

Draft Recommendation from the National Consultation on “Effective implementation of measures for control of Smokeless Tobacco use”

Held on 18th & 19th Feb 2020, in Patna, Bihar

ICMR- National Institute of Cancer Prevention and Research (NICPR), Noida, Government of India in joint collaboration with the International Union Against Tuberculosis and Lung Disease (The Union) organized a National Consultation on “Effective implementation of measures for control of Smokeless Tobacco(SLT) use”. The consultation was attended by Sh. Mangal Pandey, Hon’ble Health Minister Bihar; Sh. Sanjay Kumar, IAS, Principal Secretary (Health) & Commissioner Food Safety; Dr. Shalini Singh, Director, NICPR; Sh. Manoj Kumar, IAS, Executive Director, State Health Society, Bihar; Sh. Kaushal Kishore, IAS, Additional Secretary, Health Department, Govt. of Bihar; Dr. L Swasticharan, Chief Medical Officer, Ministry of Health and Family Welfare, New Delhi; Sh. Pranay Lal(The Union) and the Food Safety Commissioners and Assistant Commissioners from states of Gujarat, Tamil Nadu, Chhattisgarh, Madhya Pradesh, Jharkhand, Punjab, Nagaland, Sikkim, Kerala and Bihar along with the Food Safety Officers from different districts of Bihar.

The participants to the consultation after detailed discussions and deliberation on existing policies and laws for regulation of SLT at the State & National level recommended the following:

1. The State Governments/UT’s to issue notification/order for permanently banning gutkha and pan masala (with tobacco and nicotine) by issuing notification/order under clause 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011 (which prohibits the use of tobacco and nicotine as ingredients in any food products) No time limit of ban should be mentioned in the order (such as one year or any other duration). This would avoid inconsistencies and ambiguity in implementation of ban on gutkha and pan masala (with tobacco and nicotine) and also prevent the need to re-issue the notification for bans.
2. The State Government/UT’s may not give exemption to export units for manufacture of gutkha and pan masala (with tobacco and nicotine). The said exemption is in contravention of Food Safety & Standard Act 2006 and its Regulations, as they apply to food products manufactured for export also. [Reference: *SJJ Exports Company Vs Food Safety Commissioner, W.P. No. 2266/2012 & SJJ Exports Company Vs. Food Safety Commissioner-SLP No. 8432/2013*]
3. The State Governments/UT’s to issue appropriate notification/order under Clause 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011 to ensure that food or food additives in the form of scent/flavoring agents etc. are not used as ingredient in chewing tobacco. It has been observed that food and its additives in the form of scent/coloring/flavoring agents such as spices, saffron, kewda, menthol, lime, water, oil etc, are extensively used as ingredient in the manufacture or preparation of chewing tobacco

such as khaini, zarda etc. The addition of the said additives particularly flavouring or scenting ingredients to tobacco significantly increases their allure and intensifies the flavor of chewing tobacco which is otherwise un-appealing in taste or texture, thus increasing its prevalence and dependence. [Reference: State of Bihar Notification dated 25.10.2018]

4. The State Governments/UT's to issue appropriate notification/order for implementation of ban on use of tobacco in tooth powder and tooth paste under the Drugs and Cosmetics Act, 1940. The manufacture/sale of certain smokeless tobacco products like gudakhu, gul, mishri and red tooth powder used as tooth paste or tooth powder is prohibited by the Government of India Notification, GSR 443(E), dated 30th April, 1992, under Section 33(EED) of the Drugs and Cosmetics Act, 1940 and GSR 444(E), dated 30th April, 1992, under Section 26A of the Drugs and Cosmetics Act, 1940. [Reference: *Laxmikant vs UOI & Ors. (1997) 4 SCC 739*]
5. The State Governments/UT's to ensure strict enforcement of the provisions of the Environment Protection Act 1986 namely the Plastic Waste Management Rules, 2016, which mandates:
“sachets using plastic material shall not be used for storing, packing or selling gutkha, tobacco and pan masala.” AND

“plastic material in any form including Vinyl Acetate, Maleic Acid, and Vinyl Chloride Copolymer, shall not be used in any package for packaging gutkha, pan masala and tobacco in all forms. [Reference: *Ankur Gutkha Vs Indian Asthama Care Society & Others-SLP No. 16308/2007*]
6. The State Governments/UT's to collect and test samples of Pan Masala for presence of nicotine, magnesium carbonate and other impurities/adulterants which render the food unsafe. The tests may be carried out at the State notified/accredited Food & Drug Laboratories. Samples of Pan Masala may also be sent to the National Tobacco Testing Laboratory, through:

Dr. L Swasticharan-Additional DDG
National Tobacco Control Programme
Directorate General of Health Services
Room No. 743, A-Wing
Ministry of Health and Family Welfare
Government of India
Nirman Bhawan, Maulana Azad Road
New Delhi – 110 011
tsu.nttdghs@gmail.com, 011-23063537

Further appropriate follow-up action based on the test results shall be taken under the Food Safety & Standards Act 2006 and other supplementing laws.

[Reference: *Jitul Deka Vs State of Assam & Others-PIL No. 19 of 2020-Order dated 17.02.2020/State of Assam letter dated 20.02.2020/State of Bihar Notifications dated 30.08.2019 and 02.09.2019*]

7. The licence/registration of Pan Masala companies found to be adding adulterants (magnesium carbonate, nicotine etc.), misbranding and making misleading claims i.e., “no nicotine or 0% nicotine” on their packages in contravention of FSSAI laws to be cancelled.
8. The Food Safety and Standards (Safe food and healthy diets for School Children) Regulations 2019, may include provisions that prohibits the sale of pan masala and flavoured supari which are referred to as food injurious to health of school children in school canteens/mess premises/ hostel kitchens or within 50 meters of the school campus and further include prohibition on all direct or indirect advertisement of these products in school premises or within 50 meters of the school campus.
9. The meeting of the Steering Committee constituted in 2005 to take cognizance and look into specific action against direct and indirect advertisement of tobacco products, under Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA), to be convened.
10. Steps to be taken to ensure that the advertisement of food products shall:
 - a. depict only the product being advertised and not tobacco products in any form or manner.
 - b. not make any direct or indirect reference to tobacco products, through their name/logo/presentation etc.
 - c. not contain any nuances or phrases promoting tobacco products.
 - d. not use particular colors/layout/presentations associated with tobacco products.
11. The direct and indirect advertisement of Pan Masala needs to be prohibited through all mediums, by making suitable modifications in the Food Safety and Standards (Advertisements and Claims) Regulations, 2018. This would be in the interest of public health as there is rampant direct and indirect advertisement in print, electronic and outdoor media, of pan masala by undermining the harmful and injurious nature of the product. In this context the Parliamentary Standing Committee on Health & Family Welfare, in its 110th Report on Functioning of Food Safety & Standards Authority of India, (presented on 9th August, 2018), has recommended action against misleading advertisements that promote unhealthy/injurious food habit in gullible consumers especially children.
12. The recommendation of Food Safety’s Scientific Committee, for display of warning “consumption of pan masala is injurious to health”, covering 50% of Front of Pack of the label of Pan Masala, to be implemented by making suitable modification in the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. [*Minutes of Food Authority 27th Board Meeting dated 04.02.2019*]
13. Entry 6, 8, 9 and 10, pertaining to Chewing tobacco, Pan Masala or any chewing material having tobacco as one of its ingredients (by whatever name called Gutka and Tooth powder

containing tobacco), to be deleted from the schedule of COTPA 2003. The said products have been considered as food and drugs and have been banned under the Food Safety & Standards Act, 2006 and its enabling Regulations and the Drugs & Cosmetics Act of 1940. However, the mention of said products in the schedule of COTPA, 2003, is creating unwarranted confusion as to the applicability of legislation with respect to these products.

14. Tax rates on SLT to be fixed at global recommended levels and SLT manufacturers to ensure that they do not evade taxation by manufacturing from small and unregistered settings. Presently the exemptions given to business with annual turnover of less than 40 lakhs are misused by SLT industry to register multiple business and brands and avoid payment of taxes. Ignoring the financial turnover, every tobacco business entity should be registered under GST Act.
15. Uniformity should be maintained with respect to package size, amount of contents and display of health warnings for tobacco products. Presently SLT products are available in packets of various sizes and contents, this lack of uniformity in packaging has resulted in weak enforcement of 85% health warning (HW). Also, there is no impact of taxation as price of SLT products is kept low by manipulating its size and amount of content.

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