



Policy Advocacy for Taxation and TAPS Ban in India

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Campaign for Tobacco-Free Kids

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FORMS OF TOBACCO USE IN INDIA

- GATS 2010 showed a need to focus our strategies on smokeless tobacco and the 73 million bidi smokers

GATS India, 2009-2010	% of adult population	Million people
Current smoked tobacco users	14.0%	120.0
Current bidi users	9.2%	78.9
Current smokeless tobacco users	25.9%	222.0
Both smoked and smokeless	5.3%	45.4
Total users	34.6%	296.6



TAX ADVOCACY EFFORTS



TOBACCO TAXATION IN INDIA – CENTRAL LEVEL

- **Central Excise Duty Taxes : at factory gate**
 - ❖ Method of taxation differs according type of product – specific tax
 - ❖ Rates vary for each product according to the method of production and by characteristics (e.g. length)
 - ❖ Includes a range of dedicated duties/levies
 - ❖ Exemption for small scale bidi manufacturers
- On average central excise accounts for about 40% of the price of cigarettes and 5% of the price of bidis.
- Chewing tobacco is levied on a machine basis.



TOBACCO TAXATION IN INDIA – STATE AND LOCAL

- State Taxes:
 - Value Added Tax (VAT) – at retail
 - Entry Tax – upon entry into the State
- Municipal Taxes (in very few cities)
 - Octroi – upon entry into the city
- State VAT ranges from 0% to 65% depending on jurisdiction and the type of product.
- *State VAT on tobacco especially bidis is a relatively new development – largely a result of BI funded advocacy.*



PRICES OF KEY TOBACCO PRODUCTS 2009-10

- A large price gap exists between cigarettes and other tobacco products.

Price estimates	Indian Rupees
Cigarettes (20 stick pack)	43.0^a
Bidis (20 stick pack)	5.3^a
Chewing tobacco (pouch)	1-5^b

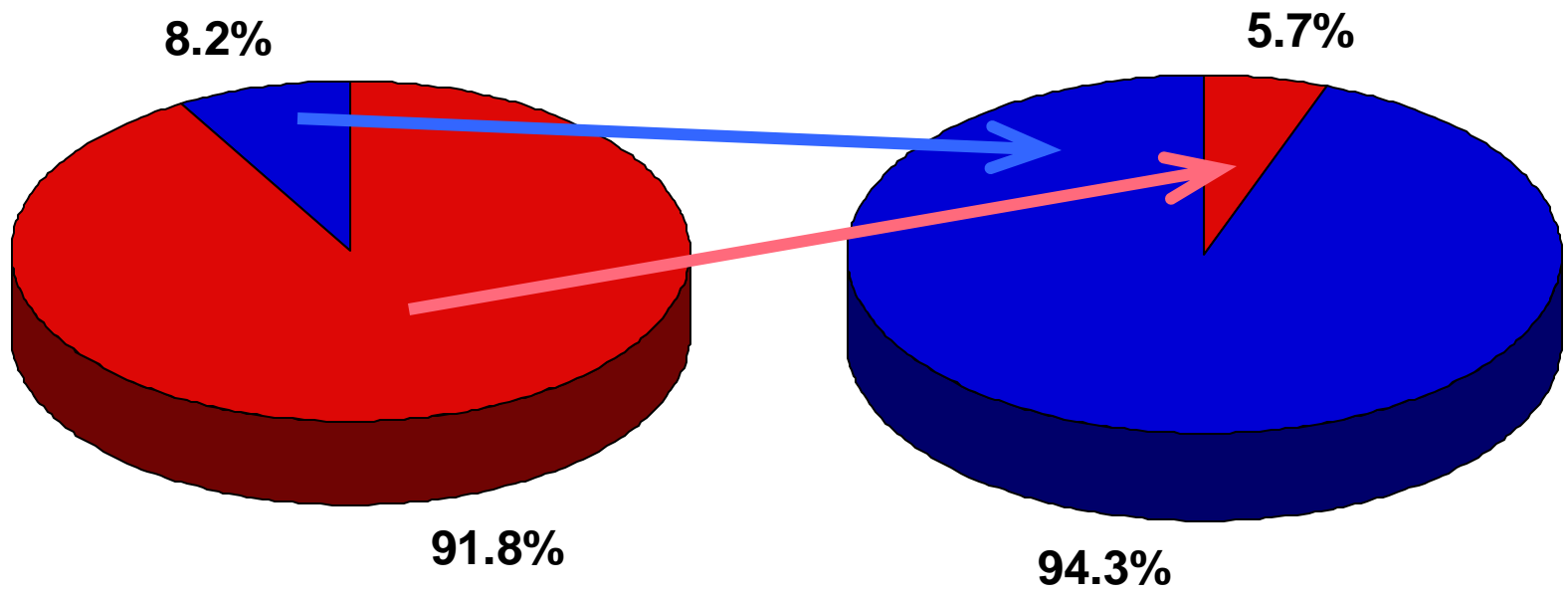
(a) Estimated from GATS (b) Indicative range (c) 1 USD = 55 INR



>10 Bidis are Smoked for Every Cigarette...
But Bidis Account for <6% of Combined Excise Tax Revenues (2006/07)

■ Bidis consumed
■ Cigarettes consumed

■ Bidi excise taxes
■ Cigarette excise taxes





SITUATIONAL ANALYSIS FOR TAX ADVOCACY IN 2010

- **Centre:**

- Optimal way to increase taxes
- Cigarettes: complex tax structure & calibrated tax increases
- Bidi: tax subsidies benefiting industry
- Smokeless: tax per machine; poor enforcement
- ‘Hostile’ Finance Minister

**Little chance of significant
increases in near term**

OPPORTUNITY IN THE STATES ?

- States have independent authority to tax tobacco products; not exercised enough
- Few were taxing bidis
- The tobacco industry was not on its guard at the state level
- The potential for increased tobacco revenue from states is tremendous.



BIDI POLITICS IN STATES – 2010 WHEN EFFORTS BEGAN

STATES with 0% VAT

- 12 out 20 (95% of popl'n)
- Population = 630 million
- 53 million people not paying VAT i.e. 51% of smokers

State/UT	Popul'n	%age tobacco users	Popl'n age 15 +	Popl'n age 15+	Fraction of bidi smokers	No of bidi smokers	VAT 2010-11
	<i>Millions</i>	<i>Overall</i>	<i>%age</i>	<i>Millions</i>	<i>Percent</i>	<i>Millions</i>	<i>Bidi</i>
India	1,150	34.6%	64.6	742.9	9.2%	68.3	
Uttar Pradesh	195	33.9%	58.9	114.9	12.4%	14.2	12.5%
West Bengal	94	36.3%	66.7	62.7	15.7%	9.8	0%
Bihar	113	53.5%	57.9	65.4	8.4%	5.5	0%
Rajasthan	56	32.3%	59.9	33.5	16.0%	5.4	20%
Madhya Prad	60	39.5%	61.4	36.8	13.4%	4.9	0%
Andhra Pradesh	76	29.2%	67.9	51.6	6.8%	3.5	0%
Gujarat	50	29.4%	67.2	33.6	8.9%	3.0	20%
Karnataka	52	28.2%	68.1	35.4	8.3%	2.9	15%
Tamil Nadu	66	16.2%	73	48.2	5.3%	2.6	0%
Haryana	21	23.7%	64	13.4	15.4%	2.1	0%
Odhisia	43	46.2%	66.8	28.7	6.5%	1.9	12.5%
Maharashtra	97	31.4%	67.9	65.9	2.7%	1.8	0%
Chhatisgarh	21	53.2%	63	13.2	9.5%	1.3	0%
Kerala	32	21.4%	73.9	23.6	4.9%	1.2	0%
Uttrakhand	8	30.7%	63.6	5.1	19.2%	1.0	
Assam	26	39.3%	62.6	16.3	5.3%	0.9	13.50%
Delhi	13	24.3%	67.5	8.8	8.7%	0.8	0%
Punjab	24	11.7%	68.6	16.5	4.2%	0.7	12.5%
Jharkhand	27	50.1%	60.2	16.3	4.1%	0.7	0%
Himachal Pradesh	6	21.2%	68.9	4.1	14.5%	0.6	5%
Sikkim	7	41.6%	63.6	4.5	10.8%	0.5	
Jammu & Kashmir	10	26.6%	64.2	6.4	3.8%	0.2	0%
States with pop <5 million	53			38		3	



BIDI – TAX POTENTIAL IN STATES VS CENTER

Market Size

Source: Satya Poddar Report, 2007-08

24,467 Rs crs

		CENTER		STATES	
		Excise Duty		VAT	
Average rate of taxation	Rs 14/1000 sticks	~ 7% of price		Current weighted avg.	8.90%
Total taxation/annum	As per TRU, FinMin	Rs crs	450	Current tax amount	Rs crs 2,178
Thus tax being paid is	as %age of industry		1.8%		
Entire industry in tax net	with current rate of tax	7%	1,713	With wghtd avg rate	15% 3,670
Entire industry in tax net	with Rs 28/1000 sticks		3,425	With wghtd avg rate	25% 6,117

- Currently more tax paid in States than at Centre (refer line 2)
- Raising VAT in 5 States impacted 10% of population
- With central posture, easier to raise VAT to 15% than bring entire industry under tax net.



ADVOCACY GOALS AT THE STATE LEVEL

- Increase VAT at the state level in 12 plus states
- Special emphasis on increasing bidi taxes especially in those states that has 0% taxes
- Create voices for retaining state right to tax tobacco after GST implementation

STATE ADVOCACY STRATEGIES AND TARGETS

- Targets – Chief Ministers, Finance Ministers
- Strategies
 - Voice of Tobacco Victims – in 2013 letter campaign endorsed by Finance Minister of Bihar
 - The Health Argument
 - Tobacco prevalence in State vs Region
 - Double Win = increased revenue + reduced consumption
 - Lives Saved Computation (by JHSPH)
 - Strong local partners with existing relationships
- Concerns
 - Taxes in neighbouring States
 - Illicit trade





VOICE OF VICTIMS





WHY WAS VOTV SO EFFECTIVE?

- Voice of Tobacco Victims – 1) Opened doors; 2) Translated the statistics into real people; 3) Gave both a human aspect to tobacco and a sense of urgency; 4) Demonstrated that there is a visible and powerful constituency for tobacco control
- The Data was Compelling; VOTV Made the tobacco problem a local problem
- Increased Visibility – the Voices of Victims combined by powerful cancer physicians attracted media attention
- Demonstrated to key leaders that tobacco taxes are a Double Win = increased revenue + reduced consumption

VOTV Both Educated and Motivated on Tax and other key issues



DOUBLE WIN: PUBLIC HEALTH AND INCREASED REVENUES

- **J&K: Shri Abdul Rahim Rather - Budget Speech 2011-2012**

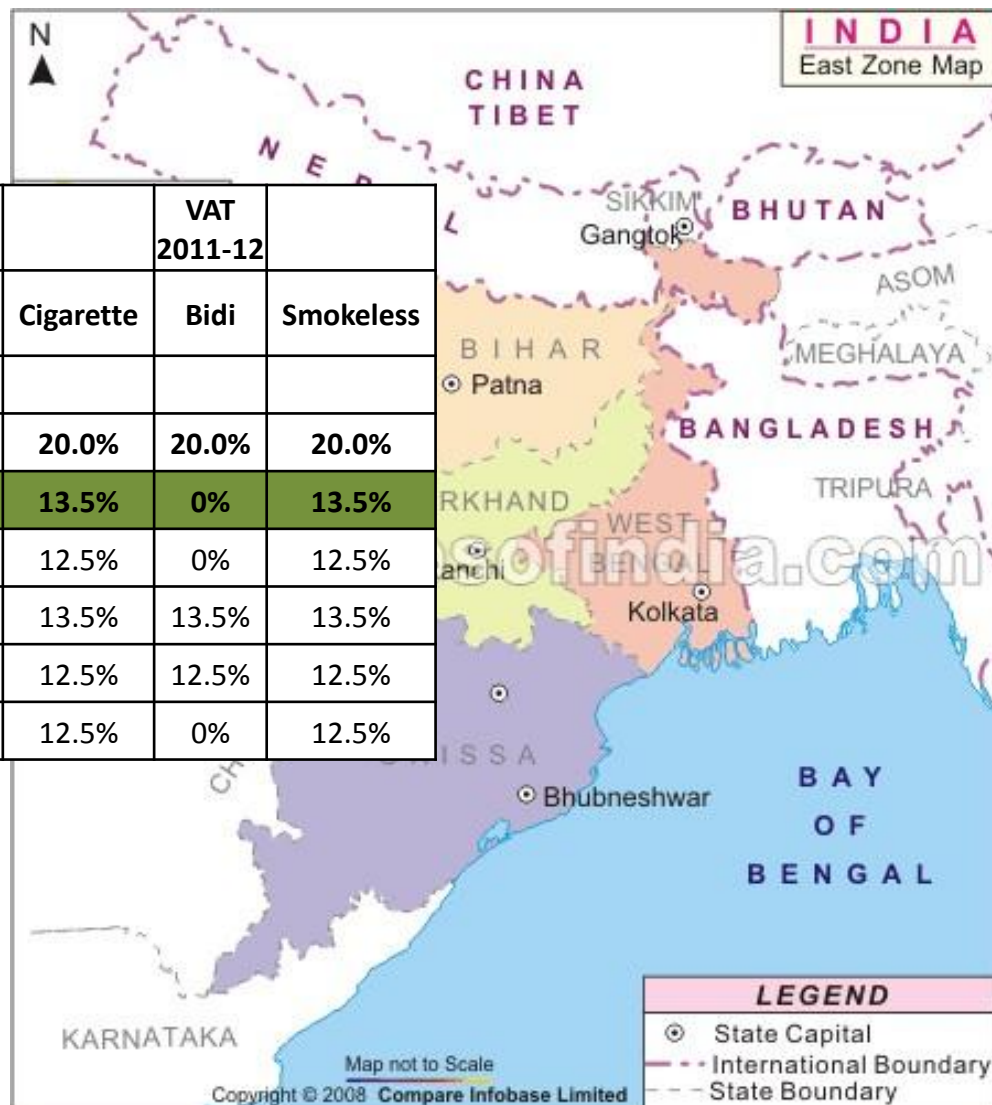
*Consumption of tobacco and its products is injurious to public health. Many people lose their lives due to cancer caused by tobacco. This menace has to be checked by education of the public. Apart from the government efforts and legislative measures, the role of the voluntary social organisations in launching campaigns against tobacco needs to be encouraged. The present rate of VAT on cigarettes is 13.5% while on beedi no VAT is charged. I propose to charge 25% tax on cigarettes, cigars, cigarillos, pouched tobacco, gutka and beedis. **The additional revenue generated from this measure will be handy to meet the needs of the State Cancer Treatment and Management Fund.***

- **Rajasthan: Shri Ashok Gehlot: 2011-12 - Budget Speech**

*Hon'ble Speaker, our government is determined to protect the health of citizens of our state. All Hon'ble members are aware about the ill effects of tobacco and its products. The families who have tobacco victims suffer economically and emotionally, therefore it is our duty to discourage the use of tobacco products. Members present in the Assembly will certainly agree with me. .. I propose **increase of VAT rates from 20% to 40%** on pan masala, tobacco and tobacco products. **The price increase will surely decrease the usage of tobacco and its products, hence the Citizens of the State will become healthy.***

TOBACCO PREVALENCE RATES IN STATE VS REGION

State/UT	Populat'n <i>In Millions</i>	Prevalence of Tobacco				VAT 2011-12		
		Overall	Cig'ette	Bidi	Smoke- less	Cigarette	Bidi	Smokeless
India	1,150	34.6%	5.7%	9.2%	26.0%			
Assam	26	39.3%	8.8%	5.3%	33.0%	20.0%	20.0%	20.0%
Bihar	113	53.5%	5.9%	8.4%	49.0%	13.5%	0%	13.5%
Jharkhand	27	50.1%	6.8%	4.1%	48.0%	12.5%	0%	12.5%
Odhisia	43	46.2%	4.7%	6.5%	43.0%	13.5%	13.5%	13.5%
Uttar Pradesh	195	33.9%	2.3%	12.4%	25.0%	12.5%	12.5%	12.5%
West Bengal	94	36.3%	10.3%	15.7%	22.0%	12.5%	0%	12.5%





LIVES SAVED *

Sn	State/UT	Population (Millions)	Adult tobacco use prevalence (GATS)	% aged 15 plus (census 2001)	Premature deaths estimated in cohort aged 15 and over	Scenario B		
						Estimated change in # of users	Premature deaths averted in quitters	% Premature mortality reduced
	India	1,150						
1	Gujarat	50	29.4%	67.2%	4,633,440	-117,615	82,330	1.8%
2	Himachal Pr.	6	21.2%	68.9%	497,527	-21,222	14,855	3.0%
3	Jammu & Kashmir	10	26.6%	64.2%	726,744	-43,172	30,220	4.2%
4	Rajasthan	56	32.3%	59.9%	5,212,738	-588,772	412,140	7.9%
5	Delhi	13	24.3%	67.5%	1,169,269	-36,907	25,835	2.2%
6	Kerala	32	21.4%	73.9%	2,869,685	-41,458	29,021	1.0%
7	Tamil Nadu	66	16.2%	73.0%	4,153,116	-330,692	231,485	5.6%
8	Assam	26	39.3%	62.6%	3,281,242	-106,042	74,229	2.3%
9	Andhra Pradesh	76	29.2%	67.9%	7,650,293	-199,521	139,665	1.8%
10	West Bengal	94	36.3%	66.7%	13,006,700	-236,372	165,461	1.3%
	G. Total	429			43,200,753	-1,721,773	1,205,241	2.8%

* Rajeev Cherukupalli, Ph.D.; Research Associate; Johns Hopkins Bloomberg School of Public Health



RESULTS TO DATE

- In 2011-12 – 13 states increased VAT.19
- Last year (2012-13), 12 states increased taxes.
- 12 states have increased VAT in 2013-14 to date. Rajasthan went up to 65 %.
- Several of them increased taxes on Bidis – many were taxing it for the first time.

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VAT rate changes on tobacco products, India 2010-14

State/UT	VAT 2010-11			VAT 2011-12			VAT 2012-13			VAT 2013-14		
	Cigarette	Bidi	Smkless	Cigarette	Bidi	Smokeless	Cigarette	Bidi	Smokeless	Cigarette	Bidi	Smokeless
India	48,865,916	78,871,303	222,039,863	48,865,916	78,871,303	222,039,863	48,865,916	78,871,303	222,039,863	48,865,916	78,871,303	222,039,863
Bihar	12.50%	0.00%	12.50%	13.50%	0.00%	13.50%	20.00%	0.00%	20.00%	30.00%	13.50%	30.00%
Delhi	20.00%	0.00%	20.00%	20.00%	12.50%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%
Goa	20.00%	15.00%	N.A.	20.00%	20.00%	N.A.	22.00%	22.00%	N.A.	22.00%	22.00%	N.A.
Himachal Pradesh	13.75%	5.00%	13.75%	16.50%	9.75%	16.50%	18.50%	11.00%	18.50%	36.00%	22.00%	36.00%
Jammu & Kashmir	13.50%	0.00%	13.50%	25.00%	25.00%	25.00%	30.00%	30.00%	30.00%	40.00%	40.00%	40.00%
Karnataka	15.00%	0.00%	15.00%	15.00%	0.00%	15.00%	17.00%	0.00%	17.00%	17.00%	0.00%	17.00%
Kerala	12.50%	0.00%	12.50%	12.50%	0.00%	20.00%	15.00%	0.00%	20.00%	20.00%	0.00%	20.00%
Madhya Pradesh	12.50%	0.00%	12.50%	13.00%	0.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%	13.00%
Maharashtra	20.00%	0.00%	20.00%	20.00%	0.00%	20.00%	20.00%	5.00%	20.00%	25.00%	12.50%	25.00%
Rajasthan	20.00%	20.00%	20.00%	40.00%	40.00%	40.00%	50.00%	50.00%	50.00%	65.00%	65.00%	65.00%
Uttar Pradesh	12.50%	12.50%	12.50%	17.50%	13.50%	18.50%	50.00%	13.50%	30.00%	50.00%	13.50%	30.00%
Uttrakhand	12.50%	0.00%	12.50%	12.50%	0.00%	12.50%	20.00%	8.00%	20.00%	20.00%	8.00%	20.00%
Andhra Pradesh	14.50%	0.00%	14.50%	20.00%	0.00%	20.00%	20.00%	0.00%	20.00%	20.00%	0.00%	20.00%
Assam	13.50%	13.50%	13.50%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%	25.00%	25.00%	25.00%
Gujarat	20.00%	20.00%	20.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	30.00%	30.00%	30.00%
Odhisa	12.50%	0.00%	12.50%	25.00%	10.00%	25.00%	25.00%	10.00%	25.00%	25.00%	10.00%	25.00%
Tamil Nadu	12.50%	0.00%	12.50%	20.00%	14.50%	20.00%	20.00%	14.50%	20.00%	20.00%	14.50%	20.00%
West Bengal	12.50%	0.00%	12.50%	20.00%	0.00%	20.00%	20.00%	0.00%	20.00%	25.00%	0.00%	25.00%
Punjab	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	22.50%	22.50%	22.50%	55.00%	55.00%	55.00%
Haryana	20%	0%	20%	20%	0%	20%	20%	0%	20%	20.00%	5.00%	20.00%
Total	13.1%	5.9%	12.4%	17.5%	9.4%	16.4%	20.7%	11.9%	19.7%	24.4%	15.5%	23.2%
Percentage of Total	91.6%	95.5%	84.1%	4.3%	3.5%	4.1%	3.2%	2.5%	3.2%	3.7%	3.6%	3.6%
Zero VAT states		13			9			6			3	



INDUSTRY PUSHBACK

- Strong counter-offensive by the tobacco lobby since 2012 as they fully geared up now.
- Constant pressure by the industry so relatively smaller increases in VAT in 2012, 2013 as compared to 2011.
- Media advocacy to praise efforts of state leadership – billboards in Rajasthan, earned media.
- Industry pressure resulted in tax roll backed in Himachal (2011) and Bihar and Karnataka (2012) – Managed to push back in Bihar this year – but not UP.



TAPS Advocacy efforts



Comprehensive national law covering TAPS

- Section 5 of COTPA (Cigarettes and Other Tobacco Products Act 2003) addresses Tobacco Advertising and Promotion (but not sponsorship?)
- Implementing Rules for COTPA Section 5 have been issued
- Loopholes exploited by industry to advertise and promote tobacco



Key Definitions in COTPA

- “advertisement” includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas.
- Promotion not defined
- Sponsorship not defined



Key areas of Violation

- Surrogate Advertising – Brand Stretching
- Promotion/Sponsorship
- Point of Sale

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Surrogate Advertising: illegal under COTPA



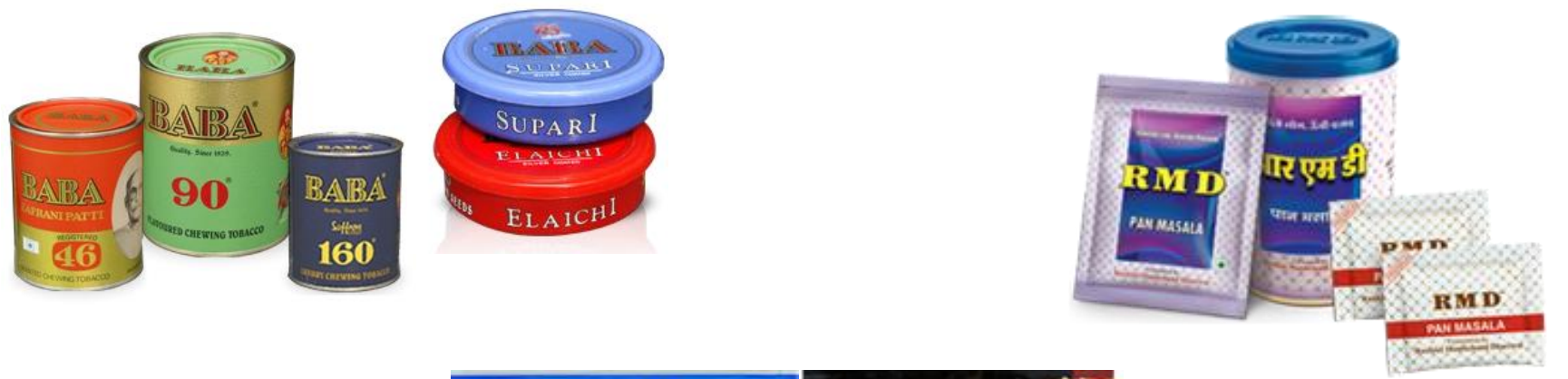
WILLS
LIFESTYLE

INDIA
FASHION
WEEK



Pan Masala (non tobacco based) and Gutkha (tobacco based) using the same name - another example of surrogate marketing/ brand-sharing??

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Relevant sections of COTPA

- Section 5 (1) COTPA: No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products
- Rule 2 provides that “indirect advertisement” mentioned in section 5(1) of COTPA means:

the use of a name or brand of tobacco products for marketing, promoting or advertising other goods services and events; the marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and service; the use of particular colors and layout and/or presentation those are associated with particular tobacco products; and the use of tobacco products and smoking situations when advertising other goods and services”.

Legal advocacy to address surrogate advertising

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- TFK supported law suit in state Chennai High court in 2012 for a ban on the sale of helmets with the Marlboro logo
- In response, the state government served notice on the relevant companies including Godfrey Philips to cease and desist from using the Marlboro logo. Court also directed the State Nodal Officer to follow up on enforcement actions.



Advocacy on surrogate advertising in gutka packaging



- Extensive advocacy with state tobacco control cell in two states in India to get enforcement action against manufacturers who were selling tobacco and non-tobacco product with the same name/pack.
- Technically moot since gutka is not banned and can no longer be sold in all states of India



Does the Trade Mark Act 1999 limit the impact of COTPA on brand stretching and surrogate advertising?

- Tobacco brands can freely register tobacco brands under different non-tobacco categories under the Trade Marks Act, 1999
 - Wills, ITC and Godfrey Philips have registered under several non tobacco and lifestyle categories
 - And thereby making the argument that advertising is for non-tobacco businesses/ events, and hence not intended to promote tobacco products
- Section 5(1) of COTPA read with the Rules clearly prohibits indirect advertising like brand sharing and stretching – so even though the Trademark Act may not prohibit tobacco companies from registering non-tobacco products with tobacco brands, Section 5(1) still clearly prohibits the advertising of such co-branded products

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Promotion/Sponsorship





Relevant section of COTPA

- Section 5 (3) of COTPA: No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of -
 - (a) Cigarettes or any other tobacco product; or
 - (b) Any trade mark or brand name of cigarettes or any other tobacco products in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

Sponsorship of Music Event

- Series of concert competitions sponsored by the Four Square cigarettes produced by Godfrey Phillips India. The “Four Square-GET FAMOUS- be Tamil Nadu’s Next Singing Sensation” events
- Local TC group presented the numerous violations to the authorities. When no action was taken by the police, PT launched a media campaign.
- As a result, State Government announced that the concerts are illegal and hence banned. All future events were cancelled.





Marathon sponsorship

- Partner Faith Foundation notified Manikchand (maker of largest gutka brands) that it was in violation of COTPA provisions through its sponsorship of the Vadodara Marathon.
- Faith Foundation informed the Collector, Commissioner of Police, and Municipal Commissioner of Vadodara that it had served a legal notice to Manikchand.
- Extensive media advocacy.
- The Vadodara Marathon was free of RMD gutka advertising as a result of Faith Foundation's advocacy.



Point of Sale Advertising



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Point of Sale Advertising





INDIAN LAW “Point of Sale”

- COTPA 5(2) includes a specific point of sale exception to the general ban on TAPS
- Rule GSR 345(E) 2(b) restricts point of sale advertising.
 - Size of the board at entrance not to exceed 60 cm by 45 cm
 - Health Warning in Indian language on the top edge of the board in a prominent manner measuring 20 cm by 15 cm (so 1/3rd of the board)
 - Health reference legible and in black color with white background
 - Display board shall only list type of tobacco products available and no brand pack shot, brand name or other promotional message or picture can be displayed
 - Display board cannot be back lit or illuminated
- These Rules could not be implemented because of a stay order issued in 2005 by the Bombay High Court was in force till January 2013



Legal Advocacy to lift POS stay

- Civil society petition filed in 2012 in Supreme Court to lift the stay in the POS case – high profile lawyer filed this case.
- The SC passed an interim order on 3rd Jan 2013, removing the stay granted by Mumbai High Court several years ago.
- Follow up advocacy resulted in MoHFW immediately issuing letters to the states to implement POS rules.
- State partners engaged in continuous advocacy to implement the rules



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....a Healthier India