

NOTES AND COMMENTS

ASSESSMENT OF LEGAL FRAMEWORK TO REGULATE DIRECT AND INDIRECT ADVERTISING OF TOBACCO PRODUCTS

Abstract

Tobacco companies have been using various tactics to indirectly promote tobacco products and target young and impressionable youth, in order to circumvent the prohibition on advertising of tobacco products. Surrogate advertising, endorsement of tobacco products, corporate social responsibility activities *etc.*, are common methods utilised by tobacco companies to lure the young towards lifelong dependence. The tobacco epidemic poses a grave risk to public health, being a common risk factor for Non-Communicable Diseases (NCDs) including higher risk for severe cases of COVID 19. It is important to examine all methods utilised for advertisement, promotion and sponsorship by tobacco companies and determine if the existing legal framework has sufficient measures to combat them. Accordingly, this paper provides an in-depth analysis of various domestic legislations which can be used to curb the different forms of direct and indirect advertising of tobacco products, especially to protect the youth.

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 Tobacco companies spent over 9 billion dollars in marketing and advertising and the world lost 8 million lives from causes related to tobacco use and exposure to second-hand smoke.² As per Global Adult Tobacco Survey-India (GATS 2) 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 deaths³ were about 930,000, while the smokeless tobacco (SLT) attributable annual deaths⁴ were about 350,000, together accounting for about 1,280,000 deaths per year or approximately 3500 deaths every day. Tobacco use is a common risk factor for the four main NCDs - cardiovascular disease, cancer, chronic lung disease and diabetes, which puts people with these

1 WHO, *MPOWER: A Policy Package to Reverse The Tobacco Pandemic* (2008), available at: https://www.who.int/tobacco/mpower/mpower_english.pdf (last visited on Feb. 10, 2021).

2 Available at: <https://www.who.int/campaigns/world-no-tobacco-day/world-no-tobacco-day-2020/key-messages> (last visited on Feb. 10, 2021).

3 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).

4 Sinha DN, Palipudi KM, *et al.*, "Smokeless tobacco use: a meta-analysis of risk and attributable mortality estimates for India" 51(5) *Indian J Cancer* 73-77 (2014).

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.⁵

As per report⁶ published recently the total economic costs in India, from all diseases and deaths attributable to tobacco use, (among persons aged 35 years or older) was Rupees 177,341 crores (US\$ 27.5 billion UD dollar) in 2017-18 or Rupees 3,773 per adult (35+ years) per year, of which 22% was direct costs and 78% indirect. This is a huge burden for a developing country like India to bear.

Advertisements have a strong influence on our life and especially on children and youth of impressionable mind. Since advertisements provide information and create awareness about the market, our decisions on whether to buy a product or not, are often completely influenced by the promotional activities of the companies concerned. While ordinarily this is a benign phenomenon, tobacco advertisements, promotion and sponsorship (TAPS) to attract the young, are devised to circumvent the law.

In India, the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA 2003) prohibits all forms of advertisement, promotion and sponsorship and also mandates display of a statutory health warning on all tobacco product packages. In order to circumvent this ban, tobacco companies started using surrogate/indirect advertising, which has been recognised by the courts as well. In *Union of India v. Unicorn Industries*,⁷ the Supreme Court noted that “Advertising tobacco products including Pan Masala (PM) containing tobacco is banned in India since May 1, 2004. To bypass this ban tobacco companies are advertising PM ostensibly without tobacco, heavily in all forms of media. PM is surrogate for tobacco products as the money spent on marketing, and advertising is many times of the revenue generated from the sale of PM”. Tobacco companies use a variety of tactics to attract a new generation of tobacco consumers, including- flavours/adulterants, misleading claims about reduced harm, increasing accessibility of tobacco products by selling them online, endorsing tobacco products by influencers and celebrities *etc.*

The Framework Convention on Tobacco Control (WHO FCTC) is an evidence-based treaty, developed in response to the globalization of the tobacco epidemic, the first to

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

6 Rijo M John, Praveen Sinha, *et.al.*, “Economic Costs of Diseases and Deaths Attributable to Tobacco Use in India, 2017–2018” 23(2) *Nicotine and Tobacco Research* 1-8(2020), available at: <https://pubmed.ncbi.nlm.nih.gov/32805055/> (last visited on Feb. 20, 2021).

7 2019 IndLaw SC 924.

be negotiated under the auspices of the WHO. India is a party to the WHO FCTC.⁸ In the preamble, the member states affirm the right of all people to the highest standard of health and express serious concern, “*about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products.* Article 13 of the WHO FCTC specifically recommends, “*a comprehensive ban of all tobacco advertising, promotion and sponsorship...within the period of five years after entry into force.*”

The preamble of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA, 2003) recognises that it is expedient to prohibit advertisements of tobacco products⁹ and mandates that, it is essential to take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship of tobacco products for achieving improvement of public health, enjoined by article 47 of the Constitution of India.

This paper seeks to examine the existing legal framework in Indian through which all the direct and indirect advertising by tobacco companies can be regulated. The first part establishes a theoretical framework by explaining the relevant terms. The second part discusses the existing laws which can be used for regulation of tobacco advertising, promotion and sponsorship. The third part analyses the contemporary methods of tobacco advertising, promotion and sponsorship which specifically targets the youth and requires better regulation. Finally, the paper concludes with some recommendations that emerge from the analysis.

II Direct and indirect advertising: Important terms and tobacco advertising

This part discusses important terms in the context of direct and indirect advertising of tobacco products.

Definitions¹⁰

Tobacco advertising and promotion: defined under article 1 (c), WHO FCTC as “any form of commercial communication, recommendation or action with the aim, effect

8 Adopted by the 56th World Health Assembly held in Geneva, Switzerland on May 21, 2003. It became the first World Health Organization treaty adopted under art. 19 of the WHO constitution. The Convention entered into force on Feb. 27, 2005 - 90 days after it had been acceded to, ratified, accepted, or approved by 40 states, *available at*: <https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=D7F62A68AE26BA615C8796499FF2C317?sequence=1> (last visited on Feb. 20, 2021)

9 *Available at*: <https://nhm.gov.in/index4.php?lang=1&level=0&linkid=459&lid=692> (last visited on Apr. 10, 2021).

10 Centre for Media Studies and Healthbridge, “Tobacco Advertising, Promotion And Sponsorship Across South And South East Asia”(2009), *available at*: [https://healthbridge.ca/images/uploads/library/TAPS_Report_\(final\).pdf](https://healthbridge.ca/images/uploads/library/TAPS_Report_(final).pdf) (last visited on Feb. 27, 2021).

or likely effect of promoting a tobacco product either directly or indirectly.”¹¹

Tobacco sponsorship is defined in article 1 (g), WHO FCTC defines it “as any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”.

Surrogate advertising refers to duplicating the brand image of one product extensively to promote another product of the same brand name. To circumvent advertising prohibitions, the brand name of tobacco products is withdrawn from tobacco packets and often exclusively used to promote other unrelated products. The brand image of one product is duplicated to promote another product of the same brand, to advertise banned products. The surrogate or substitute could either resemble the original product or could be a different product altogether, but it is marketed under the established brand name of the original product. This ploy is being used widely in all forms of mass media cassettes and compact discs *etc.* Companies also resort to event sponsorship, event organizing and corporate films. Such integrated marketing strategy is adopted by companies to create brand recall value for the prohibited product but not necessarily to increase sales of the advertised product.¹²

Another important term to be discussed in the context of tobacco advertising is brand extension or brand advertising, brand stretching occurs when a tobacco brand name, emblem, trademark, logo, or trade insignia or any other distinctive feature (including distinctive colour combinations) is connected with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or services are likely to be associated. Launching new products with a common brand name *i.e.*, brand extensions is not illegal *per se* or objectionable in nature. However, when in response to ban on advertisement of certain product categories, which are not projected directly to consumers but rather masked behind another product under the same brand name, it is problematic. This is done so that whenever there is any mention of that brand, people start associating it with its main product *i.e.*, containing tobacco, which cannot be advertised under law. This misuse of a name or brand of a product, which cannot be advertised, for marketing, promoting or advertising other products, constitutes a

11 Examples include direct advertising on electronic, print and outdoor media, product packaging, point of sale advertising, price discounts, product placement and display at retailers, sales promotions, internet promotions, use of tobacco brand names, logos, or brand identities on non-tobacco products, activities, or events, placement of tobacco products, brands or tobacco use in the entertainment media.

12 Jayant Panvelkar, “Surrogate Advertising – An Ethical way of promoting Unethical Products” 1(25) *International Journal of Management and Economics* 88-94 (2018).

form of “indirect advertisement” *i.e.*, surrogate advertising.¹³ In *Dharimal Industries Limited v. Assistant Commissioner of Income Tax*,¹⁴ the tribunal noted that:

As stated earlier, pan masala of all variants is generally sold under the same brand name. The single name for all variants of pan masala affords a significant marketing advantage to the manufacturer. Since there are no restrictions on advertising a consumer product that contains no tobacco, pan masala without tobacco is vigorously advertised and promoted. Pan masala of all variants including gutkha carry the same brand name and therefore get considerable benefit from the unrestricted advertisement and promotion of its non-tobacco counterpart and thereby through surrogate advertising, *i.e.*, duplicating the brand image of one product extensively to promote another product of the same brand. As a result of such high-profile advertising and surrogate advertising, smokeless tobacco use is increasing rapidly in the stratum of society from which it had almost disappeared- among individuals with college education who are in business and in middle and high-level management positions.

Pan masala/elaichi/ mouth freshener advertisements are commonly found in mass media, often with leading bollywood /sports celebrities, to attract their large fan base- primarily the youth. These products are depicted as means to a “better /elite/ high achieving life” and as being the choice of accomplished stars/role models. Often leading female stars are also seen endorsing these ad campaigns to attract a larger clientele. Increasingly to counter health concerns, the advertisements have disclaimers like “0% Tobacco /Nicotine.” Several leading SLT brands/ companies’ advertisements are portraying themselves as a “natural/herbal/harmless” product, to revamp their image, to mislead public perception.

Advertising in the context of tobacco products

Under article 13 of the WHO FCTC member states have an obligation to adopt a comprehensive legislation in accordance with their constitutional principles, to prohibit all forms of TAPS, within five years of entering into force. It covers TAPS by any means, (*via* radio, television, print media and, as appropriate, other media, such as the internet) including cross border TAPS, and TAPS which are “misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects,

13 Singh and Associates, “Indian Legal Impetus” (2018), *available at*: <https://www.manupatrafast.com/NewsletterArchives/listing/ILI%20Singh%20Associates/2018/May/Vol%20XI%20Issue%20V.pdf> (last visited on Feb. 21, 2021).

14 2007 IndLaw ITAT 66.

hazards or emissions.” Member states are encouraged to go beyond the enumerated obligations.¹⁵

In India liquor and cigarette advertising was banned since 1995, under the Cable Television Network (Regulation) Act.¹⁶ Thereafter section 5 of the COTPA 2003 and Rule 2(i), (iii) and (iv) of COPTA Rules 2004, specifically prohibited both direct and indirect advertisement of tobacco products.

Restricting such advertising often raises questions about the infringement on the right and liberty to trade, which is available to tobacco manufacturers. Supreme Court of India¹⁷ had observed while imposing firecracker bans in NCR, in the interest of public health, that:

...First aspect is that the argument of economic hardship is pitched against right to health and life. When the Court is called upon to protect the right to life, economic effect of a particular measure for the protection of such right to health will have to give way to this fundamental right. Second factor, which is equally important, is that the economic loss to the State is pitched against the economic loss in the form of cost of treatment for treating the ailments with which people suffer as a result of burning of these crackers.

In this case the argument of loss of substantial revenue and employment, was only considered in a *prima facie* manner, with no conclusive determination, due to paucity of detailed studies. However, in the case of the tobacco industry, there is scientific evidence regarding the adverse impact on public health and resultant economic hardship. It is now abundantly clear that the cost of lifelong disease, dependence and death caused by tobacco use, outweighs any revenue that the tobacco industry generates [see: Economic Burden Study 2020].¹⁸

15 Available at: <https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=D7F62A68AE26BA615C8796499FF2C317?sequence=1> (last visited on Feb., 2021).

16 Chandrashekhar Singh, “Evolution of Surrogate Advertising and its Legal Measures with Special Reference to India” 11(1) *Management Insight* (2015).

17 *Arjun Gopal v. Union of India* (2017) 1 SCC 412 was filed on behalf of three infants by their guardians, out of concern about the health of their children due to the alarming levels of air pollution in Delhi, leading to various health hazards. The prayer also included banning the use, in any form, of firecrackers. On Oct. 23, 2018, Supreme Court directed the Central Government to suspend all licenses as permit sale of fireworks, wholesale and retail, within the territory of NCR.

18 ‘Economic Costs of Diseases and Deaths Attributable to Tobacco Use in India, 2017–2018’ *Journal of 20(20) Nicotine & Tobacco Research* (Vol. XX, No. XX). The economic costs of tobacco use amount to approximately 1.04% of India’s GDP, while the excise tax revenue from tobacco in the previous year was only 12.2% of its economic costs. The direct medical costs alone amount to 5.3% of total health expenditure. The enormous costs imposed on the nation’s health care system due to tobacco use could potentially stress the public health care system and strain the economy and it warrants massive scaling up of tobacco control efforts in India. Available at: <https://pubmed.ncbi.nlm.nih.gov/32805055/> provides new estimates for the economic burden of tobacco-related diseases in India in 2017-18 (last visited on Apr. 10, 2021).

In *Attorney General v. JTI-Macdonald Corp.*,¹⁹ the Canadian Supreme Court dealt with this matter, with respect to tobacco products specifically:²⁰

Nor is the means chosen to achieve the objective disproportionate. The element of rational connection is made out. Placing a corporate name on a list of sponsors or on a sports or cultural facility may promote the use of tobacco in a number of ways. This is clear when the corporate name is connected with the brand name of a tobacco product. (The appellant argued that all the respondents have brand names that include portions of their corporate names; the respondents did not contradict this.) But even where there is no overt connection between the corporate name and the brand name of a tobacco product, the corporate name may serve to promote the sale of the tobacco product. Connections may be established in a variety of ways. The corporate name may, without referencing a brand name, nevertheless contain a reference to tobacco. Or the corporate name may have historically been associated with tobacco. The evidence established the tobacco industry's practice of using shell corporations as an element in brand identification. Associations between the parent company and the shell company may persist in the public mind. As a result, the corporate name in the sponsorship promotion or on the building or facility may evoke a connection with the shell company and its brand.

Given the nature of the problem, and in view of the limited value of the expression in issue compared with the beneficial effects of the ban, the proposed solution — a total ban on the use of corporate names in sponsorship promotion, or on sports or cultural facilities — is proportional. And in view of the limited value of the expression in issue compared with the beneficial effects of the ban, proportionality of effects is established.

III Existing legal framework for regulation of advertising

Though direct advertisements of tobacco products have been eliminated to a great extent in the country, indirect advertisement continues unabated, especially in the form of surrogate advertisements and brand extensions. In this regard this current analysis is to look at the existing domestic legal framework to ensure a comprehensive ban on tobacco advertisements including prevention of surrogate advertisements. The paper discusses various enactments for regulation of advertisements of tobacco and tobacco products.

19 2007 SCC 30 (Canada).

20 *Id.*, para 127, 128.

COTPA 2003

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003²¹ (COTPA 2003) prohibits all forms of direct and indirect advertising, promotion and sponsorship of tobacco products.

Rule 2(e) of the COTPA Rules 2004 defines indirect advertisement as follows:²²

(e) ‘Indirect advertisement’ mentioned in section 5 (1) of the Act means:

- (i) the use of a name or brand of tobacco products or marketing, promoting or advertising other goods, services and events;
- (ii) the marketing of tobacco products with the aid of a brand name or aid which is known as or in use as a name or brand or other goods and service;
- (iii) the use of particular colour’s and layout and/or presentation those are associated with particular tobacco products; and
- (iv) the use of tobacco products and smoking situations when advertising other goods and services.

Thus, the ambiguity in the Act as to its scope in dealing with surrogate advertisements was taken care of by the above definition of “indirect advertisement,” under 2004 Rules.

In *Health for Million v. Union of India*,²³ the Supreme Court directed the Central Government and the governments of all the states to rigorously implement the provisions of COTPA and 2004 Rules.

21 Available at: <https://nhm.gov.in/index4.php?lang=1&level=0&linkid=459&lid=692> (last visited on Feb. 20, 2021).

22 Ministry of Health and Family Welfare, “Notification G.S.R. 345(E) dated May 31, 2005” available at: [http://164.100.154.238/NTCP/Acts-Rules-Regulations/GSR-345\(E\).pdf](http://164.100.154.238/NTCP/Acts-Rules-Regulations/GSR-345(E).pdf) (last visited on Feb. 20, 2021).

23 C.A. No. 5912-5913/2013. The Supreme Court noted that “The consumption of tobacco and tobacco products has huge adverse impact on the health of the public at large and, particularly, the poor and weaker sections of the society which are the largest consumers of such products and that unrestricted advertisement of these products will attract younger generation and innocent minds, who are not aware of grave and adverse consequences of consuming such products) We have no doubt that the Central Government and the State Governments across the country are alive to the serious and grave consequences of advertising tobacco and various products manufactured by using tobacco. They know that the consumption of these products will result in rapid increase in the number of cancer patients and huge proportion of the Budget earmarked for health of the common man will have to be used for treating the patients of cancer.”

The Trademark Act 1999²⁴

Following the prohibition on direct and indirect advertisements of tobacco products, tobacco companies are advertising pan masala and other products as surrogate advertisements for tobacco products. For this purpose, consider the following:

- i. VIMAL is one of the leading manufacturers of smokeless tobacco products. Some of its trademarks are registered under Class 34 “tobacco products and smokers’ articles” (e.g. Vimal, Vimal Pan Masala, Vimal Red, Vimal Apna Tobacco, Vimal Jhatka *etc*) and similar trademarks are registered under Class 31 “betal spices, mouth fresheners and agricultural goods” (e.g. Vimal, Vimal Pan Masala, Vimal Red, Vimal Apna Tobacco, Vimal Elaichi, Vimal Kesaria *etc*).²⁵
- ii. BABA is one of the leading smokeless tobacco brands. Some of its trademarks are registered under Class 34 (e.g. BABA, BABA 120 Plus, BABA ELAICHI, BABA NAURATAN *etc*) and similar trademarks are also registered under Class 31 “agricultural, horticultural and forestry products” (e.g. BABA, BABA 120 Plus, BABA ELAICHI, BABA NAURATAN *etc*).²⁶
- iii. TULSI has been registered under Class 34 (e.g. Tulsi Royal) and under Class 31 (e.g. Tulsi Royal Khajoor, Tulsi Josh).²⁷

From these examples, it is clear that the same brand names and same logos have been used by the same proprietor for products in different classes. The intent of the proprietor is to bypass the prohibition placed on advertising tobacco products by advertising other goods with the same brand name or logo as the tobacco product. These are clear cases of surrogate advertising by tobacco companies.

Remedy under COTPA 2003

The use of trademarks for surrogate advertising is covered under the scope of ‘indirect advertising’ under COTPA 2003. Accordingly, tobacco companies are restricted from advertising under section 5 of COTPA and can be penalised under section 22 of COTPA.

Remedy under Trademark Act 1999

Use of a trademark for the purpose of surrogate advertising means that it can be removed from the register as per section 47 of the Trademark Act, 1999. In a landmark

24 Available at: <https://www.incometaxindia.gov.in/pages/acts/trade-marks-act.aspx> (last visited on Feb. 22, 2021).

25 “VIMAL”, available at: <http://smokelesstobaccocontrolindia.com/vimal/> (last visited on Feb. 19, 2021).

26 “BABA”, available at: <http://smokelesstobaccocontrolindia.com/baba/> (last visited on Feb. 19, 2021).

27 “TULSI”, available at: <http://smokelesstobaccocontrolindia.com/wp-content/uploads/2020/08/tulsi.pdf> (last visited on Feb. 19, 2021). Amit Yadav, Pamela Ling *et.al.*, “Smokeless tobacco industry’s brand stretching in India” *Tob. Control* 1-3 (2020).

judgement under section 47, *Hardie Trading Ltd. v. Addisons Paint and Chemicals Ltd.*,²⁸ the Supreme Court noted that there are three conditions which must be fulfilled before a registered trademark can be removed from the register – (i) That an application is filed by a ‘person aggrieved’; (ii) That the trademark has not been used by the proprietor for a continuous period of at least five years and one month prior to the date of application; and (iii) There were no special circumstances which affected the use of the trademark during this period by the proprietor. The onus to establish the first two conditions lies on the applicant, while the burden to prove existence of special circumstance is on the proprietor.

Also in *Kabushiki Kaisha Toshiba v. TOSIBA Appliances*,²⁹ the Supreme Court held that “The intention to use a trade mark sought to be registered must be genuine and real.” The division bench further explained that “when a trade mark is registered, it confers a valuable right. It seeks to distinguish the goods made by one person from those made by another. The person, therefore, who does not have any *bona fide* intention to use the trade mark, is not expected to get his product registered so as to prevent any other person from using the same.”

Further in *FeddersLyod Corporation v. Fedders Corporation*,³⁰ the High Court of Delhi noted that mere use of trademark in advertising or other publication media is insufficient ‘use’ of a trademark because that would give impetus to legal trafficking in trademark by not using it but keeping it alive by advertisements only, thus it cannot amount to legitimate ‘use’.

In *Kellog Company v. Pops Food Products Private Limited*,³¹ the High Court of Delhi observed that if there is only intention to use a trademark for a very long period of time, then there is no *bona fide* intention to use the trademark and it can be removed from the register under section 47.

From an analysis of these judgements, it is arguable that surrogate advertising by tobacco companies amounts to valid grounds for removal of the trademark from the register of trademarks under section 47 of the Trade Mark Act, 1999.

Remedy under the Emblems and Names (Prevention of Improper Use) Act 1950

Under the Emblems and Names (Prevention of Improper Use) Act 1950,³² the use of trademarks by tobacco companies which suggest any government patronage or support, can be restricted under section 3 read with item 7 of the schedule.

28 2003 IndLaw SC 756.

29 Civil Appeal No. 3639 of 2008.

30 2005 IndLaw Del 313.

31 2018 IndLaw Del 131.

32 Available at: <http://legislative.gov.in/actsofparliamentfromtheyear/emblems-and-names-prevention-improper-use-act-1950> (last visited on Feb. 22, 2021).

In *Sable Wagbire and Company v. Union of India*,³³ the petitioners were manufacturing, marketing and selling bidis under the trademark “Chhatrapati Shivaji Bidi”. By a notification, the words “*Chhatrapati Shivaji Maharaj*” were added to the Schedule of the Emblems and Names (Prevention of Improper Use) Act 1950, and the trademark was sought to be cancelled. The Supreme Court held petitioner’s right to trade is not affected by the legislation and it is a reasonable restriction under article 19(1)(f) and article 19(1)(g). In *K.P. Vijayakumaran v. State of Kerala*³⁴ and in *India School Society v. State of Uttarakhand*,³⁵ the respective high courts noted that when the name suggests to the public that there is patronage of the state or government, then the name is not valid. Moreover names such as ‘*Rajnivas*’ pan masala, referring to Governor’s residence, could arguably be cancelled under Names and Emblem Act, 1950.³⁶

Resolving the conflict between the COTPA 2003 and the Trademark Act 1999

A major contention raised by tobacco companies is that restriction on promotion of trademark is a violation of their right to use the trademark. However, use of trademarks for surrogate advertising of tobacco products is a circumvention of the prohibition under the COTPA, 2003. This can be resolved through the established principle “a special law prevails over a general law”.³⁷ Considering that the COPTA 2003 is a special and latter legislation on tobacco while the Trademark Act, 1999 is a general legislation applicable to all trademarks, the COTPA must take prevalence. In *Godawat Pan Masala Products I.P. Ltd. v. Union of India*,³⁸ the Supreme Court held that that COTPA is a special law intended to deal with tobacco and its products. It’s a comprehensive legislation occupying the whole field of tobacco and its products. Further in *Tata Press*

33 (1975) 1 SCC 763.

34 2014 SCC OnLine Ker 28082.

35 2019 SCC OnLine Utt 251.

36 Available at: <https://www.youtube.com/watch?v=zBtwIqQjL9I> (advertisement clip) (last visited on Feb. 22, 2021). See also, available at: <https://www.zaubacorp.com/trademark/RAJ-NIWAS-PAN-MASALA/1052535> (image) (last visited on Apr. 10, 2021).

37 See, *Sbarat Babu Digumarti v. State Govt. of (NCT of Delhi)*, 2016 IndLaw SC 892; *Suresh Nanda v. Central Bureau of Investigation*, 2008 IndLaw SC 360; *General Manager, Telecom v. M. Krishan*, 2009 IndLaw SC 1082.

38 (2004) 7 SCC 68. The Supreme Court noted that “the objective of the proposed enactment is to reduce the exposure of people to tobacco smoke (passive smoking) and to prevent the sale of tobacco products to minors and to protect them from becoming victims of misleading advertisements. This will result in a healthier life style and the protection of the right to life enshrined in the Constitution. The proposed legislation further seeks to implement article 47 of the Constitution which, inter alia, requires the State to endeavour to improve public health of the people.”

v. *M.T.N.L.*,³⁹ the Supreme Court held that commercial advertisements which are deceptive, unfair, misleading, and untruthful could be regulated by the government.

In *Allahabad Bank v. Canara Bank*,⁴⁰ *Ajay Kumar Banerjee v. Umed Singh*,⁴¹ and *S. Prakash v. K.M.Kurian*,⁴² the Supreme Court supports the following propositions that where there is conflict between two Central Acts, the endeavour of court should be to harmonize two Acts seemingly in conflict. In the case of a direct conflict (repugnancy) between two special statutes, both being special laws, the following rules apply: (i) The later Act will prevail over the earlier Act; (ii) If there is a provision in one of the Acts giving overriding effect then that Act will prevail; (iii) A later Act, even if it is a general Act, can prevail over an earlier special Act, in the case of a repugnancy if there is no express provision to the contrary in the earlier special Act.⁴³

While upholding WTO Panel's 2018 decision to set aside challenge to Australia's Plain packaging law for tobacco products, WTO Appellate Board (AB), ruling in June 2020, affirmed that trademark rights under TRIPS article 16.1 do not grant a right to use the trademark in marketing. The AB rejected the idea that there is a right to use a trademark under TRIPS. It confirmed the panel's finding that TRIPS article 16.1 only protected a negative right to prevent infringement of a trademark.⁴⁴ It also agreed with the panel that the consequence of a trademark being a negative right is that there is no right to

39 AIR 1995 SC 2438. The Supreme Court observed that reasonable restrictions have been imposed vide the said Rules to discourage the printing of any message that would promote a brand and has the effect of deviating or distracting from the specified warnings and thereby undermine its objective to create general awareness among the public about the ill-effects of tobacco consumption. It is pertinent to mention here that the impugned Rules do not prohibit the use of brand names only misleading messages for its promotion that distracts from the specified warnings has been curbed.

40 AIR 2000 SC 1535.

41 AIR 1984 SC 1130.

42 AIR 1999 SC 2094.

43 When there is an earlier special law and a later general law, numerous judgements have held that there is no 'implied repeal' of an earlier special law by a later general law. Any fundamental change/alteration of law can only be carried out by explicit word, or by making provisions which are wholly inconsistent with it. Refer to: *The Pharmacy Council of India v. S.K. Toshnival Educational Trusts*, 2020 IndLaw SC 245; *R.S. Raghunath v. State of Karnataka*, 1991 IndLaw SC 604; *Justiniano Augusto De Piedade Barreto v. Antonio Vincente Da Fonesca*, 1979 IndLaw SC 165; *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey*, 1966 IndLaw SC 353.

44 Para 6.614, available at: <https://untobaccocontrol.org/kh/legal-challenges/wto-appellate-body/> (last visited on Mar. 1, 2021).

45 Paras 6.602, 6.616, 6.619, available at: <https://untobaccocontrol.org/kh/legal-challenges/wto-appellate-body/> (last visited on Feb. 20, 2021).

use it for the purposes of keeping the trademark distinctive.⁴⁵The AB's finding on this question is shared by many other courts and dispute settlement systems.⁴⁶

The Consumer Protection Act, 2019

Seeking to protect the interest of consumers, the Consumer Protection Act, 2019⁴⁷ section 2(28), provides a broad definition of 'misleading advertisement' which includes any advertisement amounting to an 'unfair trade practice' under section 2(47). It also introduced endorser liability. The Central Consumer Protection Authority established under the Act has been empowered under section 21 to handle complaints related to misleading advertisements and impose appropriate penalties on manufacturers, producers and endorsers. Various legal pronouncements illustrate time and again the law on this issue.

In *Ludhiana Improvement Trust v. Shakti Coop. Housebuilding Society Ltd.*,⁴⁸ the Supreme Court held that an unfair trade practice under section 2(1)(r) of the Consumer Protection Act, 1986 refers to any trade practice which is used for promoting the sale, use or supply of any goods by adopting any unfair method or unfair or deceptive practice, which includes any practice mentioned in section 2(1)(r) clauses (1) to (6).

Also in *Havells India v. Amritanshu Khaitan*,⁴⁹ the High Court of Delhi held that two elements must be satisfied for an advertisement to be considered to be a misleading advertisement – *firstly*, it must deceive the persons to whom it is addressed or must have the potential to deceive them; *secondly*, as a consequence of this deception it should be likely to affect the economic behaviour of the public to whom it is addressed or harm a competitor of the advisor.

In *Struggle Through Pain v. State of Uttar Pradesh*,⁵⁰ the High Court of Allahabad held that commercial advertisements include indirect or surrogate advertisements and these are not protected under article 19(1)(a) of the Constitution of India. It opined that while sponsoring of cultural, sports, music activities by itself is not prohibited, sponsoring of these activities with the objective to use a well-known liquor brand amounts to surrogate advertisements. In *United Breweries Limited v. Mumbai Grahak Panchayat*,⁵¹ the National Consumer Disputes Redressal Commission held that surrogate advertisements are particularly impactful on young consumers. Accordingly, for the purpose of

46 Including the decisions of the *Philip Morris v. Uruguay* investment tribunal and the appellate or constitutional courts of the United Kingdom, France, and Uganda, *available at*: <https://untobaccocontrol.org/kh/legal-challenges/wto-appellate-body> (last visited on Feb. 20, 2021).

47 *Available at*: <http://egazette.nic.in/WriteReadData/2019/210422.pdf> (last visited on Mar. 20, 201).

48 (2009) 12 SCC 269.

49 2015 Indlaw DEL 3133.

50 2019 Indlaw ALL 239.

51 (2006) Indlaw NCDRC 212.

neutralising the effect of such advertisements it directed the contravening party to issue corrective advertisements.

The Cable Television Networks (Regulation) Act, 1995

The Cable Television Networks (Regulation) Act 1995⁵² seeks to regulate the operation of cable television networks in India.

- i. Section 6 prohibits transmission or re-transmission of any advertisement if it does not conform with the prescribed advertisement code, which has been prescribed in the Cable Television Networks Rules, 1994⁵³.
- ii. Rule 7 of the Cable Television Networks Rules 1994 requires that all advertisements carried in the cable service shall conform to the laws of the country and no advertisement shall be permitted which inter alia, tends to incite people to breach of law; promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants.

The Advertising Standards Council of India (ASCI)

The ASCI is a non-governmental self-regulatory voluntary organization of the advertising industry in India established in 1985. The Code for Self-Regulation (Code)⁵⁴ was introduced to ensure that fair advertising practices are followed, to meet the best interests of the consumers. Any person can file a complaint before the ASCI for a review of the advertisement. The Consumer Complaint Council (CCC) decides whether the complaint is valid, in which case the advertisement is either modified or withdrawn.

Relevant provisions of the code

- i. Chapter I requires all advertisements to be truthful and be an honest representation.
- ii. Guideline 3.3 in Chapter III provides that advertisements towards children should not contain anything which can result in physical, mental or moral harm.
- iii. Guidelines 3.6 in Chapter III provides that companies should not circumvent the restrictions placed by law for advertisement of certain products.
- iv. The Guidelines for Qualification of Brand Extension Product or Service specifically address surrogate advertisements for liquor and tobacco companies.

52 *Available at:* <http://legislative.gov.in/sites/default/files/A1995-7.pdf> (last visited on Mar. 10, 2021).

53 *Available at:* <https://www.trai.gov.in/sites/default/files/CableTelevisionNetworksRules1994.pdf> (last visited on Mar. 10, 2021).

54 *Available at:* https://www.ascionline.org/images/pdf/code_book.pdf (last visited on Feb. 10, 2021).

In *Common Cause v. Union of India*,⁵⁵ the Supreme Court in its order on July 12, 2017 directed the Central Government to educate the general public about the existence of the grievance redressal mechanism under the ASCI Code for Self-Regulation. Also in *Aditya Kumar Jha v. UOI*,⁵⁶ the High Court of Allahabad held that the role of the ASCI is to ensure that advertisements are truthful and honest. Further, the test to determine if an advertisement is truthful and honest is the impact it has on a consumer and whether it is likely to mislead them.

IV Contemporary issues

In terms of advertising and surrogate advertising of tobacco products, there are two contemporary issues which have arisen: (i) Minors and Online Advertising of Tobacco Products; and (ii) Corporate Social Responsibility Activities by Tobacco Companies.

Minors and online advertising of tobacco products

Currently India has its largest ever adolescent and youth population⁵⁷ and youth is also the primary target group of the tobacco industry. Protecting the youth of the country means protecting its future. The theme of the World No Tobacco Day 2020⁵⁸ highlighted the need to counter manipulative tactics utilised by the tobacco industry to entice the youth, such as attractive designs and flavours of tobacco products, celebrity/influencer sponsorship, indirect promotion in media *etc.*⁵⁹

In consonance with WHO FCTC recommendation under article 16, section 6 of COTPA, 2003 prohibits sale of tobacco products to minors, making it a punishable offence under section 24. In addition section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015⁶⁰ penalises any person who gives to a child any tobacco product, with rigorous imprisonment of seven years and a fine of one lakh rupees. There have been numerous cases where tobacco products were sold to children or near school premises.⁶¹ In *Bachpan Bachao Andolan v. Union of India*,⁶² the Supreme

55 W.P. (C) No. 387/2000.

56 2017 IndLaw ALL 95.

57 Available at: <https://india.unfpa.org/en/topics/young-people-12> (last visited on Jan 31, 2021).

58 Available at: <https://www.who.int/campaigns/world-no-tobacco-day/world-no-tobacco-day-2020> (last visited on Jan 31, 2021).

59 WHO, "World No Tobacco Day – 31 May 2020", available at: <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> (last visited on Jan 31, 2021).

60 Available at: <http://cara.nic.in/PDF/JJ%20act%202015.pdf> (last visited on Jan 31, 2021).

Court observed that there is an increase in the use of drugs and tobacco among children in India.

A major cause of concern is online advertising of tobacco products. Websites of certain tobacco companies actively promote tobacco products and have no age-restricted access for minors. Tobacco companies often use social media sites to promote their brands. Social media platforms such as Facebook, Twitter, Instagram and websites such as Tumblr, Reddit *etc.* have promotional posts regarding tobacco products.⁶³ *E.g.*, there are forums dedicated to e-cigarettes and vaping on Reddit, Instagram and Twitter have many trends relating to smoking, most series on Netflix and Amazon Prime contain scenes depicting tobacco use and even brands placement.⁶⁴ These are all forms of promotion of tobacco products, to attract consumers, specifically adolescents and children who use social media savvy and are present on such platforms in large numbers.

In addition to being promoted *via* social media, tobacco products are also sold on these online platforms.⁶⁵ Two factors which facilitate such illegal sales are (i) targeted advertising; and (ii) privacy settings. Targeted advertising enables minors to easily come

61 Refer to: *Muhammedkutty v. State of Kerala*, 2017 SCC OnLine Ker 29688; *Rijas v. State of Kerala*, 2017 SCC OnLine Ker 29900; *Jayakumar v. State of Kerala*, 2018 SCC OnLine Ker 4989; *Abdul Azeez v. State of Kerala*, 2018 SCC OnLine Ker 14529; *Vijayappan v. State of Kerala*, 2020 SCC OnLine Ker 3300

62 (2017) 1 SCC 653. The Supreme Court directed the Central Government to: (i) establish a national database and conduct a national survey on drug abuse within six months; (ii) formulate a comprehensive national plan within four months to address immediate concerns such as (a) National Action plan for children; (b) Creating an appropriate curriculum for children of all ages to keep away from drugs, alcohol and tobacco; (c) Setting up de-addiction centres; (d) Establishing a standard operating procedure for enforcing s. 77 and s. 78 of the JJ Act 2015; (e) Implementing the National Policy on Narcotic Drugs and Psychotropic Substances which has been approved by the Union Cabinet; and (iii) adopt specific content in the school curriculum under the aegis of the National Education Policy.

63 Emily T. Herbert, Kathleen R. Case and Steven H. Kelder *et al.*, “Exposure and Engagement With Tobacco- and E-Cigarette – Related Social Media” 61(3) *J Adolsec Health* 371-377 (2017); Julia Vassey, Catherine Metayer and Chris J. Kennedy *et al.*, “#Vape: Measuring E-Cigarette Influence on Instagram With Deep Learning and Text Analysis” *Frontiers in Communication*, Jan. 22, 2020, available at: <https://www.frontiersin.org/articles/10.3389/fcomm.2019.00075/full> (last visited on Feb. 20, 2021); Daniel K. Cortese, Glen Szczyпка and Sherry L. Emery, “Smoking Selfies: Using Instagram to Explore Young Women’s Smoking Behaviours” 4(3) *Social Media* 2-8 (2018).

64 Monika Arora, Gaurang P. Nazar *et al.*, “Tobacco imagery in on-demand streaming content popular among adolescents and young adults in India: implications for global tobacco control” *Tob. Control* 1-7 (2020).

65 HM ChaithanyaSwamy, “Coronavirus lockdown: CCB sleuths nab two persons selling tobacco products online in Bengaluru” *Deccan Herald*, Apr. 24, 2020, available at: <https://www.deccanherald.com/city/bengaluru-crime/coronavirus-lockdown-ccb-sleuths-nab-two-persons-selling-tobacco-products-online-in-bengaluru-829196.html> (last visited on Feb. 20, 2021).

across content which promotes tobacco products - by searching for a popular celebrity or influencer, if it is trending, it will show up in recommendations *etc.* Further, given that social media platforms allow minors to make private accounts, their guardians might not even be aware about the advertising by tobacco companies. For example, sellers can advertise their products on Instagram and sell it to any person (including minors) who pays.⁶⁶

Other possible solutions used worldwide, to restrict tobacco companies from promoting their products on social media, and also prohibit social media influencers from promoting these products.⁶⁷ For example - in 2019, the United Kingdom Advertising Standards Authority ruled against British American Tobacco (BAT), holding that BAT cannot promote its e-cigarettes on Instagram. It also noted that BAT had paid influencers to promote its Vype e-cigarettes. The influencers used tags such as “#feelingVypeAF” and “I dareyou to try it”, instead of mentioning that it was a paid promotion.⁶⁸

Information Technology (Intermediaries Guidelines) Rules 2011

IT Rules, 2011⁶⁹ Rule 3, requires the intermediary to exercise due diligence and ensure that no information is uploaded which is unlawful.

As direct and indirect advertising of tobacco products is prohibited under COTPA 2003, intermediaries are required to curtail advertising of tobacco products on their platforms, in adherence with the law of the land.

In *Shreya Singhal v. Union of India*,⁷⁰ the Supreme Court noted that as per Rule 3(2) of the IT Rules 2011, “an intermediary has not only to publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary’s computer resource but he has also to inform all users of the various matters set out in Rule 3(2).” Also in *Swami Ramdev v. Facebook Inc.*,⁷¹ the High Court of Delhi held that Rule 3(2) of the IT Rules 2011 requires an

66 Preeti Soni, “India’s e-cigarettes ban hasn’t stopped vaping – it only drove out Juul and Vape” *Business Insider*, May 30, 2020, available at: <https://www.businessinsider.in/india/news/indias-e-cigarettes-ban-hasnt-stopped-vaping-it-only-drove-out-juul-and-vape/articleshow/76093490.cms> (last visited on Feb. 10, 2021).

67 Andrew Rowell, “Despite being banned, Big Tobacco is still on social media” *Independent*, February 3, 2020, available at: https://www.independent.co.uk/health_and_wellbeing/big-tobacco-cigarettes-facebook-ban-instagram-influencers-a9309971.html (last visited on Feb. 10, 2021).

68 Sara Spary, “ASA bans 10 e-cigarette Instagram ads as brands continue to fall foul on rules” *Campaign*, Dec. 18, 2019, available at: <https://www.campaignlive.co.uk/article/asa-bans-10-e-cigarette-instagram-ads-brands-continue-fall-foul-rules/1669058> (last visited on Feb. 10, 2021).

69 Available at: https://www.meity.gov.in/writereaddata/files/GSR314E_10511%281%29_0.pdf (last visited on Apr. 10, 2021); Information Technology Act, 2000 - <https://www.meity.gov.in/content/information-technology-act-2000>; (last visited on Feb. 22, 2021).

70 2015 IndLaw SC 211.

71 2019 IndLaw DEL 2747.

intermediary to remove or disable access to any material which is violative of Rule 3(2) upon receiving a court order.

However, these companies have not complied with Rule 3(2). The content regulation policies of these companies do not restrict promotion of tobacco products,⁷² although sale of tobacco products is banned thereunder.⁷³

To address the need for stricter regulation of digital/online media platforms, Government of India notification dated November 9, 2020,⁷⁴ brings films and audio-visual programmes provided by online content providers, within the ambit of the Ministry of Information and Broadcasting. This can be a significant step to ensure that tobacco promotion does not take place *via* OTT platform content regulation and denormalization of TAPS. Following the laudable ban on e-cigarettes by the government in 2019,⁷⁵ similar cautionary measures are essential to regulate TAPS in all media including OTT platforms, especially for protecting the youth.

Corporate social responsibility activities by tobacco companies

Corporate social responsibility refers to any form of contribution by tobacco companies to any event, activity, or individual commonly in exchange for the promotion of the companies' brand(s) or corporate identities with the aim, effect, or likely effect of promoting a tobacco product or tobacco use either directly or indirectly. Companies often engage in CSR activities as a means to improve their goodwill among the general public and the government. This enables them to promote their brand and products as consumers have a positive outlook on companies which contribute positively to the society.⁷⁶

72 "Facebook – Community Standards", *available at*: <https://www.facebook.com/communitystandards/> (last visited on Feb. 5, 2021); "Twitter – The Twitter Rules", *available at*: <https://help.twitter.com/en/rules-and-policies/twitter-rules> (last visited on Feb. 5, 2020) "Instagram – Community Guidelines", *available at*: <https://help.instagram.com/477434105621119> (last visited on Mar. 25, 2021)

73 "Alcohol, tobacco, e-cigarettes to be restricted on Instagram, Facebook" *Financial Express*, July 25, 2019, *available at*: <https://www.financialexpress.com/industry/technology/alcohol-tobacco-e-cigarettes-to-be-restricted-on-instagram-facebook/1656498/> (last visited on Feb., 2021).

74 The notification issued by the Cabinet Secretariat has amended the Government of India (Allocation of Business) Rules, 1961 by inserting two new entries - 22A and 22B - to the Second Schedule of the Rules, namely: 1) Films and Audio-Visual programmes made available by online content providers 2) News and Current Affairs on online platforms. This is essentially an enabling mandate giving Ministry of Information and jurisdiction to regulate online content. <http://egazette.nic.in/WriteReadData/2020/223032.pdf> (last visited on Feb. 25, 2021).

75 *Available at*: <http://egazette.nic.in/WriteReadData/2019/214523.pdf> (last visited on Feb. 15, 2021)

76 WHO, "Tobacco Industry and Corporate Responsibility... An Inherent Contradiction" *available at*: https://www.who.int/tobacco/communications/CSR_report.pdf (accessed on Sep. 5, 2020).

CSR activities not only allow tobacco industry to market its dangerous and addictive products but also undermines the governments' tobacco control efforts and meet its commitments under WHO FCTC. Article 5.3 of WHO FCTC, provides that governments must protect its public health policy from the commercial and vested interests of the tobacco industry, and this involves denormalizing the so-called CSR of the tobacco industry.⁷⁷

Recognising the fact that engagement of tobacco companies in CSR activities leads to promotion of tobacco products, international guidelines and domestic circulars have sought to regulate the same:

- i. Recommendation (6) of the Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control⁷⁸ provides for “*Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility.”*”
- ii. The CBSE passed a circular on 7th January 2015 which prohibited schools from participating in any activity affiliated with tobacco companies.⁷⁹
- iii. The Ministry of Corporate Affairs passed a circular on 16th May 2016 which noted that CSR activities by companies cannot contravene other laws, including the provisions of COTPA 2003.⁸⁰

Thus, international organisations and regulatory bodies are cognisant of the dangers posed by allowing tobacco companies to engage in CSR activities, as these would lead to indirect promotion of their brand and tobacco products. Use of such tobacco industry tactics to target the youth has intensified during the COVID 19 pandemic.⁸¹

77 Available at: <https://ggtc.world/2020/04/23/tobacco-industrys-covid-donations-vs-economic-cost-of-tobacco/> (last visited on Feb. 22, 2021).

78 The Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, available at: https://www.who.int/fctc/guidelines/article_5_3.pdf (last visited Feb. 25, 2020).

79 Central Board of Secondary Education, “Circular No. Acad-03/2015 dated January 7, 2015”, available at: cbseacademic.nic.in/web_material/Circulars/2015/03_Tobacco.pdf (last visited on Feb. 20, 2021).

80 Ministry of Corporate Affairs, “No. 05/01/2014-CSR dated May 16, 2016”, available at: https://www.mca.gov.in/Ministry/pdf/General_circular05_16052016.pdf (last visited on Feb. 20, 2021).

81 Available at: <https://ggtc.world/2020/05/27/the-role-of-the-who-fctc-in-covid-19-responses-2020/> (last visited on Feb. 20, 2021). See also, available at: <https://blogs.bmj.com/tc/2020/05/10/the-two-faces-of-the-tobacco-industry-during-the-covid-19-pandemic/> (last visited on Feb. 20, 2021).

V Conclusion

It is clear that advertising of tobacco products is done in numerous ways – through surrogate advertising, brand stretching, use of trademarks, CSR, promotion on various forms of media, celebrity/influencer sponsorship *etc.* While the existing legal framework is sufficient to address some of these concerns, their effective implementation is critical, other measures are required to plug legal policy gaps and for compliance with India's obligations under the WHO FCTC:

- (i) The registration of trademarks by tobacco companies needs to be monitored to ensure that new trademarks are not being used to bypass the prohibition on direct and indirect advertisement of tobacco product under section 5 of the COTPA 2003.
- (ii) Information about the tactics employed by the tobacco industry for advertisement, promotion and sponsorship of their products is widely disseminated, denormalized and regulated.
- (iii) All parties which contravene the provisions of the aforementioned legislations should be penalised appropriately to deter future violations.
- (iv) Existing regulatory bodies should take appropriate measures for the enforcement of ban on every form of advertising, promotion and sponsorship, of all tobacco products.
- (v) CSR activities by tobacco companies needs closer scrutiny and appropriate restrictions be placed in order to prevent promotion of tobacco products.

Promotion of tobacco products on online platforms and streaming services needs to be regulated and denormalized, as per Government of India notification dated November 9, 2020.⁸²

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82 Available at: <http://egazette.nic.in/WriteReadData/2020/223032.pdf> (last visited on Jan. 31, 2021).

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