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# ASSESSMENT OF LEGAL METROLOGY ACT, 2009 TO SUPPORT TOBACCO CONTROL IN INDIA

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**Developed with support from WHO Country Office for India**

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# PREFACE

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With 268 million active tobacco users, India has been ranked second in tobacco consumption. The highest rates of tobacco use have made India the world capital of lung and oral cancer. Tobacco-related cancers account for 27% of the country's cancer burden. The use of tobacco has become a matter of concern for the country which is costing the health and pockets of the people.

The World Health Organization and the National Governments are very serious about the issue of tobacco menace. Various legislations at the national and international levels have been made to curb and control tobacco usage. But, due to jurisdictional issues, lack of awareness, and ignorance of the law, the situation is not being properly addressed.

To discourage tobacco use, prohibiting the loose sale of tobacco products is an effective measure. The ban of loose tobacco products reduces the easy accessibility and affordability of tobacco. Also in loose sales, the consumer does not get to see the mandatory health warnings on packages.

The WHO Framework Convention on Tobacco Control (WHO FCTC) first-ever international public health treaty focusing on the global issue of tobacco menace provides for a ban on the sale of cigarettes individually or in small packets. India being party to the WHO FCTC has ratified it in the year 2004. Further loose and illicit sale of tobacco products is a contravention of Section 7 of the COTPA, 2003 and its accompanying Rules. Moreover, such sale also contravenes the provision of the Legal Metrology (Packaged Commodities) Rules, 2011 under the Legal Metrology Act, 2009.

An attempt to familiarise everyone with relevant provisions of these legislations has been made through this book. An analysis of the Legal Metrology Act, 2009 with tobacco control laws made in this book, may facilitate a new tool for controlling and curbing tobacco usage in India.

It's my pleasure to express my deep sense of gratitude and indebtedness to Mr. Praveen Sinha, National Professional Officer, TFI for his valuable contributions and suggestions for this book. I am also grateful to, WHO-Country Office for India for their support and encouragement in bringing out this book. I am very thankful to Mr. Ranjit Singh, Senior Law Expert, Advocate Supreme Court of India, New Delhi; Ms. Purva Singh, Legal Consultant WHO-India; Mr. Akshay Yadav, Teaching Associate National Law School of India University, Bengaluru and Mr. Arjun Singal, Student Researcher, National Law School of India University, Bengaluru for their support. I also wish to express my sincere thanks to the Vice chancellor and the Registrar of National Law School of India University, Bengaluru for being helpful, kind and supportive all the times. I truly believe that this book will be very helpful for policymakers, enforcement officers, consumer activists, academicians, researchers, legal fraternity, social workers, and the concerned stakeholders, and it gives effect to the spirit of the law.

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# EXECUTIVE SUMMARY

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Tobacco is the foremost preventable cause of death and disease in the world today, killing half of the people who use it. Tobacco use<sup>1</sup> is a major risk factor for the four main Non-communicable Diseases (NCDs) and puts people with these conditions at higher risk for developing severe illness when affected by COVID-19. The use of tobacco products results in unparalleled health and socio-economic losses in all countries<sup>2</sup>. The economic burden of tobacco, as per WHO's Study on Economic Costs of Diseases and Deaths Attributable to Tobacco use in India, in 2017-18, is estimated to be a staggering INR 1,773.4 billion, i.e. 1% of the GDP in 2017-18, while the tax collected from tobacco products in the previous year was only 12.2% of this economic cost<sup>3</sup>.

Evidence suggests that the availability of single cigarettes facilitates smoking among youth and people with fewer resources and that having greater access of single cigarettes, reduces the likelihood that smokers will make a quit attempt. As per the Global Adult Tobacco Survey -India (2016-17) (GATS 2), two-thirds of cigarette smokers, one-sixth of bidi smokers and one-fourth of smokeless tobacco users buy their products in the loose form (not in packs).

The World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC)<sup>4</sup>, the first treaty negotiated under the auspices of WHO, was developed to implement evidence-based strategies to reduce tobacco consumption across the world. This Convention and its protocols aim to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. India has duly ratified the convention on 5<sup>th</sup> February 2004.

Article 16(2) of the WHO Framework Convention on Tobacco Control mandates that "each party shall endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors". Further, WHO has also highlighted that tobacco and related industries manipulate youth by selling single stick cigarettes and other tobacco and nicotine products near schools, making it cheap and easy for school children to access tobacco and nicotine products.

Illicit trade of tobacco products is another major global concern that threatens public health gains of tobacco control and the outcomes of the WHO FCTC with multi-fold implications on health, economy and overall governance. Illicit trade in tobacco products undermines national pricing policies, deprives governments of revenue and makes international brands available at affordable prices, fuelling the spread of the tobacco epidemic. Article 15 of the WHO FCTC and the Protocol negotiated thereunder specifically aim at eliminating illicit trade in tobacco products, including their smuggling, illicit manufacturing and counterfeiting in the country through a set of legal, administrative and other policy measures. The Government of India has acceded to the protocol in 2018 and is now a Party to it.

<sup>1</sup>WHO, MPOWER: A Policy Package To Reverse The Tobacco Pandemic (2008) [https://www.who.int/tobacco/mpower/mpower\\_english.pdf](https://www.who.int/tobacco/mpower/mpower_english.pdf)

<sup>2</sup>World Bank Group, Confronting Illicit Tobacco Trade – A Global Review of Country Experiences (2019)

<sup>3</sup><https://academic.oup.com/ntr/article-abstract/23/2/294/5893458?redirectedFrom=fulltext>

<sup>4</sup>[https://www.who.int/fctc/text\\_download/en/](https://www.who.int/fctc/text_download/en/)

The Legal Metrology Act, 2009 (the 'LM Act') , which came into force on 13<sup>th</sup> January 2010, pertains to the science of measurements. This Act seeks to establish standards of weights and measures to ensure that trade of all goods which are sold on the basis of their weight, measures or numbers, is on the basis of these established standards.

In this background, it is critical to analyse the provisions of the Legal Metrology Act, 2009<sup>5</sup> and the Legal Metrology (Packaged Commodities) Rules, 2011<sup>6</sup>, with respect to the regulation of tobacco products along with the relevant case laws. Specifically, there is a need to study the implications of the Legal Metrology Act, 2009 and the Rules mentioned above to regulate the sale of tobacco products to curb— a) loose sale of cigarettes or other tobacco products b) illicit trade in tobacco products.

Based on an in-depth legal analysis of the Legal Metrology Act, 2009, its Rules and the relevant case laws, it is recommended that:

1. The Legal Metrology Officers need to:
  - Rigorously enforce Section 18 of the Legal Metrology Act, 2009, which mandates declarations to be made on all pre-packaged commodities i.e. all tobacco product packages to be manufactured, packed, sold, imported, distributed, delivered, offered, exposed or possessed for sale, with all the prescribed declarations and are in standard quantities or number, as mentioned in the package.
  - Ensure that no pre-packaged commodity, including cigarettes, cigars, bidis etc., are sold in loose form or single sticks, after tearing the package, in contravention of Section 18 of the Legal Metrology Act, 2009 read with Rule 4 (on regulation for pre-packing and sale etc. of commodities in packaged form), and Rule 6 (specifying declarations to be made on every package) of the Legal Metrology (Packaged Commodities) Rules, 2011.
  - Ensure that all pre-packaged commodities, including tobacco products (except bidi), must contain the following information on the package: the name and address of the manufacturer or importer or packer, quantity of the product, month and year of manufacturing or pre-packing or importation and the retail sale price (except bidi), the name, address, telephone number, e-mail address of the person who can be or the office which can be contacted, in case of consumer complaints.
  - Take appropriate action against persons selling tobacco products (including cigarettes, cigars, bidis etc.) in contravention of Section 18 of the Legal Metrology Act, 2009 read with Rule 4 and Rule 6 and penalise violations under Rule 32 of the Legal Metrology (Packaged Commodities) Rules, 2011.
  - Also, enforce the aforementioned provisions of the Legal Metrology Act, 2009 on all imported pre-packed products, including tobacco products, sold in India- any violations to be penalised under Section 36 and Section 48 of the Legal Metrology Act, 2009.
2. All non-compliant tobacco products (including imported products), to be seized under Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 and must be destroyed in compliance with pollution control laws, not auctioned /released in the domestic market.
3. Government of India may consider launching extensive awareness programs and dissemination of the information on the applicability of Legal Metrology laws for

<sup>5</sup><https://www.indiacode.nic.in/bitstream/123456789/2102/1/201001.pdf>

<sup>6</sup><https://megweights.gov.in/acts/Legal-Metrology-Packaged-Commodities-Rules-2011.pdf>

countering loose and illicit sale of tobacco products. In addition, the Ministry of Consumer Affairs may take measures to sensitise manufacturers and retailers. States can also issue orders for effective enforcement of the Legal Metrology Act, 2009.

## **Excerpts**

### **Legal Metrology Act 2009 (came into force on 13<sup>th</sup> January 2010)**

Section 2. Definitions, -

- (1) "pre-packaged commodity" means a commodity which, without the purchaser being present, is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.

Section 18. Declarations on pre-packaged commodities -

- (1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.
- (2) Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

### **Legal Metrology (Packaged Commodities) Rules 2011 (came into force on 1<sup>st</sup> April 2011).**

Rule 4. Regulation for pre-packing and sale etc. of commodities in packaged form—

- (1) On and from the commencement of these rules, no person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label is securely affixed thereto, such declarations as are required to be made under these rules.
- (2) when one or more packages intended for retail sale are grouped together for being sold as a retail package on promotional offer, every package of the group shall comply with provision of rule 6.

Rule 6. Declarations to be made on every package –

- (1) Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to-
  - (a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned

Explanation I. - If any name and address of a company is mentioned on the label without any qualifying words 'manufactured by' or 'packed by', it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly;

Explanation II. - If the brand name and address of the brand owner appear on the label as a marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

Explanation III. - In respect of packages containing food articles, the provisions of this clause shall not apply, but the provisions of, and the requirements specified in the Food Safety and Standards Act, 2006 (34 of 2006) and the rules made thereunder shall apply;

- (a) The name of the country of origin or manufacture or assembly in case of imported products shall be mentioned on the package;
- (b) The common or generic names of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be mentioned on the package.
- (c) The net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package shall be mentioned.
- (d) The month and year in which the commodity is manufactured shall be mentioned in the package:  
Provided that nothing in this clause shall apply if a provision in this regard is made in any other law.
- (e) the retail sale price of the package [shall clearly indicate that it is the maximum retail price inclusive of all taxes and shall be in Indian currency ;

...

Provided that -

- (A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on-
  - (i) any package containing bidi or incense sticks;
- (C) no declaration as to the retail sale price shall be required to be made on
  - (I) any package containing bidi;



# I. INTRODUCTION

Tobacco is the foremost preventable cause of death and disease in the world today, killing half of the people who use it.<sup>1</sup> As per the Global Adult Tobacco Survey-India (GATS2) India is home to over 27 crore tobacco users and globally it is the second largest producer and consumer of tobacco products. Available estimates in India show that smoking-attributable annual deaths<sup>2</sup> were about 930,000, while the smokeless tobacco (SLT) attributable annual deaths<sup>3</sup> were about 350,000, together accounting for about 1,280,000 deaths per year or approximately 3500 deaths every day.

Tobacco use is a major risk factor for the four main Noncommunicable diseases (NCDs) — cardiovascular disease, cancer, chronic lung disease and diabetes, which puts people with these conditions at higher risk for developing severe illness when affected by COVID-19.

Use of tobacco products results in unparalleled health, economic, and social losses in all countries.<sup>4</sup> A WHO study titled “Economic Costs of Diseases and Deaths Attributable to Tobacco use in India (2017-18)” has estimated that total annual economic cost from all diseases and deaths attributable to tobacco use in India in 2017-18 was a staggering INR 1,773,410 million. The estimated economic cost of tobacco was 1% of the GDP in 2017-18, while the tax collected from tobacco products in the previous year was only 12.2% of this economic cost. This is a major drain on the national exchequer.<sup>5</sup>

## Framework Convention on Tobacco Control (FCTC)

The Framework Convention on Tobacco Control (FCTC) is the first treaty negotiated under the auspices of the WHO. The WHO FCTC was developed to implement efficient methods to reduce tobacco consumption across the world. The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. It enlists key strategies for reduction of demand and supply of tobacco. The Government of India, signed the WHO FCTC on 10<sup>th</sup> September 2003 and ratified the treaty on 5<sup>th</sup> February 2004, thereby confirming its obligation to perform and carry out the stipulations contained in the treaty.

<sup>1</sup>WHO, MPOWER: A Policy Package To Reverse The Tobacco Pandemic (2008)  
<[https://www.who.int/tobacco/mpower/mpower\\_english.pdf](https://www.who.int/tobacco/mpower/mpower_english.pdf)> accessed 4 September 2020

<sup>2</sup>Jha P, Jacob B and Gajalakshmi V et al., 'A Nationally Representative Case-Control Study of Smoking and Death in India' [2008] 358(10) New England Journal of Medicine 1137-1147

<sup>3</sup>Sinha DN, Palipudi KM, Gupta PC, et al 'Smokeless tobacco use: a meta-analysis of risk and attributable mortality estimates for India' [2014] 51(5) Indian J Cancer 73-77

<sup>4</sup>World Bank Group, Confronting Illicit Tobacco Trade – A Global Review of Country Experiences (2019)

<sup>5</sup><https://academic.oup.com/ntr/advance-article-abstract/doi/10.1093/ntr/ntaa154/5893458?redirectedFrom=fulltext>

## II. SINGLE STICK OR LOOSE SALE OF TOBACCO PRODUCTS AND ILLICIT TRADE

### Single Stick or Loose Sale of Tobacco Products

Evidence suggests that availability of single cigarettes facilitates smoking among youth and people with fewer resources, and that having greater accessibility of single cigarettes reduces the likelihood that smokers will make a quit attempt.<sup>6,7,8</sup>

Single stick cigarette sales facilitate experimentation among youth who have not yet become regular smokers.<sup>9</sup> The sale of single sticks also undermines existing effective tobacco control policies by limiting an individual's exposure to health warning labels and lessening the impact of tobacco tax increases on cigarette packs.<sup>10</sup> Thus the sale of loose tobacco products undermines the tax policies, increases affordability and reduces the impact of the pack warnings. It also increases affordability and accessibility of the products, specifically for the youth.

As per the Global Adult Tobacco Survey – India (2016-17), two-thirds of cigarette smokers, one sixth of bidi smokers and one-fourth of smokeless tobacco users buy their products in the loose form (not in packs). The WHO Framework Convention on Tobacco Control (FCTC) Article 16(2) mandates that *“each party shall endeavor to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors”*. Further WHO has also highlighted that tobacco and related industries manipulate youth by selling single stick cigarettes and other tobacco and nicotine products near schools, which makes it cheap and easy for school children to access tobacco and nicotine products.<sup>11</sup>

### Illicit Trade in Tobacco Products

Illicit trade of tobacco products is a major global concern with multi-fold implications on public health, economy and overall governance. It threatens public health gains of tobacco control and the outcomes of the WHO FCTC<sup>12</sup>. There is a growing body of evidence to

<sup>6</sup>Landrine H, Klonoff EA, Alcaraz R., 'Minors' Access to Single Cigarettes in California' [1998] 27 Prev Med. 503-505

<sup>7</sup>Klonoff EA, Fritz JM, Landrine H, Riddle R, Tully-Payne L., 'The Problem and sociocultural context of single cigarette sales' [1994] 271 JAMA 618-620

<sup>8</sup>Hall MG et al. 'Increasing availability and consumption of single cigarettes: trends and implications for smoking cessation from the ITC Mexico Survey' [2015] 24 Tobacco Control 64-70

<sup>9</sup>Pranay Lal et al. 2015. The Single Cigarette Economy in India - a Back of the Envelope Survey to Estimate its Magnitude [2015] 16(13) Asian Pac J Cancer Prev 5579-5582

<sup>10</sup>Ibid

<sup>11</sup><<https://www.who.int/news-room/events/detail/2020/05/31/default-calendar/world-no-tobacco-day-2020-protecting-youth-from-industry-manipulation-&-preventing-them-from-tobacco-&-nicotine-use>> accessed 4 September 2020

suggest that illicit trade in tobacco products is fuelling the spread of the tobacco epidemic. It undermines national pricing policies, deprives governments of revenue and makes international brands available at affordable prices. Above all, it undermines legal restrictions and health regulations such as mandatory health warnings and sales to minors. Illicit trade in tobacco products contributes to making tobacco products relatively more affordable thus undermining the tobacco tax policy while also leading to increased consumption of these products which finally culminates in increased disease burden and untimely death.<sup>13</sup>

Article 15 of WHO FCTC and the Protocol negotiated thereunder aims at eliminating illicit trade in tobacco products, including their smuggling, illicit manufacturing and counterfeiting in the country through a set of legal, administrative and other policy measures. The Government of India has acceded to the protocol in 2018 and is now a Party to it.<sup>14</sup>

Reducing illicit trade in tobacco products would contribute significantly to the effectiveness of measures implemented to reduce tobacco use and the death and disease that it causes, significantly deliver substantial revenue to the government and strengthen tax administration. Thus, reducing illicit trade in tobacco products is critical whether viewed from the perspective of public health, public finance, governance, or equity.

<sup>13</sup>WHO FCTC Secretariat, The Tobacco Industry and illicit Trade in Tobacco Products <[https://www.who.int/fctc/publications/The\\_TI\\_and\\_the\\_Illicit\\_Trade\\_in\\_Tobacco\\_Products.pdf?ua=1](https://www.who.int/fctc/publications/The_TI_and_the_Illicit_Trade_in_Tobacco_Products.pdf?ua=1)> accessed 4 September 2020

<sup>14</sup>Van Walbeek C et al, 'Price and Tax Measures and Illicit Trade in the Framework Convention on Tobacco Control: What We Know and What Research Is Required' [2013] 15(4) Nicotine and Tobacco Research 767, 776

<sup>15</sup><https://nhm.gov.in/index1.php?lang=1andlevel=3andsublinkid=1126andlid=636>

<sup>16</sup>Criminal Appeal No. 1328-1329/2019

# III. THE LEGAL METROLOGY ACT 2009

The Legal Metrology Act, 2009 came into force on 13<sup>th</sup> January 2010 by repealing the two old legislations, namely - the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985. Metrology is the science of measurement. Accordingly, the Legal Metrology Act, 2009 seeks to establish standards of weights and measures and to ensure that trade of all goods which are sold on the basis of their weight, measures or numbers is on the basis of these established standards. As per the recent decision of the honorable Supreme Court in *State of UP v. Aman Mittal*<sup>15</sup>, any offence relating to weights and measures (such as tampering or altering the standards) will be covered under the Legal Metrology Act, 2009 and not under the Indian Penal Code 1860.

Accordingly, this section covers the important provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011, some important issues pertaining to regulation of tobacco products and relevant case laws.

## Important Provisions

For the purpose of control of sale of tobacco products, particularly loose sticks of cigarettes, the important provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 are given below:

## Legal Metrology Act, 2009 (came into force on 13<sup>th</sup> January 2010)

### Section 2.

#### Definitions, -

- (1) "pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.

*Therefore, tobacco products are covered under the LM Act as they are a "pre-packaged commodity".*

#### Section 18. Declarations on pre-packaged commodities, -

- (1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

- (2) Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

*Therefore, any person shall be prohibited from manufacturing, packing, selling, importing, distributing, delivering, offering, exposing or possessing for sale any tobacco product package that does not conform with the requirements given in the LM Act.*

### **Section 36. Penalty for selling, etc., of non-standard packages, -**

Whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

*Therefore, any manufacturer or seller of tobacco products who does not comply with the legal requirements will be held liable under Section 36 of the LM Act. For the first offence, a fine of upto INR 25,000 can be imposed. For the second offence, a fine of upto INR 50,000 can be imposed. For any subsequent offence, a fine ranging from INR 50,000 to INR 1 lakh or imprisonment for upto one year or both can be imposed.*

## **Legal Metrology (Packaged Commodities) Rules, 2011**

The Legal Metrology (Packaged Commodities) Rules, 2011 came into force on 1<sup>st</sup> April 2011.

### **Rule 4. Regulation for pre-packing and sale etc. of commodities in packaged form –**

- (1) On and from the commencement of these rules, no person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label is securely affixed thereto, such declarations as are required to be made under these rules.
- (2) when one or more packages intended for retail sale are grouped together for being sold as a retail package on promotional offer, every package of the group shall comply with provision of rule 6.

*Therefore, all tobacco products must be packed in a package which has complied with all requirements regarding the declarations under the LM Act and incumbent Rules thereunder.*

### **Rule 6. Declarations to be made on every package –**

- (1) Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to-
- (a) the name and address of the manufacturer, or where the manufacturer is not the packer,

the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned

**Explanation I.** - If any name and address of a company is mentioned on the label without any qualifying words 'manufactured by' or 'packed by', it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly;

**Explanation II.** - If the brand name and address of the brand owner appear on the label as a marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

**Explanation III.** - In respect of packages containing food articles, the provisions of this clause shall not apply, but the provisions of, and the requirements specified in the Food Safety and Standards Act, 2006 (34 of 2006) and the rules made thereunder shall apply;

- (a) The name of the country of origin or manufacture or assembly in case of imported products shall be mentioned on the package;
- (b) The common or generic names of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be mentioned on the package.
- (c) The net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package shall be mentioned.
- (d) The month and year in which the commodity is manufactured shall be mentioned in the package:  
Provided that nothing in this clause shall apply if a provision in this regard is made in any other law.
- (e) The retail sale price of the package [shall clearly indicate that it is the maximum retail price inclusive of all taxes and shall be in Indian currency ;
- (f) Where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different piece shall be mentioned.
- (g) Such other matter as are specified in these rules:

**Provided that -**

- (A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on-
  - (i) any package containing bidi or incense sticks;

- (C) no declaration as to the retail sale price shall be required to be made on
- (i) any package containing bidi;

**Explanation I:** The month and the year in which commodity is pre-packed may be expressed either in words, or by numerals indicating the month and the year, or by both.

- (2) Every package shall bear the name, address, telephone number, e-mail address of the person who can be or the office which can be or the office which can be contacted, in case of consumer complaints.<sup>16</sup>
- (3) It shall not be permissible to affix individual stickers on the package for altering or making declaration required under these rules:

Provided that for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, as the case may be, on the label of the package.

- (4) It shall be permissible to use stickers for making any declaration other than the declaration required to be made under these rules.

- (4) Nothing in this rule shall preclude a manufacturer or packer or importer to declare the following on the package, in addition to the mandatory declarations-

- (a) Barcode or GTIN or QR Code;
- (b) 'e-code' for net quantity assurance of the commodity and other required declarations, after obtaining the same in the manner as specified by the Central Government;
- (c) logos of Government schemes, such as Swatch Bharat Mission, where such use is authorised by the Central Government.]

- (5) Where a commodity consists of a number of components and these components are packed in two or more units, for sale as a single commodity, the declaration required to be made under sub-rule (1) shall appear on the main package and such package shall also carry information about the other accompanying packages or such declaration may be given on individual packages and intimation to that effect may be given on the main package and if the components are sold as spare parts, all declarations shall be given on each package.

*Therefore, no pre-packaged products can be manufactured, packed, imported, distributed, delivered, offered for sale without following the stipulated package declarations, as per Section 18 of the LM Act read with Rule 6 of the LM Rules, 2011. This would ordinarily be applicable to all tobacco products as well, as they are "pre-packaged products." However, there are certain exemptions to the applicability of the requirement of these declarations to packages containing Bidis under Proviso A (i) and C (i) of Rule 6 of the LM Rules, 2011 read with Section 18 of the LM Act.*

<sup>16</sup>Inserted by the Legal Metrology (Packaged Commodities) (Amendment) Rules 2015



An amendment to the LM Rules, 2011, was passed in 2015, introducing the following changes –

*In Rule 6, the following sub-rule substituted the existing sub-rule (2): (2) Every package shall bear the name, address, telephone number, e-mail address of the person who can be or the office which can be contacted, in case of consumer complaints.*

Rule 26. Exemption in respect of certain packages. -

Nothing contained in these rules shall apply to any package containing a commodity if—

- (a) the net weight or measure of the commodity is ten gram or ten millilitre or less, if sold by weight or measure;

Provided that the declaration in respect of maximum retail price and net quantity shall be declared on packages containing 10g to 20g or 10ml to 20ml.

Provided that the provision of this clause shall not be applicable for tobacco and tobacco products.

- (b) any package containing fast food items packed by restaurant or hotel and the like;<sup>17</sup>
- (c) it contains scheduled formulations and non-scheduled formulations covered under the Drugs (Price Control) Order, 1995 made under Section 3 of the Essential Commodities Act, 1955 (10 of 1955);
- (d) agricultural form produces in packages of above 50 kg'

The LM Rules 2011, passed in 2015 also introducing the following changes –

*In Rule 26, the following proviso was inserted in clause (a): “Provided that the provisions of this clause shall not be applicable for tobacco and tobacco products”.*

Therefore, the exemptions given to commodity of weight 10g to 20gm or 10ml to 20ml from applicability of the Packaged Commodity Rules, is not applicable to tobacco products.

## Relevant Cases

### (i) **State of Telangana v. Himajal Beverages**<sup>18</sup>

In this case, the Telangana High Court held that the declarations under Section 18 of the Legal Metrology Act, 2009 read with Rule 6(1) and 6(2) of the Legal Metrology (Packaged Commodities) Rules, 2011 are mandatory and the manufacturer is legally bound to comply with these requirements.

Therefore, all the declarations under Rule 6 of the LMPC Rules must be complied with by the manufacturer of any tobacco product. Failure to comply means that the goods can be validly seized and appropriate penalty can be imposed under the LM Act.

<sup>17</sup>Inserted by the Legal Metrology (Packaged Commodities) (Amendment) Rules 2015

<sup>18</sup>Writ Appeal No. 985/2018



## (ii) **Kandukuri Garments v. Inspector of Legal Metrology**<sup>19</sup>

In this case, the court considered the meaning of a 'pre-packaged commodity' and whether certain goods were exempt from the declaration to be made due to the type of package. The Karnataka High Court held that a pre-packaged commodity under Section 2(1) of the Legal Metrology Act, 2009 refers to any commodity which is secured by packaging, irrespective of whatever such packaging is called and Section 18 of the LM Act lays down the declarations to be made for pre-packaged commodities.

Tobacco products such as cigarettes, bidis etc., are pre-packaged commodities and have to be sold in sealed packages having the prescribed declarations.

## **Important Issues**

For the regulation of tobacco products under the Legal Metrology Act, 2009, we find that the following issues arise:

### **1. Sale of loose cigarettes/single sticks**

Almost two-third of cigarettes and bidis are sold in the form of loose sticks, in India. Selling loose cigarettes, bidi sticks and other tobacco products is an established marketing strategy of the tobacco industry which also has been judicially recognised. In *Adarth Tobacco Company Ltd. v. Mr. Munna Bhai and Ors*<sup>20</sup>, the court acknowledged that sale of loose cigarettes is the norm in India and that customers normally do not get to see the package when vendors take out a single cigarette from a packet and give it to them.

There are four major drawbacks of the prevalence of this practice, from a tobacco control perspective<sup>21</sup>:

- (a) The pictorial warning requirements on packaging of tobacco products as required under Sections 7 and 8 of the Cigarettes and Other Tobacco Products Act (the 'COTPA'), 2003 which show health hazards of smoking, are circumvented. This also violates Section 18 of the LM Act, 2009 read with Rule 4 and Rule 6 of the LM Rules, 2011 as the mandatory declarations made on a package of a tobacco product are not communicated to the consumer.
- (b) The increase on taxes on tobacco products is a measure adopted by the government to make these products more expensive and hence less affordable to consumers. However, sale of single sticks negates the impact of such rises in tax.
- (c) Children and adolescents are easily and conveniently lured towards smoking as single sticks are more affordable, easily accessible and can be easily hidden from parents/guardians.
- (d) Any person who wants to quit smoking is also hindered as single sticks are more affordable and easily accessible.

<sup>19</sup>2018 Indlaw KAR 1643

<sup>20</sup>2009 Indlaw DEL 303

<sup>21</sup>Pranay Lal, Ravinder Kumar and Shreelekha Ray et al, 'The Single Cigarette Economy in India – a Back of the Envelope Survey to Estimate its Magnitude' [2015] 16(13)Asian Pac J Cancer Prev 5579-5582

**Accordingly, many states have banned the sale of loose cigarettes:**

<b>State</b>	<b>Ban on sale of loose cigarettes</b>
Punjab	< <a href="http://pbhealth.gov.in/tobacco.html">http://pbhealth.gov.in/tobacco.html</a> > accessed 4 September 2020
Rajasthan	< <a href="http://www.rajswashya.nic.in/Tobaccu.htm">http://www.rajswashya.nic.in/Tobaccu.htm</a> > accessed 4 September 2020
Bihar	< <a href="https://currentaffairs.bankexamstoday.com/2018/02/bihar-government-bans-sale-of-loose.html">https://currentaffairs.bankexamstoday.com/2018/02/bihar-government-bans-sale-of-loose.html</a> > accessed 4 September 2020
Jharkhand	'Implement ban on tobacco sale effectively: Jharkhand health dept to DCs', The Times of India (27 April 2020) < <a href="https://timesofindia.indiatimes.com/city/ranchi/implement-ban-on-tobacco-sale-effectively-jharkhand-health-dept-to-dcs/articleshow/75395899.cms">https://timesofindia.indiatimes.com/city/ranchi/implement-ban-on-tobacco-sale-effectively-jharkhand-health-dept-to-dcs/articleshow/75395899.cms</a> > accessed 4 September 2020
Uttar Pradesh	'Sale of Loose Cigarettes Now Invites Prison Term in Uttar Pradesh' NDTV (Lucknow, 7 October 2015) < <a href="https://www.ndtv.com/india-news/sale-of-loose-cigarettes-now-invites-prison-term-in-uttar-pradesh-1229165">https://www.ndtv.com/india-news/sale-of-loose-cigarettes-now-invites-prison-term-in-uttar-pradesh-1229165</a> > accessed 4 September 2020
Himachal Pradesh	'Sale of Loose Cigarettes Now Invites Prison Term in Uttar Pradesh' NDTV (Lucknow, 7 October 2015) < <a href="https://www.ndtv.com/india-news/sale-of-loose-cigarettes-now-invites-prison-term-in-uttar-pradesh-1229165">https://www.ndtv.com/india-news/sale-of-loose-cigarettes-now-invites-prison-term-in-uttar-pradesh-1229165</a> > accessed 4 September 2020
Delhi	Shagun Kapil, 'Tobacco rules go up in smoke in Delhi' The New Indian Express (Delhi, 22 January 2019) < <a href="https://www.newindianexpress.com/cities/delhi/2019/jan/22/tobacco-rules-go-up-in-smoke-1928449.html">https://www.newindianexpress.com/cities/delhi/2019/jan/22/tobacco-rules-go-up-in-smoke-1928449.html</a> > accessed 4 September 2020
Karnataka	Sunitha Rao, 'Karnataka bans sale of loose cigarettes' The Times of India (Bengaluru, 27 September 2017) < <a href="https://timesofindia.indiatimes.com/india/karnataka-bans-sale-of-loose-cigarettes/articleshow/60860466.cms">https://timesofindia.indiatimes.com/india/karnataka-bans-sale-of-loose-cigarettes/articleshow/60860466.cms</a> > accessed 4 September 2020
Uttarakhand	Nihi Sharma Sahani, 'Tobacco ban orders in Uttarakhand go up in smoke' Hindustan Times (Dehradun, 5 October 2015) < <a href="https://www.hindustantimes.com/dehradun/tobacco-ban-orders-in-uttarakhand-go-up-in-smoke/story-Cp3OwnoMgSDswFJPUkO63I.html">https://www.hindustantimes.com/dehradun/tobacco-ban-orders-in-uttarakhand-go-up-in-smoke/story-Cp3OwnoMgSDswFJPUkO63I.html</a> > accessed 4 September 2020
Jammu and Kashmir	'JandK bans sale of loose cigarettes, beedis and tobacco' The Times of India (Srinagar, 28 May 2016) < <a href="https://timesofindia.indiatimes.com/india/JK-bans-sale-of-loose-cigarettes-beedis-and-tobacco/articleshow/52479433.cms">https://timesofindia.indiatimes.com/india/JK-bans-sale-of-loose-cigarettes-beedis-and-tobacco/articleshow/52479433.cms</a> > accessed 4 September 2020
Chhattisgarh	'Chhattisgarh bans the sale of loose cigarettes' The Union (27 January 2020) < <a href="https://www.theunion.org/news-centre/news/chhattisgarh-bans-the-sale-of-loose-cigarettes">https://www.theunion.org/news-centre/news/chhattisgarh-bans-the-sale-of-loose-cigarettes</a> > accessed 4 September 2020

Chandigarh	Notification dated 25th May 2015
Mizoram	Notification dated 11th September 2015
Maharashtra	Notification dated 24th September 2020

However, due to lack of proper enforcement, such measures were ineffective and have resulted in failure. In *Court On Its Own Motion v. State of Himachal Pradesh and Ors.*<sup>22</sup>, the court recognised that the Himachal Pradesh Prohibition of Sale of Loose Cigarettes and Beedies and Regulation of Retail Business of Cigarettes and Other Tobacco Products Act, 2016 has not been implemented in spirit in the state. It directed the authorities to ensure that no sale of loose cigarettes/bidis/other prohibited articles should be carried out especially within 100 metres of an educational institution.

#### **Actions taken by the States in dealing with loose and illicit cigarettes**

Various States and government departments have taken measures to combat the widespread use of loose cigarettes and illicit cigarettes, such as:

- a. The Legal Metrology Organisation of Maharashtra sent letters to cigarette and bidi manufacturers to comply with the provisions of the LM Act.
- b. Ministry of Consumer Affairs (Legal Metrology Division) letter dated 10.11.2016, to the Controller of Legal Metrology of all States/UT`s to ensure that no packaged commodity including cigarettes, cigars, bidis etc., is sold loose after tearing the package as such sale is in violation of Section 18 of the LM Act read with Rule 4 and Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011.

<sup>22</sup>2018 Indlaw HP 2206

## IV. DISCUSSIONS and RECOMMENDATIONS

The tobacco and related industries have persistently employed multiple tactics to lure consumers by making the tobacco product attractive, affordable and accessible. This includes selling the tobacco products individually or loose or illicit products cheap. Such sales undermine the existing tobacco control policies to reduce its demand through mandatory health warnings on packages and raising price by increasing taxes. Surveys have shown that loose and illicit tobacco products especially cigarettes are sold widely in India by evading duty and without the mandatory pack warning, leading to increased consumption of these products which eventually results in increased disease burden and untimely death. The Honourable Delhi High Court in *Adarth Tobacco Company Ltd. v. Mr. Munna Bhai and Ors*, observed that in India sale of loose cigarettes to customers is a norm and thus such customers do not get to see the packet.

Article 15 of the WHO FCTC requires parties to eliminate all forms of illicit trade in tobacco products. Article 16(3) of WHO FCTC requires parties to prohibit sale of cigarettes individually or in small packets, so as to not increase affordability of tobacco products, especially for minors.

Loose and illicit sale of tobacco products is in contravention of Section 7 of the COTPA, 2003 and its accompanying Rules, as the consumer does not get to see the mandatory health warnings on packages, moreover such sale also contravene the provision of the Legal Metrology (Packaged Commodities) Rules, 2011 under the Legal Metrology Act, 2009.

The Government of India through the Ministry of Consumer Affairs, Legal Metrology Division, issued a Directive [Circular No. 09 / 2017 - Customs dated the 29<sup>th</sup> March, 2017] on 10 November 2016, to Legal Metrology Controllers of all States/UTs, inter-alia urging the field officers to ensure that no packaged commodity including cigarettes, cigars, bidis etc. are sold in loose form and after tearing the package, in contravention of Rule 4 and Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011.

The Ministry of Finance, Central Board of Excise and Customs, Anti-Smuggling Unit, in its Circular No. 09/2017, dated 29<sup>th</sup> March 2017, observed that the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 apply to all packaged commodities which includes cigarettes. As the imported cigarette packs are intended for

retail sale, they are covered under the Legal Metrology (Packaged Commodity) Rules, 2011 which require a declaration on the packs containing the name and address of the manufacturer or importer or packer, quantity of the product, month and year of manufacturing or pre-packing or importation, the retail sale price, etc. In terms of the said Act and Rules it is illegal to manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless the package is in such standard quantities or number and bears thereon such declarations and particulars, in such a manner as prescribed.

The Circular further envisages guidelines explaining that the cigarette packets shall have the name and address of the manufacturer or packer or importer and the month and year in which the commodity is manufactured or pre-packed or imported and that the cigarette packets which do not comply with the provisions of laws as discussed above should not be released for home consumption in the domestic market and should be destroyed. Such destruction shall be carried out in compliance of pollution control laws that are in force, in consultation with the respective State Pollution Control Boards.

## **Recommendations**

Essentially, all tobacco products prepacked for sale, distribution or delivery, should bear thereon, (or on a label securely affixed), all the stipulated declarations under Rule 6 of the LM Rules, 2011. These declarations should include information on the name and address of the manufacturer, packer, importer; common or generic names of the commodity; net quantity, in terms of the standard unit of weight or measure of the commodity; month and year in which the commodity is manufactured or pre-packed or imported; retail sale price of the package; sizes/ dimensions of the commodity (wherever relevant) and consumer complaint contact details.

On the basis of this study, the following recommendations are made:

1. The Legal Metrology Officers to rigorously enforce Section 18 of the Legal Metrology Act, 2009, for all pre-packaged products, including all tobacco products. All tobacco product packages to be manufactured, packed, sold, imported, distributed, delivered, offered, exposed or possessed for sale, with all the prescribed declarations (as prescribed under Section 18 of the Legal Metrology Act, 2009) and are in standard quantities or number, as mentioned on the package.
2. The Legal Metrology Officers or any other authorized officer, to ensure that no pre-packaged commodities, including cigarettes, cigars, bidis etc, are sold in loose form or single sticks, after tearing the package, in contravention of Section 18 of the Legal Metrology Act, 2009 read with Rule 4 and Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011.
3. All pre-packaged commodities including tobacco products (except bidis), must contain the following information on the package: the name and address of the manufacturer or importer or packer, quantity of the product, month and year of

manufacturing or pre-packing or importation and the retail sale price the name, address, telephone number, email address of the person who can be or the office which can be contacted, in case of any consumer complaints.

4. The Legal Metrology Officers shall ensure appropriate action against persons selling tobacco products, including cigarettes, cigars, bidis etc. in contravention of Section 18 of the Legal Metrology Act, 2009 read with Rule 4 and Rule 6 and penalise violations under Rule 32 of the Legal Metrology (Packaged Commodities) Rules, 2011. This may include regular and random checking at retail outlets selling tobacco products and checks for evidence of loose sale, i.e. display of single stick or single stick price stickers, open packages etc. and conduct inspections and seizure in case of suspected violations, as empowered by Section 15 of the Legal Metrology Act, 2009.
5. All imported pre-packed products, including tobacco products, sold in India must be in standard quantities or numbers and shall bear on their package declarations as prescribed under Rule 4 and Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011 read with Section 18 (declaration on pre-packaged commodities) of the Legal Metrology Act, 2009. Any violations of the above provisions to be penalized under Section 36 (penalty for selling non-standard packs) and Section 48 (compounding of offenses) of the Legal Metrology Act, 2009.
6. All seized tobacco products (including imported products), which do not comply with the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 be destroyed in an environmentally friendly manner, in compliance with pollution control laws, and not to be auctioned /released in the domestic market.
7. The Government of India needs to undertake extensive awareness campaigns and dissemination of information on the applicability of Legal Metrology laws for countering loose and illicit sale of tobacco products.
8. The Ministry of Consumer Affairs may consider undertaking measures to sensitize both manufacturers and retailers about abovementioned provisions via letters (and other suitable ways to effectively communicate the message to the concerned parties), with warning of strict penal action against any violations.
9. States are recommended to issue orders for effective enforcement of the Legal Metrology Act, 2009 and its accompanying Rules, for prohibition on loose sale of tobacco products and to counter illicit trade using provisions under the Legal Metrology Act, 2009.

## V. CONCLUSION

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Considering the widespread consumption of single-stick cigarettes, bidis etc, in India, the provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 must be used to regulate the loose sale and concomitant consumption of tobacco. These measures to curb loose sales of all tobacco products must be undertaken for compliance with Article 16 (3) of the WHO FCTC i.e. to reduce affordability of tobacco products, particularly for minors.

The sale of illicit tobacco products must also be curbed, by the use of LM Act, 2009 and its enabling Legal Metrology (Packaged Commodities) Rules, 2011 on regulation of packaged commodity. This is critical for eliminating all forms of illicit trade of tobacco products, in compliance with Article 15 of the WHO FCTC.

Recognising the two issues of - loose sales and illicit trade of tobacco products, there are numerous complementary measures to be adopted. These measures range from increasing awareness to improving enforcement of the law and penalising offenders.

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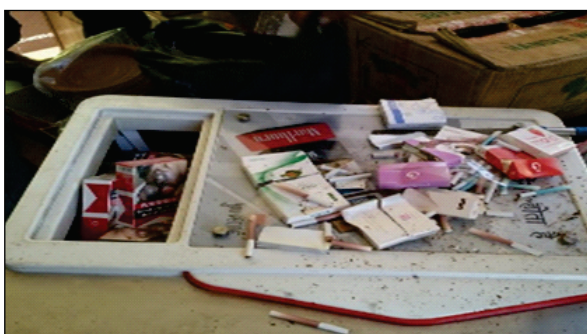
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# ANNEXURE: IMAGES OF SINGLE-STICK CIGARETTES AND ILLICIT TOBACCO PRODUCTS

## SINGLE-STICK CIGARETTES



ಗ್ರಾಹಕರ ಗಮನಕ್ಕೆ  
ಪ್ರಕಟಣೆ  
ದಿನ : 20-02-2020 ರಿಂದ ಅಂದಿಲ್ಲದಿದ್ದರೆ ಸಾರ್ವಜನಿಕ ದರ ಈ ಕೆಳಗಿನಂತಿದೆ

ಸಾರ್ವಜನಿಕ ಹೆಸರು Brand Name	ಒಂದು ಪ್ಯಾಕೆಟ್ ದರ 1 Packet Rate	ಒಂದು ಸಿಗರೇಟ್ ದರ 1 Stick Rate
ಕೆಪ್ಟನ್ / ಗೋಲ್ಡ್ ಫ್ಲೇಕ್ ಕಿಂಗ್ CLASSIC / GOLD FLAKE KING	₹ 165/-	₹ 17.00
ನಾವಿ ಕಟ್ ಡಿಲಕ್ಸ್ NAVY CUT DELUXE	₹ 95/-	₹ 10.00
ಗೋಲ್ಡ್ ಫ್ಲೇಕ್ / ITC SMALL GOLD FLAKE FILTER	₹ 100/-	₹ 10.00
ಗೋಲ್ಡ್ ಫ್ಲೇಕ್ ಪ್ರೀಮಿಯಂ ಫಿಲ್ಟರ್ GOLD FLAKE PREMIUM FILTER	₹ 80/-	₹ 8.00
ಲೇಯರ್ಸ್ ಫಿಲ್ಟರ್ LAYERS FILTER	₹ 60/-	₹ 6.00
ಬರ್ಕಲಿ ಫಿಲ್ಟರ್ BERKELEY FILTER	₹ 60/-	₹ 6.00

ವಿವರಿಸಿದ ವಿಷಯ ಸುರಕ್ಷಿತ ಪ್ಯಾಕೆಟ್ ಕಡೆಗೆ  
WARNING : Smoking causes throat cancer



## ILLICIT SALE OF TOBACCO PRODUCTS







**ISBN 978-93-91111-15-1**