact on tobacco efforts". Further Article 5.3 of the WHO FCTC reads as: <i>In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law....</i></p>
<p>15. Juxtaposition of the said policy formulation of the Government of India on pre-legislative consultation with the current exercise of the Ministry of Health & Family Welfare relating to placing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill, 2020 in the public domain with a view to eliciting the comments/views of public, the Committee are unhappy to find that none of the process has been followed by the Ministry of Health & Family Welfare. The Committee are constrained to express that either the higher officials of the Tobacco Control Division not aware of any such policy guidelines issued by the Government of India or they had intentionally ignored such an important policy guideline of the Government of India for reasons incomprehensible to the Committee. The Committee are of considered opinion that, on both these counts, the Tobacco Control Division of the Ministry of Health & Family Welfare should have exercised restraint and at the same time exhibited congruence for attaining the legitimate and growing expectation of the people for transparent and better informed Government.</p>	<p>The guidelines for implementation of the said Article (5.3) states there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests, therefore parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent. Guidelines further recommend that Parties should establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur. Parties should avoid conflicts of interest for government officials and employees and not give preferential treatment to the tobacco industry.</p> <p>With the view to protect public polices from tobacco industry interference the 'Code of Conduct for Public Officials' has been developed by this Ministry, with the inclusion of a comprehensive protocol to deal with any interaction with tobacco industry or its representative. This Code of Conduct has already been shared with all the Divisions of this Ministry to further circulate among autonomous bodies/institutions under the MoHFW.</p> <p>This Ministry with due cognizance of Article 5.3 of WHO FCTC, has been altering the States/UTs, NITI Aayog, stakeholder Ministries/Departments and various institutes to not to engage with Tobacco industry funded entities.</p>

In addition, the 139th Report of Rajya Sabha Department-Related Parliamentary Standing Committee on Health and Family Welfare, following text of paras related to tobacco use is reproduced as;

"1.1 Cancer can affect any part of the human body, though in India, highest number of lives lost is due to oral cancer caused by tobacco followed by cancer of the lungs, oesophagus and stomach."

"1.6.4 The Committee is of the firm view that there is an urgent need to disincentivize the consumption of tobacco and alcohol in the country. The Committee accordingly recommends the Government to formulate effective policies on alcohol and tobacco control. The Committee also notes that India has one of the lowest prices for tobacco products and there is a need to increase taxes on tobacco products. The Committee accordingly recommends the Government to raise taxes on tobacco and utilize the additional revenue gained for cancer prevention and awareness.

1.6.6 Taking into consideration that oral cancer being the highest contributor to the total cancer cases, the Committee observes that there is a need to implement the provisions of Cigarettes and Other Tobacco Products Act 2003 (COTPA) more universally. The Committee notes that COTPA is the principal anti - tobacco law in India that encompasses a ban on smoking in public places, advertising and sponsorship, sales to minors, and warnings on packs. The Committee further notes that India's National Health Policy 2017 has set out to achieve a relative reduction in the prevalence of current tobacco use by 30% in 2025. The Committee believes to achieve the SDG target, the Ministry must take effective measures to contain the sale of Tobacco products. The Committee recommends the Government to abolish designated smoking areas in airports, hotels, and restaurants and encourage a smoke free policy in organizations. The Committee further recommends the Government to prohibit single stick sales of cigarettes and lay stringent penalties and fines on offenders.

2.3.4 The Committee notes that in India tobacco use in different forms accounts for nearly 50 % of all cancers, these are called tobacco related cancers, so these cancers are preventable. The Committee expresses its concern to note the fact that while

	<p>thousands of crores are spent by both Central and State Governments on treatment of Cancer, however, the desired focus is not given to its root cause i.e. tobacco consumption. The Committee has been given to understand that majority of tobacco addicts start in their teens. Therefore, the Committee recommends the Government to focus campaign against tobacco consumption by youth and since the "quit-rate" in India is very low, the Government should formulate strategies to stop the teen-population from falling prey to the tobacco addiction.</p> <p>Hence, Government is well aware about the repercussion of draft amendments and the legitimate and growing expectation of the people for transparent and better informed Government. Also the Government is committed to take effective steps for reducing tobacco burden in the society.</p>
<p>16. Though the Committee would discuss all the aspects contained in the Amendment Bill, 2020 in the succeeding paragraphs, the Committee also recommend that whenever any substantive issue having legal connotations as it is in the present case of carrying out amendments in the Act is taken up for effecting amendment(s)/modification(s), while putting up the draft proposal in the public domain as a part of pre-legislative consultations, a new column, containing the reasons for addition/deletion/substitution in the existing Sections of the Act should also be included. The said suggestion should also be taken into consideration by the Ministry of Health & Family Welfare with reference to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020. It is, thus, expected that urgent action for the above-stated suggestion for procedural improvement, which would enable the public to understand the subject matter in a better way, should also be initiated by the Ministry, under intimation to the Committee on Petitions.</p>	<p>16. It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Committee's observation has been noted.</p>
<p><u>Key issues relating to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020</u></p>	
<p>17. Apart from representations received from S/Shri Rajnikant P. Patel & Sudhir Sable as well as Shri Sanjay Bechan, the Committee on Petitions, Lok Sabha also not only held detailed discussions with the representatives of the Ministry of Health & Family Welfare but also relied upon various documents/papers, etc., available in public domain. Out of these discussions/deliberations, the following key issues, having bearing on the provisions of the Bill, have emerged out</p>	<p>17 - 18. It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. As already large number of public representations have been received and due consideration will be given to all the representation while finalizing the draft.</p>
<p>(i) Definition-Amendment in Section 3(k). (ii) Prohibition of smoking in a public place - Deletion of Section 4.</p>	<p>Further the observations of the Committee have been noted. It is also submitted that the recommendations of the Committee will be</p>

duly considered as and when the draft Bill is finalized, so as to avoid any ambiguity.

- (iii) Prohibition of advertisement of cigarettes and other tobacco products- Substitution of Section 5(1) and deletion of 5(2)(a) & (b).
- (iv) Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area - Substitution of Section 6(a) & (b).
- (v) Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5).
- (vi) Size of letters and figures, - Deletion of words in Section 10 and insertion of new Section as 10(A).
- (vii) Testing laboratory for nicotine and tar contents - Substitution of Section 11.
- (viii) Power to give option to pay costs in lieu of confiscation - Deletion of words in Section 15(2).
- (ix) Power to add any tobacco products in the Schedule - Substitution of Section 30 and insertion of new Section as 30(A) & (B).
- (x) Power of Central Government to make rules - Substitution of Section 31(2)(b) and deletion of Section 31(2)(d).

These are discussed in the succeeding paragraphs.
A. Definition- Amendment in Section 3(k)

A comparative analysis of the Section 3(k) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to Definition' is, as under-

Section 3(K) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
Production with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, Beedis, cigarette tobacco, pipe include- tobacco hookah tobacco, chewing tobacco, pan Masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include-	Production with its grammatical variations and cognate expressions, includes the making of tobacco products and shall include - Packing, labelling or re- labelling of containers; Re-packing from bulk packages to retail packages; and
(i) (packing, labelling or re-labelling, of containers	(ii) The adoption of any other method to render the tobacco product marketable.

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

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

The Committee note that in the proposed Amendment Bill, 2020, no change has been proposed in sub-sections (i) to (iii) of Section 3(k) of COTPA, 2003. However, the description of tobacco products', viz., cigarettes, cigars, cheroots, Beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan Masala or any chewing material having tobacco as one of its ingredients have been substituted by Tobacco Products'.

Since the proposed amendment would give rise to ambiguity while describing the Tobacco Products', it may result in multiple litigations with the stakeholders. Moreover, it has been an established principle of legislative process that the law should invariably contain even the minute details and also self-contained so that it may not lead to different by different people. In view of this, the Committee disapprove the proposed amendment to the definition of production' as contained in Section 3(k) of the COTPA, 2003 and recommend that status quo should be maintained.

B. Prohibition of smoking in a public place - Deletion of Section 4

Section 4 of the COTPA, 2003 relating to 'Prohibition of smoking in a public place' reads, as under:-

No person shall smoke in any public place:
Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.

The Committee note that the Ministry, in their submissions, has acknowledged the dangers of second and third hand smoking and its impact on the health of vulnerable sections of the Society, viz., women and children. It is in this context that the Committee feel that the relevant section in COTPA, 2003 should not be deleted and rather made broad-based by including railway platforms, bus stations, sports stadiums, Shopping Mall, besides the Airports. The Committee, therefore, recommend that Section 4 of COTPA, 2003 should not be deleted/omitted.

C. Prohibition of advertisement of cigarettes and other tobacco products- Substitution of Section 5(1) and deletion of 5(2)(a) & (b)

A comparative analysis of the Section 5(1) & (2) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Prohibition of advertisement of cigarettes and other tobacco products' is, as under:-

Section 5(1) & (2)(a) & (b) of COTPA, 2003	Substitution and deletion proposed in COTPA (Amendment) Bill, 2020
<p>5(1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or other tobacco or products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products</p> <p>No person, for any direct or indirect pecuniary benefit shall display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product or sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or</p> <p>(c) distribute, cause to distribute, or permit or authorize to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product, or</p> <p>(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product</p>	<p>5(1) No person shall directly or indirectly advertise cigarettes or any other tobacco products through any medium and no person shall take part in any advertisement that directly or indirectly promote the use or consumption cigarettes or any other tobacco products.</p>

The Committee note that in the proposed Amendment Bill, 2020, re- wording of Section 5(1) will have same meaning and intent and, therefore, the aforementioned substitution could be retained. However, deletion/omission of Section 5(2)(a) & (b) might propel a person to display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product or sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product, which would be in conflict with the preamble and the aims and objectives for which COPTA was enacted in the year 2003. The Committee, therefore, disapprove the proposed deletion/omission of Section 5(2)(a) & (b) of the COTPA, 2003 and recommend that status quo should be maintained.

D. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area - Substitution of Section 6(a) & (b)

A comparative analysis of the Section 6(a) & (b) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area' is, as under:-

Section 6(a) & (b) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
<p>No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product-</p> <p style="padding-left: 40px;">to any person who is under eighteen years of age, and in an area within a radius of one hundred yards of any educational institution.</p>	<p>No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product-</p> <p style="padding-left: 40px;">to any person who is under twenty-one years of age, and in an area within a radius of one hundred yards of any educational institution.</p>

The Committee note that the proposed substitution of Section 6 (a) & (b) in the Amendment Bill, 2020 is in tune with the National Health Policy of 2017 which envisages the targets for relative reduction in prevalence of current tobacco use as 15 per cent by 2020 and 30 per cent by 2025. Besides, restricting the sale, offer for sale, or permit sale of, cigarette or any other tobacco product to a person below the age of 21 years and within a radius of one hundred meters of any educational institution is a welcome step in the direction of discouraging the consumption of cigarettes or any other tobacco products. The Committee, therefore, recommend that Section 6(a) & (b) of COTPA, 2003 could be substituted in the manner proposed by the Ministry in the Amendment Bill, 2020.

E. Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products - Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5)

A comparative analysis of the Section 7(2), (4) & (5) of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to 'Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products' relating to insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5) is, as under:-

Section 7(2), (4) & (5) of COTPA, 2003	Insertion/substitution proposed in COTPA (Amendment) Bill, 2020
<p>7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.</p> <p>7(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.</p> <p>7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:</p>	<p>7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning. Provided that the trade and commerce in cigarette or any other tobacco product shall be in sealed, intact and original packing.</p> <p>7(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply.</p> <p>7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having minimum quantity as may be prescribed</p>

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

The Committee note that the impact of the proposed insertion of proviso in Section 7(2) in the Amendment Bill which relates to carrying out trade or commerce in cigarettes or any other tobacco products in sealed, intact and original packing would be comparatively more on Beedis since this product is produced by unorganised and small scale/cottage household, would be at a disadvantageous position. Moreover, ensuring the compliance of this proviso by the Authorities concerned would be a herculean task without any positive outcome. In this context, the Committee are of the considered view that in the process of law making, realistic and easily implementable propositions should be given prominence in place of regressive and theoretical formulations. The Committee, therefore, recommend that status quo should be maintained in regard to Section 7(2) of COTPA, 2003 and no changes be made vide the Amendment Bill, 2020.

The Committee also note that substitution of Section 7(4) & (5) in the Amendment Bill, 2020 is not confined to its re-wording in the Amendment Bill, 2020 but it has connotations in the form of deleting the 'nicotine and tar contents on cigarettes' along with doing away the austere proviso of prescribing the maximum quantity of 'nicotine and tar contents'. In this context, the Committee are of considered view that in case, Section 7 of the COTPA, 2003 is amended in the present form, it would drastically liquidate the regulation of usage of tobacco products, especially, the cigarettes. The Committee, therefore, disapprove re-wording and substitution of Section 7(2), (4) & (5) in the Amendment Bill, 2020 and recommend that status quo should be maintained.

F. Size of letters and figures - Deletion of words in Section 10 and insertion of new Section as 10(A)

A comparative analysis of the Section 10 of the COTPA, 2003 and the proposed insertion of a new Section 10A vide COTPA (Amendment) Bill, 2020 relating to 'Size of letters and figures' is, as under:-

Section 10 of COTPA, 2003	Deletion/insertion proposed in COTPA (Amendment) Bill, 2020
No specified warning or indication of nicotine and tar contents and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and	No specified warning in cigarettes and any in other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used less than the height as may be

indication is less than the prescribed by rules made height as may be under this Act prescribed by rules made under this Act.

Insertion of a new Section 10A

10A (1) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of illicit cigarette or any other tobacco product.

(2) The manner in which illicit cigarette or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act.

Explanation. For the purpose of this section, the expression, "illicit means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct intended to facilitate such activity.

(3) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government."

The Committee are constrained to note that re-wording of Section 10 of COTPA, 2003 is aimed at deleting the words 'nicotine and tar contents' which would further liquidate the overall framework of the existing COTPA, 2003. In this connection, the Committee would like to reiterate that the 'Memorandum regarding Delegated Legislation' attached to COTPA Bill, which was introduced in Rajya Sabha [Bill No. XXIX of 2001], there was a specific mention of specifying the form and manner in which warning shall be given in respect of cigarettes, to specify the maximum permissible nicotine and tar contents in cigarettes...

Now that more than 18 years have elapsed since the formulation of an Act in the form of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act to primarily deal with 'Cigarettes and other Tobacco Products' and also the averments made by the Ministry to the effect that as per the second round of Global Adult Tobacco Survey [GATS-2016-17], 28.6 per cent [26.7 crore] adults in the country, aged 15 and above currently use tobacco in some form and the

prevalence of any form of tobacco use has decreased significantly by 6 percentage points from 34.6 per cent [2009-10] to 28.6 per cent [2016-17]. the Committee are of firm opinion that any amendment to the COTPA should contain more stringent provisions so that the target for relative reduction in the prevalence of tobacco use, as envisaged in the National Health Policy of 2017, be brought down to 30 per cent by 2025. The Committee, therefore, disapprove the deletion/omission of words 'indication of nicotine and tar contents', as contained in Section 10, in the proposed Amendment Bill.

On the aspect of insertion of a new Section as 10A in the Amendment Bill, the Committee has meticulously considered the objective of said Though, the proposed insertion has not shaken the basic framework of the COTPA, 2003, the Committee would like to point out that the subject of Section 10 relates to 'Size of Letters and Figures' and the proposed insertion of a new Section primarily deals with illicit cigarette or any other tobacco products. As such, the said insertion, if effected, would be out of context and might lead to misinterpretation by various stakeholders. The Committee, therefore, recommend that the said insertion could find place in the Amendment Bill, under a distinct 'Heading'.

**G. Testing Laboratory for nicotine and tar contents
Substitution Section 11**

A comparative analysis of the Section 11 of the COTPA, 2003 and the proposed substitution vide COTPA (Amendment) Bill, 2020 relating to Testing Laboratory for nicotine and tar contents' is, as under:-

Section 11 of COTPA, 2003	Substitution in COTPA (Amendment) Bill, 2020
For purposes of testing nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.	For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory or laboratories as the Government may deem necessary.

The Committee note that the proposed substitution of Section 11 of COTPA, 2003 also relates to deleting the aspect of 'nicotine and tar contents in cigarettes' and substituting it with 'contents and emissions in cigarettes'. In this regard, the Committee wish to point out that Section 11 is one of the determining factors for protecting the passive smokers, including women and children. It is also an acknowledged fact that the testing laboratories could measure 'emission' of cigarettes only when they are able to unambiguously establish the 'nicotine and tar contents'. In the opinion of the Committee, any hasty deletion of 'tar and nicotine contents' and substituting it

by 'contents and emissions' would transform the said Amendment Bill and opaque document - fraught with inconsistencies. The Committee, therefore, disapprove the substitution of Section 11 in the Amendment Bill, 2020 and recommend that status quo should be maintained.

(H) Power to give option to pay costs in lieu of confiscation - Deletion of words in Section 15(2)

A comparative analysis of the Section 15(2) of the COTPA, 2003 and the proposed deletion of words vide COTPA (Amendment) Bill, 2020 relating to 'Power to give option to pay costs in lieu of confiscation' is, as under:-

Section 15(2) of COTPA, 2003	Deletion in COTPA (Amendment) Bill 2020
On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package.	On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and incorporated on each such package.

The Committee note that the words 'nicotine and tar contents' are again proposed to be deleted/omitted in the Amendment Bill. The Committee have systematically analysed all the provisions of COTPA, 2003 vis-a-vis the proposals contained in the Amendment Bill and find that the entire exercise of said amendment seems to have been centred towards deleting the 'tar and nicotine contents', wherever this phrase appears in any of the Sections. The requirement of retaining 'nicotine and tar contents', as analysed in the foregoing paragraphs, therefore, also holds good in the context of Section 11. The Committee, thus, recommend that any re-wording of the relevant Section by way of deleting 'nicotine and tar contents' in the Amendment Bill should not be carried out and status quo should be maintained.

(I) Power to add any tobacco products in the Schedule - Substitution of Section 30 and insertion of new Section as 30(A)& (B)

A comparative analysis of substitution of Section 30 of the COTPA, 2003 and the proposed insertion of a new Section vide COTPA (Amendment) Bill, 2020 relating to 'Power to add any tobacco products in the Schedule' is, as under:-

Section 30 of COTPA, 2003	Substitution and Insertion in COTPA (Amendment) Bill, 2020

<p>The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated</p>	<p>The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to, or omit from, the Schedule any tobacco products and thereupon the Schedule shall be deemed to have been amended accordingly</p>
<p>under this Act and thereupon the Schedule shall in to application to such products be deemed to be amended accordingly</p>	<p><u>Insertion of a new Section 30A</u> Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p> <p><u>Insertion of a new Section 30B</u> The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products.</p>

The Committee find that Section 30 of COTPA, 2003 relates to power of the Central Government to add any tobacco products in the Schedule, whereas, in the Amendment Bill, it has been proposed by the Ministry to omit any tobacco product from the Schedule. The Committee also note that pursuant to Section 2(p) of the COTPA, 2003, a Schedule has been appended, which includes tobacco products, viz, Cigarettes, Cigars, Cheroots, Beedis, Cigaretta Tobacco, Pipe Tobacco and Hookah Tobacco, Chewing Tobacco, Snuff, Pan Masala, Gutkha and Tooth Powder containing Tobacco.

In this context, the moot question that the Committee is required to address is whether there should be provisions in the law for giving powers to the executive to delete/omit any tobacco product from the Schedule by way of subordinate legislation. The two principal factors of COTPA, 2003 are adding any other tobacco product and vice versa. Since deletion of a specific tobacco product from the Schedule falls within the domain of Legislature, which is invariably preceded by threadbare discussions, the Committee are not able to comprehend as to why our Executive Authorities, in the 21st century, persist with such an anomalous practice. Moreover, it is a common logic that in case, the Ministry 'omits' any tobacco product

from the Schedule, anybody could draw an inference that after such deletion, a specific tobacco product' would now be an item of 'food', which could even be consumed by women and children. The Committee, thus, disapproved the relevant amendment to Section 30 of COTPA, 2003 as it gives wide discretion to the Executive Authorities. Accordingly, the proposed substitution of Section 30 should not be effected in the Amendment Bill.

On the aspect of Insertion of a new Section(s) as 30A & 30B in the Amendment Bill, the Committee find that the language and contents of the both the proposed new Sections are contradictory. On the one hand, Section 30A emphasises that 'the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained therein contained in any other law, whereas, on the other hand, Section 30B makes a conflicting clarification that 'the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law...prohibiting trade and commerce, production, supply and distribution of cigarettes and any other products.

In this context, the Committee are able to easily make a guess on the intent of inserting a new Section as 30B which is, perhaps, an attempt to legalize the provisions contained in Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restriction on Sales) Regulations, 2011, which is presently under active examination by the Committee on Petitions, Lok Sabha. Since the Committee have their own reservations on the aspect of 'excessive delegation by the Executive Authorities' and also the fact that FSS Act/Regulations should be confined to the aspects connected with 'Food' and 'Cigarettes and other Tobacco Products' to be dealt with only under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Committee recommend that the a new Section 30A could be inserted by adding the following words:-

"In case of any conflict vis-a-vis any other law in regard to 'cigarettes and other tobacco products, the provisions contained in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act would prevail."

As regards the proposal for insertion of a new Section 30B, the Committee recommend that this should not form part of the Amendment Bill, 2020.

(J) Power of Central Government to make rules - Substitution of Section 31(2) (b) and deletion of words/phrase in Section 31(2)(d)

A comparative analysis of substitution of Section 31(2)(b) of the COTPA 2003 and the proposed deletion of words/phrase in Section 31(2)(d) vide COTPA

(Amendment) Bill, 2020 relating to 'Power of Central Government to make rules' is, as under:-

Section 31(2) of COTPA, 2003	Substitution and deletion of words/phrase in COTPA (Amendment) Bill, 2020
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31(2)(b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7.	31(2) (b) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked or traced, under to sub-section (2) of section 10A. (d) specify the height of the letter or figure or both to be used in specified warning in cigarettes or other tobacco products under section 10.
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The Committee note that the proposal to amend Section 31(2) (b) & (d) in the Amendment Bill, 2020 is primarily to delete the words/phrase 'nicotine and tar contents' in cigarettes or other tobacco products. Since the relevant Section in COTPA, 2003 relates to 'Power of Central Government to make rules' and the Committee on Petitions, after due diligence and exhaustive study of the subject under examination, have already impressed upon the Ministry to retain the words/phrase, i.e., 'nicotine and tar contents' in the Amendment Bill, 2020, the Committee recommend that status quo should be maintained.

COTPA (Amendment) Bill, 2020 - An Overview
18. The Committee note that the proposed Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020, purportedly, seeks to effectively address the harmful effects of cigarettes and other tobacco products in the country by making substantive changes in the COTPA, 2003, for which it has been hosted in the public domain for pre-legislative consultations, whereby, suggestions of the public were invited on the same. In the midst of this, pursuant to the receipt of representations, the Committee got an opportunity to participate in the said pre- legislative process.

19. The Committee are happy to note that during the deliberations with the representatives of the Ministry of Health & Family Welfare, especially, with the senior officers, looking after the affairs of Tobacco Division, the Secretary, Ministry of Health & Family Welfare was candid to convey that not only the comments and suggestions received from the public on the draft Bill would be given due consideration, but also the guidance and suggestions given by the Committee on Petitions, on

19. As per the Committee on Petitions Branch, Lok Sabha Secretariat's OM No. 11/CPB/2021/R-226 dated 17th March, 2021, it was stated that;

The Committee on Petitions, Lok Sabha, during its sitting held on 17th March, 2021 have, therefore, expressed that consequential action on the Cigarettes and

<p>this issue, would be appropriately looked into. Encouraged by this, the Committee on Petitions vide their communication dated 17 March, 2021 urged the Ministry of Health & Family Welfare to finalize the proposed Amendment Bill i.e., the pre-legislative consultation only after they are able look into all the aspects/intricacies connected with the regulation of cigarettes and other tobacco products.</p>	<p>other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 be initiated by the Ministry of Health & Family Welfare only when the Action Taken Report on the 68th Report (on the representation of Shri Sanjay Bechan is finalized and presented to Lok Sabha.</p>
<p>20. It was against this backdrop that the Committee not only invited the representationist to depose before but also held a series of discussions with the representatives of the Ministry of Health & Family Welfare. This elaborate exercise has set the stage for examining almost all the 'Sections' of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 which are now proposed to be amended/omitted/substituted by way of proposed Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill.</p>	<p>20-23. It is submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. It is also submitted that this Ministry has been providing the similar replies for the Parliament Assurances on COTPA Amendment (total 9 in no. - 4 of Lok Sabha and 1 (4 clubbed together) of Rajya Sabha), VIP representations and Parliament Questions. Hence, we may not have different response/s to the recommendations of Committee's 41st Report against the responses given for Parliamentary questions; assurances and VIP references. It would be premature to frame any different reply to the draft COTPA Amendments proposed in the draft Bill, 2020, which are still in the pre-legislative consultative stage.</p>
<p>21. The Committee on Petitions, while undertaking the onerous exercise of threadbare examination of the Amendment Bill, relied upon the perceptions, perspectives, priorities and problems of the affected persons/stakeholders along with the deficiencies, if any, the effective implementation of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 vis-a-vis weighing the necessity of bringing an amended version of the Act.</p>	<p>Further, considering the mandate of the Ministry to improve public health as a priority the draft bill is essential for bringing suitable changes in the act so as to enhance the tobacco control measures and to reduce the tobacco burden in the country.</p>
<p>22. The Committee were, therefore, able to identify ten 'key issues' which were incorporated in the Amendment Bill and after meticulously examining each of them in terms of legal provisions, jurisprudence and its implementation at the ground level, suitable observations/recommendations along with cogent reasoning have been given in the preceding paragraphs. However, during the course of examination, the Committee have noticed that the Amendment Bill, 2020 is fraught with various deficiencies and inconsistencies vis-a-vis the existing provisions contained in various Sections of COTPA, 2003. The Committee are apprehensive that in case, the Ministry proceeds further by way of concluding their pre-legislative consultations and get into the second stage of finalizing the Amendment Bill, it would not be termed as a 'good piece of legislation' by the majority of stakeholders and public at large. At that stage, even the Ministry of Law and Justice, Department of Legal Affairs might raise similar aspects which have currently been noticed by the Committee and appropriately dealt with in the preceding paragraphs.</p>	<p>Efforts will be made to assimilate valuable suggestions from stakeholders and also to protect tobacco control policies from influence of tobacco industries as per this Ministry's 'Code of Conduct for Public Officials' issued in compliance with the article 5.3 of WHO FCTC.</p>
<p>23. The Committee, therefore, recommend that the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce,</p>	

Production, Supply and Distribution) (Amendment) Bill, 2020 should be withdrawn and thereafter re-examined, with a new perspective by invariably following the spirit of 'harmony' and 'balance' in place of 'confrontation' and 'suspicion'. After completion of this exercise, the draft Bill should be re-circulated for eliciting the comments/views of public. While undertaking such re-examination, the Ministry of Health & Family Welfare should also take into account the observations/recommendations made by the Committee in this Report so that formulation of a new Amendment Bill should not be unnecessarily challenged by the stakeholders/public before the Court of Law for being 'opaque' and 'asymmetrical'. The Committee would like to be apprised of the action taken by the Ministry at the right earnest.

FAX: 23010755

PARLIAMENT HOUSE ANNEXE
NEW DELHI-110001COMMITTEE ON PETITIONS BRANCHNo. 12/CPB/41/2022
(LAFEAS-CP016/38/2022-COPIE-220442)

Dated: 16 December, 2022

OFFICE MEMORANDUM

Subject: Implementation of the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Forty First Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) and other matter connected therewith or incidental thereto.

The undersigned is directed to forward herewith a copy each of Hindi and English versions of the 41st Report of the Committee on Petitions (Seventeenth Lok Sabha) presented to the House on 13 December, 2022.

2. Attention of the Ministry of Health and Family Welfare is invited to the observations/recommendations of the Committee on Petitions contained in paras 6 to 23 of the Report (English and Hindi versions). The full text of the Report is also available on the website of Lok Sabha, namely, www.loksabha.nic.in—Committees—Introduction—Other Parliamentary Standing Committees—Petitions—Reports Presented. The following procedure may kindly be followed for communicating information regarding action taken or proposed to be taken on the observations/recommendations contained in the Report:-

- (i) Full text of each recommendation/conclusion as given in the body of the Report with the paragraph number may be reproduced in the proforma (Annexure-I) before stating the action taken by the Government on the recommendation.
- (ii) Action Taken Replies may be furnished both in Hindi and English versions in full scape size paper.
- (iii) Each recommendation may be dealt with on a new page.
- (iv) At the end of the reply to each recommendation, the number and date of the communication under which reply is forwarded to this Secretariat may be indicated.
- (v) Replies to all the recommendations made in the Report may be sent to this Secretariat in one batch alongwith a distinctive cover page (Annexure-II) and contents page to facilitate easy reference.
- (vi) Replies to the recommendations should be comprehensive and not inconclusive, vague or couched in general terms like 'noted' or 'accepted' etc.
- (vii) Replies to all the recommendations may also be sent in soft copy (in MS word also) to comm-petitions-1ss@sansad.nic.in.

3. The Ministry of Health and Family Welfare are requested to furnish the Action Taken Replies on the recommendations contained in the 41st Report (17th Lok Sabha) of Committee on Petitions, Lok Sabha for consideration of the Committee expeditiously.

Encl: As above

Ministry of Health & Family Welfare
(Shri Rajesh Bhushan - Secretary)
Government of India,
'C' Wing, Nirman Bhawan,
New Delhi - 110001

(TENZIN GYALTSEN)
DEPUTY SECRETARY
Tel: 23035780

'D' Branch may please issue

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**MINUTES OF THE THIRTIETH SITTING OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

The Committee met on Monday, 18 December, 2023 from 1500 hrs. to 1715 hrs. in Committee Room No. 3, Parliament House Annexe Extension, New Delhi.

PRESENT

Shri Sunil Kumar Singh - In the Chair

MEMBERS

2. Shri Brijendra Singh
3. Shri Sushil Kumar Singh
4. Shri Manoj Kumar Tiwari
5. Shri Prabhubhai Nagarbhai Vasava
6. Shri Rajan Baburao Vichare

SECRETARIAT

1. Shri Raju Srivastava - Joint Secretary
2. Shri Tenzin Gyaltzen - Deputy Secretary

WITNESSES

2. At the outset, in the absence of the Chairperson, the Committee under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha chose Shri Sunil Kumar Singh to act as Chairperson for the sitting.

3. Thereafter, the Chairperson welcomed the Members to the sitting of the Committee.

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15. The Committee, thereafter, took up for consideration the following draft Action Taken Reports:-

- (i) *** *** *** ***
- (ii) *** *** *** ***
- (iii) *** *** *** ***

(iv) Action Taken Report on the action taken by the Government on the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Forty First Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) and other matter connected therewith or incidental thereto;

- (v) *** *** *** ***
- (vi) *** *** *** ***
- (vii) *** *** *** ***
- (viii) *** *** *** ***

16. After discussing the above mentioned eight draft Action Taken Reports in detail, the Committee adopted these Reports without any modification and authorised the Chairperson to finalise the draft Action Taken Reports and present the same to the House during the ensuing Session.

- 17. *** *** *** ***
- 18. *** *** *** ***

The Committee, then, adjourned.

*** *Does not pertain to this Report.*