

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

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***A**bstract—It is well-established that the consumption of tobacco products leads to significant medical and economic harm to India. Despite the attempt by the government to regulate consumption through the Cigarettes And Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, intended as a comprehensive law on tobacco control bans smoking in most public places, sale of tobacco products to minors, direct and indirect advertisement in addition to specifying mandatory display of pictorial health warning on tobacco packs buttobacco companies and vendors circumvent these regulations. Particularly, they engage in the sale of single stick cigarettes, loose sale of tobacco products and illicit sale. Given the harm caused by such contravention, it is important to examine these methods utilised by tobacco companies and vendors and determine if the existing legal framework is sufficient for regulation of the same. Accordingly, this paper provides an in-depth analysis of the Legal Metrology Act 2009 and the relevant rules and judgements which can be utilised to curb sale of single stick cigarettes, loose sale and illicit sale of tobacco products for improving and protecting public health which is the State's primary duty under the Constitution of India.*

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I. INTRODUCTION

Tobacco is the foremost preventable cause of death and disease in the world today, killing half of the people who use it.¹ As per 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 deaths² were about 930,000, while the smokeless tobacco (SLT) attributable annual deaths³ 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 Non-communicable Diseases (NCDs) such as 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. The use of tobacco products results in unparalleled health, economic, and social losses has been proved in all countries.⁴ As per Ministry of Health & Family Welfare, the total economic costs attributable to tobacco use from all diseases and deaths in Indian in the year 2011 was INR 104,500 crores, which is huge burden for a developing country like India to bear.⁵

This article seeks to examine the possible methods of curtailing the sale of single stick cigarettes, loose tobacco products and illicit trade of tobacco products. For this purpose, the article is divided into three parts. The first part examines the harms caused by the sale of single stick cigarettes, loose and illicit sale of tobacco products. The second part analyses the provisions of the Legal Metrology Act 2009 and the relevant rules and judgements under the legislation. The third part lays down key points of discussion and provides recommendations to improve the existing legal regime.

¹ WHO, *MPOWER: A Policy Package to Reverse the Tobacco Pandemic* (2008) <https://www.who.int/tobacco/mpower/mpower_english.pdf> (Accessed on 4 September 2020).

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

³ Sinha D.N., Palipudi K.M., Gupta P.C., et al., "Smokeless Tobacco use: A Meta-analysis of Risk and Attributable Mortality Estimates for India," 51(5) *Indian J. Cancer* 73-77 (2014).

⁴ World Bank Group, *Confronting Illicit Tobacco Trade – A Global Review of Country Experiences* (2019).

⁵ Ministry of Health & Family Welfare, *Economic Burden of Tobacco Related Diseases in India* (2014).

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

A. Single Stick or Loose Sale of Tobacco Products

The 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.^{6,7,8} Single stick cigarette sales facilitate experimentation among youth who have not yet become regular smokers.⁹ 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.¹⁰ 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 to 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) of FCTC 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, which makes it cheap and easy for school children to access tobacco and nicotine products.¹¹

B. Illicit Trade in Tobacco Products

Illicit trade of tobacco products is a major global concern with multi-fold implications on health, economy and overall governance. It threatens public

⁶ Landrine H., Klonoff E.A., Alcaraz R., *Minors' Access to Single Cigarettes in California*, 27 Prev Med. 503-505 (1998).

⁷ Klonoff E.A., Fritz J.M., Landrine H., Riddle R., Tully-Payne L., ‘*The Problem and Sociocultural Context of Single Cigarette Sales*’ 271 JAMA 618-620 (1994).

⁸ Hall MG et al., *Increasing Availability and Consumption of Single Cigarettes: Trends and Implications for Smoking Cessation from the ITC Mexico Survey*, 24 Tobacco Control 64-70 (2015).

⁹ Pranay Lal et al., 2015. “The Single Cigarette Economy in India - a Back of the Envelope Survey to Estimate its Magnitude,” 16(13) Asian Pac. J. Cancer Prev. 5579-5582, (2015).

¹⁰ *Ibid.*

¹¹ WHO, *World No Tobacco Day 2020 - Tobacco Exposed: The Secret's Out*, <<https://www.who.int/news-room/events/detail/2020/05/31/default-calendar/world-no-tobacco-day-2020-protecting-youth-from-industry-manipulation-and-preventing-them-from-tobacco-and-nicotine-use>> (Accessed on 12 February 2022).

health gains of tobacco control and the outcomes of WHO FCTC.¹² There is a growing body of evidence to suggest that illicit trade in tobacco products is fuelling the spread of 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.¹³

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.¹⁴

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.

III. THE LEGAL METROLOGY ACT 2009

The Legal Metrology Act, 2009 (LM Act 2009) came into force on 13th January 2010 by repealing the two old legislations ‘Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985’. It seeks to establish standards of weights and measures and 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 Supreme Court in *State of U.P. v. Aman Mittal*¹⁵, 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.

¹² 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> (Accessed on 12 February 2022).

¹³ 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” 15(4) *Nicotine & Tobacco Research* 767, 776, (2013).

¹⁴ National Health Mission, *Who Framework Convention on Tobacco Control (WHO)* <<https://nhm.gov.in/index1.php?lang=1&level=3&sublinkid=1126&lid=636> (Accessed on 12 February 2022).

¹⁵ *State of U.P. v. Aman Mittal*, (2019) 19 SCC 740.

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

Important Provisions of the Act to Control Tobacco

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:

The Act defines “*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.”¹⁶ Therefore, tobacco products are covered under the LM Act as they are a “*pre-packaged commodity*.”

In *Kandukuri Garments v. Inspector of Legal Metrology*,¹⁷ the Karnataka HC dealt with a dispute involving the meaning of ‘pre-packaged commodity’ and whether certain goods were exempt from the declaration to be made due to the type of package. The Karnataka HC held that a pre-packaged commodity under Sec. 2(l) of the Legal Metrology Act 2009 refers to any commodity which is secured by packaging, irrespective of whatever such packaging is called and Sec. 18 lays down the declarations to be made for pre-packaged commodities. In light of the above judgement, tobacco products such as cigarettes, beedies etc., are pre-packaged commodities and have to be sold in sealed packages having the prescribed declarations.

Manufacturers have to provide mandatory declarations on pre-packaged commodities i.e. “*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.*”¹⁸ 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 prescribed¹⁹. 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.

¹⁶ Legal Metrology Act, 2009, S. 2(l).

¹⁷ *Kandukuri Garments v. Inspector of Legal Metrology Inspection Squad*, 2018 SCC OnLine Kar 3879 : 2018 Indlaw Kar 1643.

¹⁸ Legal Metrology Act, 2009, S. 18(l).

¹⁹ Legal Metrology Act, 2009, S. 18(2).

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 both²⁰. This provision also extends to the manufacturer or seller of tobacco products who does not comply with the legal requirements & will be held liable under Sec. 36 of the LM Act. For the first offence, a fine of upto Rs. 25,000 can be imposed. For the second offence, a fine of upto Rs. 50,000 can be imposed. For any subsequent offence, a fine ranging from Rs. 50,000 to Rs. 1 lakh or imprisonment for upto one year or both can be imposed.

A. Legal Metrology (Packaged Commodities) Rules 2011

In exercise of the powers conferred by sub-section (1) read with clause(j) and (q) of the sub-section (2) of section 52 of the Legal Metrology Act, 2009, the Central Government framed Legal Metrology (Packaged Commodities) Rules 2011 (LMPC Rules 2011). These rules came into force on the 1st April 2011.

B. Regulation for pre-packing and sale etc. of commodities in packaged form

On and from the commencement of these rules, which mandates “*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.*”²¹ Therefore, all tobacco products must be packed in a package which has complied with all requirements regarding the declarations.

C. Declarations to be made on every package²²

Every package should have the following declarations:

- (1) The name and address of the manufacturer, and where the manufacturer is not the packer, the name and address of the manufacturer and packer.

²⁰ Legal Metrology Act, 2009, S. 36(1).

²¹ Legal Metrology (Packaged Commodities) Rules, 2011, R. 4.

²² Legal Metrology (Packaged Commodities) Rules, 2011, R. 6.

For imported package, the name and address of the importer shall be provided.

- (i) If the words ‘manufactured by’ or ‘packed by’ are not mentioned on the label, then it is presumed that the name and address are that of the manufacturer and they shall be held liable.
 - (ii) If the brand name and address of the brand owner appear on the label, then the brand owner shall be held responsible for violation of the rules and action shall be taken against the deemed manufacturer. If there is more than one name and address on the label, then only the manufacturer shall be held liable.
 - (iii) This declaration does not apply where the package contains food articles, as those are governed by the Food Safety & Standards Act 2006 and the rules made thereunder.
- (2) The name of the country of origin or manufacture or assembly in case of imported products.
 - (3) The common or generic names of the commodity (or all commodities) in the package should be mentioned.
 - (4) The net quantity in terms of the standard unit of weight or measure of the commodity shall be mentioned. If the commodity is packed by number, the number of the commodity shall be mentioned.
 - (5) The month and year in which the commodity is manufactured or pre-packaged or imported has to be mentioned. However,
 - (i) This does not apply if any other law has a provision dealing with this declaration.
 - (ii) This declaration is not to be made on any package containing bidis or incense sticks.
 - (6) The retail sale price of the package should indicate that it represents the maximum retail price including taxes and the price is rupees rounded off to the nearest rupee or 50 paise. It must be noted that this declaration is not required on any package containing bidis.
 - (7) Where the size of the commodity is important, the dimensions of the commodity (or commodities) shall be mentioned.
 - (8) 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.²³
 - (9) Individual stickers which alter the mandatory declaration cannot be affixed on the package. However, sticker with revised lower MRP

²³ Inserted by the Legal Metrology (Packaged Commodities) (Amendment) Rules, 2015.

(including taxes) may be affixed by the manufacturer or packer provided it does not cover the MRP declaration.

- (10) Stickers which make other declarations are permissible.
- (11) A manufacturer/ packer/ importer is allowed to declare the following on a package in addition to the mandatory declarations –
 - (i) Barcode or GTIN or QR Code
 - (ii) ‘e-code’ for net quantity assurance of the commodity
 - (iii) Logos of government schemes.
- (12) When a commodity is made up of multiple components which are packed in multiple units for sale as a single commodity, then the declaration to be made regarding the name and address of the manufacturer as per (1) shall appear on the main package. If there are any accompanying packages, all declarations must be made on these packages as well.

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 LMA read with Rule 6 of 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) to Rule 6 of LM Rules 2011.

Legal Metrology (Packaged Commodities) Rules 2011 (came into force on 1st April 2011). An amendment to the LMPC 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.”

In *State of Telangana v. Himjal Beverages*²⁴ the Telangana HC held that the declarations under Sec. 18 of the Legal Metrology Act 2009 r/w Rule 6(1) and 6(2) of the Legal Metrology (Packaged Commodities) Rules 2011 are mandatory and the manufacturer is legally obliged 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.

²⁴ *State of Telangana v. Himjal Beverages*, 2018 SCC OnLine Hyd 509.

D. Exemption in respect of certain packages²⁵

The Rule 26 of the LMPC Rules 2011 also lays down certain exemptions i.e., it exempts packages of certain commodities from making the requisite declarations. These are as follows:

- (i) Any commodity which is sold by weight or measure and has a net weight or measure of ten gram or ten millilitre or less.
- (ii) The MRP and net quantity has to be declared on packages containing 10g to 20g or 10mL to 20mL. However, this does not apply to tobacco and tobacco products.
- (iii) Any package containing fast food items which are packaged by restaurants or hotels.
- (iv) Any package containing scheduled and non-scheduled formulations under the Drug (Price Control) Order 1995 under Sec. 3 of the Essential Commodities Act 1955.²⁶
- (v) Agricultural form produces in packages above 50kg.

Therefore, the Proviso A(ii) to Rule 26 of the LMPC Rules 2011 clarifies that there is no requirement for a declaration regarding the maximum retail price and net quantity for tobacco or a tobacco product if the net weight is upto 20 grams.

E. LMPC Rules 2011, passed in 2015, also introducing the following changes –

The amendment carried out in 2015 to LMPC rules has come up as an exception to exceptional Rule 26, inserting a proviso clause (a) that *the provisions of this clause shall not be applicable for tobacco and tobacco products.*"

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

F. Important Issues

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

²⁵ Legal Metrology (Packaged Commodities) Rules, 2011, R. 26.

²⁶ Inserted by the Legal Metrology (Packaged Commodities) (Amendment) Rules, 2015.

i. 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 *Ardath Tobacco Co. Ltd. v. Munna Bhai*²⁷, 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 perspective²⁸:

- a. The pictorial warning requirementson packaging of tobacco products as required under Secs. 7 & 8 of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 (COTPA 2003) which show health hazards of smoking are circumvented. This also violates Sec. 18 of the LM Act 2009 r/w Rule 4 & 6 of the LMPC 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 attractive 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.

²⁷ *Ardath Tobacco Co. Ltd. v. Munna Bhai*, 2009 SCC OnLine Del 29 : 2009 Indlaw Del 303.

²⁸ *Supra* note 9.

Accordingly, many states have banned the sale of loose cigarettes²⁹ such as Punjab,³⁰ Rajasthan,³¹ Bihar,³² Jharkhand,³³ Uttar Pradesh,³⁴ Himachal Pradesh,³⁵ Delhi,³⁶ Karnataka,³⁷ Uttarakhand,³⁸ Jammu & Kashmir³⁹, Chattisgarh⁴⁰ and Maharashtra.⁴¹ 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 H.P.*⁴², 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.

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- ²⁹ Shivam Kapoor et al., “Banning Loose Cigarettes and Other Tobacco Products in India: A Policy Analysis” *Asian Pac. J. Cancer* 51 (2021). <http://journal.waocp.org/article_89829_5c1d86c9916c2f75f1c1c131edfclddc.pdf> (Accessed on 12 February 2022).
- ³⁰ “Sale of Loose Tobacco Items Banned in Punjab” *The Indian Express* (Chandigarh, 6 January 2015) <<https://indianexpress.com/article/cities/chandigarh/sale-of-loose-tobacco-items-banned-in-punjab/>> (Accessed on 12 February 2022).
- ³¹ <<http://www.rajswasthya.nic.in/Tobaccu.htm>> (Accessed on 4 September 2020).
- ³² “Stick for Loose Cigarettes” *The Telegraph Online* (Patna, 11 February 2018) <<https://www.telegraphindia.com/bihar/stick-for-loose-cigarettes/cid/1384850>> (Accessed on 12 February 2022).
- ³³ ‘Implement Ban on Tobacco Sale Effectively: Jharkhand Health Dept to DCs’, *The Times of India* (27 April 2020) <<https://timesofindia.indiatimes.com/city/ranchi/implement-ban-on-tobacco-sale-effectively-jharkhand-health-dept-to-dcs/articleshow/75395899.cms>> (Accessed on 4 September 2020).
- ³⁴ “Sale of Loose Cigarettes Now Invites Prison Term in Uttar Pradesh” *NDTV* (Lucknow, 7 October 2015) <<https://www.ndtv.com/india-news/sale-of-loose-cigarettes-now-invites-prison-term-in-uttar-pradesh-1229165>>. (Accessed on 4 September 2020).
- ³⁵ “Ban on Sale of Loose Cigarettes Comes into Effect in Himachal” *The Hindu* (Shimla, 9 October 2016) <<https://www.thehindu.com/news/cities/Delhi/Ban-on-sale-of-loose-cigarettes-comes-into-effect-in-Himachal/article15476786.ece>>. (Accessed 4 September 2020).
- ³⁶ Shagun Kapil, “Tobacco Rules Go Up in Smoke in Delhi” *The New Indian Express* (Delhi, 22 January 2019) <<https://www.newindianexpress.com/cities/delhi/2019/jan/22/tobacco-rules-go-up-in-smoke-1928449.html>>. (Accessed on 4 September 2020).
- ³⁷ Sunitha Rao, “Karnataka Bans Sale of Loose Cigarettes” *The Times of India* (Bengaluru, 27 September 2017) <<https://timesofindia.indiatimes.com/india/karnataka-bans-sale-of-loose-cigarettes/articleshow/60860466.cms>>. (Accessed 4 September 2020).
- ³⁸ Nihi Sharma Sahani, “Tobacco Ban Orders in Uttarakhand Go Up in Smoke” *The Hindustan Times* (Dehradun, 5 October 2015). <<https://www.hindustantimes.com/dehradun/tobacco-ban-orders-in-uttarakhand-go-up-in-smoke/story-Cp3OwnoMGSDswFJPUkO63I.html>>. (Accessed on 4 September 2020).
- ³⁹ “J&K Bans Sale of Loose Cigarettes, Beedis and Tobacco” *The Times of India* (Srinagar, 28 May 2016) <<https://timesofindia.indiatimes.com/india/JK-bans-sale-of-loose-cigarettes-beedis-and-tobacco/articleshow/52479433.cms>> accessed 4 September 2020.
- ⁴⁰ “Chhattisgarh Bans the Sale of Loose Cigarettes” *The Union* (27 January 2020). <<https://www.theunion.org/news-centre/news/chhattisgarh-bans-the-sale-of-loose-cigarettes>>. (Accessed on 4 September 2020).
- ⁴¹ “Explained: Why Maharashtra has Banned the Sale of Loose Cigarettes, Beedis” *The Indian Express* (New Delhi, 6 October 2020). <<https://indianexpress.com/article/explained/maharashtra-ban-sale-of-loose-cigarettes-beedis-6619453/>>. (Accessed on 12 February 2022).
- ⁴² *Court On Its Own Motion v. State of H.P.*, 2018 SCC OnLine HP 487 : 2018 Indlaw HP 2206.

ii. Sale of illicit cigarettes

Data released by the Tobacco Institute of India regarding illegal trade of cigarettes (referring to internationally smuggled cigarettes and cigarettes produced domestically without paying tax) shows that illegal cigarettes have increased by more than double since 2005, with nearly 28.1 billion illegal cigarette stick sales in 2020. India is now the 4th largest illegal cigarette market in the world.⁴³ In addition, instances of illegal cigarettes being seized by authorities are also on the rise.⁴⁴

Broadly speaking, there are three reasons for the popularity of illicit cigarettes:⁴⁵

- a. Smuggled cigarettes often carry international brand names. This makes them attractive to smokers.
- b. Illicit cigarettes which evade tax are priced very cheaply. Compared to high taxes imposed on cigarettes, this makes them more affordable for customers and more profitable for retailers.
- c. Lack of proper enforcement of laws prohibiting smuggling causes an easily available supply of illicit cigarettes.

Accordingly, despite the implementation of the LM Act 2009 and the LMPC Rules 2011, illicit sale of cigarettes is still prevalent in India. For the purpose of curbing illicit sale, the COTPA (Amendment) Bill 2020 contains specific provisions:⁴⁶

- a. The proposed Sec. 10A prohibits production, supply, distribution, import, sale, offer for sale or permitting sale of illicit tobacco products.
- b. The proposed proviso to Sec. 15(2) prevents payment of costs in lieu of confiscation of illicit tobacco products.
- c. The proposed Sec. 20A lays down a penalty for production, manufacturing, supply or import of illicit tobacco products.
- d. The proposed amendment to Sec. 31(2)(b) empowers the Central Government to make rules for identification, tracking or tracing of illicit tobacco products.

⁴³ Tobacco Institute of India, *Illegal Cigarette Trade*, <<https://www.tiionline.org/industry-issues/illegal-trade/>> (Accessed on 12 February 2022).

⁴⁴ <<https://www.tiionline.org/spurt-in-illegal-cigarette-seizures-in-india-table/>>. (Accessed on 12 February 2022).

⁴⁵ *Supra* note 31.

⁴⁶ Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020.

G. 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. Some of these are given below:

- 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 for ensuring no packaged commodity including cigarettes, cigars, bidis etc., is sold loose after tearing the package as such sale was in violation of section 18 of the LM Act r/w Rule 4 & 6 of the Legal Metrology (Packaged Commodities) Rule 2011.
- c. The Ministry of Finance, Central Board of Excise and Customs, Anti-Smuggling Unit, in its Circular No. 09/2017, dated 29th March 2017, observed that the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 apply to packaged commodity 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, 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.

IV. CONCLUSION

The tobacco and related industries have persistently employed tactics to attract consumers by making the tobacco product affordable and accessible.

This is achieved by selling the tobacco product individually or loose or illicit product 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 Hon'ble Delhi High Court in *Ardath Tobacco Co. Ltd. v. Munna Bhai*, observed that in India sale of loose cigarettes to customers is a norm and thus such customers do not get to see the packet.

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, and the sale of illicit tobacco products must also be curbed by use of LM Act, 2009 and its enabling LMPC Rules 2011, on regulation of packaged commodity.

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

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 LM 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 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 LM Act, 2009 read with Rule 4 and 6 of the Legal Metrology (Packaged Commodities) Rules 2011
3. 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 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
4. The Legal Metrology Officers shall ensure appropriate action against persons selling tobacco products, including cigarette, cigars, bidi etc,

in contravention of Section 18 of the LM Act read with Rule 4 and 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 check for evidence of loose sale i.e. display of single stick or single stick price stickers, open packages etc., conduct inspections and seizure, as empowered by Section 15 of the LM Act.

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 6 of the Legal Metrology (Packaged Commodities) Rules 2011, read with Section 18 (declaration on pre-packaged commodities). Any violations of the above provisions to be penalized under Section 36 (penalty for selling non-standard packs) and Section 48 (compounding of offenses) under the Legal Metrology Act, 2009.
6. All seized tobacco products (including imported products), which do not comply with LM Act and the Legal Metrology (Packaged Commodities) Rules 2011, to be destroyed in an environmentally friendly manner, in compliance with pollution control laws, and not auctioned /released in the domestic market.
7. The Government of India should 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 to undertake measures to sensitizing 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 may issue orders for enforcement of the LM Act, 2009 and its accompanying Rules, on the lines of state of Punjab for prohibition on loose sale of tobacco products and to counter illicit trade using provisions under LM Act, 2009.