

**A report on the
“Mapping and analysis of tobacco-related litigations in Karnataka”**

Submitted to,

**Karnataka State Anti Tobacco Cell,
Department of Health and Family Welfare Services,
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Background

Tobacco poses a huge disease, economic and environmental burden in India. It accounts for over 13 lakh deaths a year in India¹. Karnataka has its fair share of this burden. About one in three men and one in ten women uses tobacco in Karnataka amounting to about 1.2 crores (22.8% of her population) tobacco users in the state. Tobacco attributable diseases are estimated to cost about 983 crores a year.²

The Karnataka government has instituted several measures to reduce tobacco use and associated disease burden. These include an ensemble of laws and policies to curb tobacco use across the state. Even prior to the enactment of the Cigarette and Other Products Act, 2003 – central law on tobacco – Karnataka already had laws like the Karnataka Prohibition of Smoking and Protection of Health of Non – Smokers Act, in place. And throughout the years, the state has incrementally worked to ban specific tobacco products like: gutka, pan masala (containing tobacco) and electronic cigarettes. Through these and many other state driven initiatives, Karnataka has witnessed substantial progress in terms of reducing the tobacco use prevalence by 5.4 percentage points between 2009-10 and 2016-17.³

The tobacco industry is known to interfere in (public) health policy aimed at ameliorating the health effects of tobacco. Realising this, the World Health Organization Framework Convention on Tobacco Control, the United Nations treaty – signed and ratified by India – highlights the fundamental and irreconcilable conflict of interests between the goals of tobacco industry and that of tobacco control policies; and hence Article 5.3 has been incorporated to shield national policies against the commercial imperative of the Industry. But despite the existence of a comprehensive regulatory (global and national) framework to shield tobacco control policies, the Industry uses several strategies including litigations to intimidate governments and delay the implementation of laws and policies. Interestingly, litigations to safeguard public interest are commonly invoked across India as well as South

¹ See [DN Sinha, KM Palipudi, PC Gupta, S Singhal, C Ramsundarahettgi, P Jha, A Indrayan, S Asma, G

² This amount is for persons aged 35 to 69. See Economic Burden of Tobacco Related Diseases in Karnataka Highlights, part of *The Study on Economic Burden of Tobacco Related Diseases in India, 2011*. Available at http://origin.searo.who.int/india/topics/tobacco/karnataka_highlights.pdf

³ See GATS I Karnataka, India 2009-2010; GATS II Karnataka, India 2016 – 2017; and Curbing tobacco: K'taka success story <https://www.deccanherald.com/content/656982/curbing-tobacco-ktaka-success-story.html>.

Asia to also strengthen and cement the working of tobacco control regulations.⁴ There is some documentation of the role of litigations in tobacco control globally, but in India, especially at state level, such documentation is sparse.

Karnataka is one of the largest growers of tobacco in the country; and hence manufactures a gamut of (tobacco) products. Due to the strong presence of the tobacco Industry in the state, this study is commissioned by the Karnataka State Anti Tobacco Cell (Department of Health and Family Welfare Services) to better understand the tobacco-related litigations in Karnataka.

Aims and objectives

The overall aim of the study was to historically map and analyse tobacco-related litigations in Karnataka in order to better understand implications on tobacco control regulations in the state.

Specific objectives included:

1. Mapping the laws that have been directly and incidentally used in these litigations.
2. Analyzing the contents of the litigations in terms of the claims advanced by the parties and the corresponding outcomes.
3. Mapping the stakeholders using these litigations.

The expectation was that such understanding would help the State Anti Tobacco Cell better understand, pre-empt and address future legal challenges as they pursue tobacco control regulatory measures in the state.

Methods

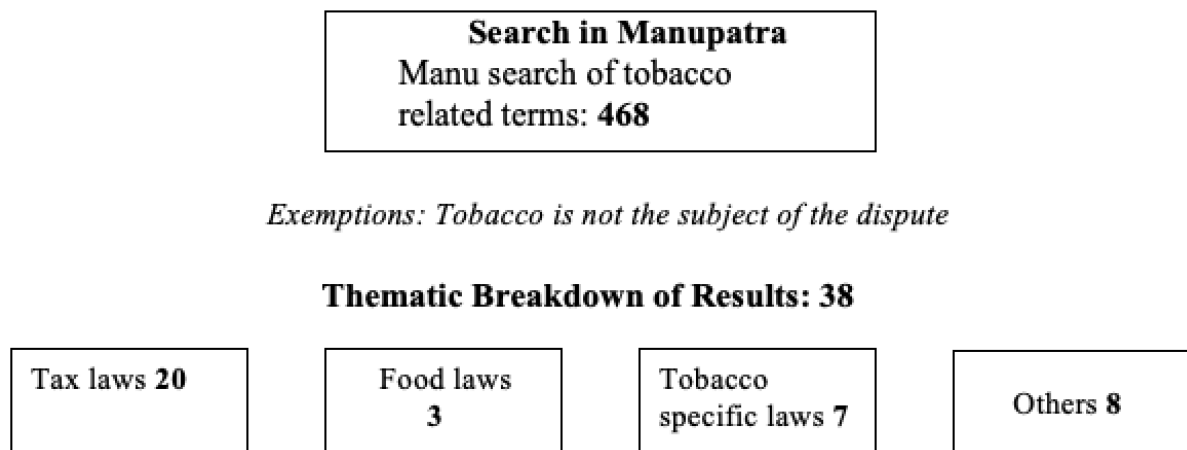
Using the Indian legal database, *Manupatra*, we designed a search mechanism to ensure that all litigations – directly and incidentally – dealing with tobacco in Karnataka high court are generated for the purpose of our analysis. At the beginning of March, we used the *Manu Search* option to generate case judgements that dealt with specific forms of tobacco. Search

⁴ See Bhojani U, Hebbar P, Rao V, Shah. V. Litigations for Claiming Health Rights: Insights from Tobacco Control. 2014 <https://www.hhrjournal.org/2014/07/litigation-for-claiming-health-rights-insights-from-tobacco-control/>.

terms included: *tobacco, bidi/beedi, khaini, gutka, cigarette, hukka/hookah, zarda, gul, kharra, mishri, mawa, gudakhu, nastaar, chillum, cheroot, cigar*. We did not restrict the search by any time limiters, and hence searched for cases historically till March 2020, the time of conducting this search. The cases produced were from the year 1950 till 2020. Since only cases adjudicated by the Karnataka High Court were relevant for this study, we applied the Karnataka High Court filter to exclude other high court cases. Additionally, we sourced orders from the web portal on tobacco control laws and litigations maintained by the Campaign for Tobacco-Free Kids.⁵

We then reviewed the cases sourced in this manner. We excluded cases that had tobacco as well as other products as the subject matter, and hence were jointly litigated. Additionally, cases with no direct or incidental effect on tobacco control regulations, such as procedural dispute, were excluded. We also refrained from analysing labour disputes such as cases dealing with gratuity of beedi workers and payment of minimum wage to beedi manufacturers. In summary, we analysed cases that that dealt primarily with tobacco and were of relevance to tobacco control regulations. Figure-1 provides the search strategy and outputs. The Annex-1 provides the list of all cases mapped and analysed for the purpose of this study.

Figure-1 Search strategy and outputs



We reviewed the short listed cases doing document and thematic analysis: mapping the petitioners, nature of their claim, court proceedings and its relevance to tobacco control

⁵ See <https://www.tobaccocontrolaws.org/>

regulations. Information for the petitioner (and their attributes) has been collated primarily from the details of the parties provided in the litigation itself. When cases didn't have required details, we used free Internet searches to gain needed information. Figure-2 provides the framework used to analyse the cases.

Figure-2 Framework for analysis of cases

Case analysis

Case	Legal Framework	Theme	Petitioner details	Facts + Issue/s	Petitioner Claims	Respondent	Judgement
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Petitioner mapping

Name of the petitioner	Nature of entity	Form of tobacco	Brief description
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Results

We first focus on identifying the laws that are primarily used in litigations and how they are used. Table-1 provides details on the laws that have been used, the tobacco products that are regulated through those laws and a summary of the nature of disputes brought forward through these laws in the litigations studied.

We could see (Table-1) that disputes were brought forward under various laws beyond the COTPA (tobacco-specific law), including food laws, municipal laws, tax laws and laws regulating drugs. These all have implications on tobacco control as tobacco control measures also stem from these and more laws, not necessarily restricted to tobacco-specific laws framed with tobacco control mandates. The disputes varied from questions of law (interpretation and applicability of prevailing laws), questions of authority (power of issuing regulations under the prevailing laws) and disputes concerning procedures/operation of regulations.

Table-1 Major laws used and the nature of disputes presented before the Karnataka High Court

	Law used in litigation	Products regulated	Type of dispute brought to the court
1.	Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 – COTPA	Cigarettes; hookah; tobacco products	- Application of COTPA/Rules - Validity of the Rules - PIL asking the Court to enforce the Rules, 2014 & enact measures to safeguard people’s health - Tobacco Board to withdraw sponsorship in violation of COTPA - Violation of COTPA – Section 7.
2.	Food Safety and Standards Act 2006 – FSSA	Paan masala and gutka	- Validity of notification issued by the Commissioner; and the question of law
3.	Prevention of Food Adulteration Act 1954 – PFA	Supari; gutka	- Whether the Amendment to the Rule 42 zzz (6) is unconstitutional? Question of law - Conflict between PFA & COTPA
4.	Drugs and Cosmetics Act 1940 –DCA	ENDS	- Power of the state government to issue circular
5.	Karnataka Tax on Entry of Goods Act 1979 – KTEGA	Raw beedi/beedi; unmanufactured tobacco; beedi/tendu leaves	- Question of law - Validity of the circular passed by Commissioner - Validity of notification passed by GoK - Validity of the order
6.	Karnataka Municipal Corporation Act 1976- KMCA	Hookah; tobacco	- Nature of power under the Act; and whether the Commissioner can delegate it? - Challenging the order: cancellation of trade license.
7.	Tobacco Board Act 1975 –TBA	Tobacco	
8.	Karnataka Value Added Tax Act, 2003 –KVAT	Unmanufactured tobacco (used for beedi); beedi	- Question of law - “Whether the notification Annexure-"D" is ex abundanti cautela the policy of the state exempting unmanufactured tobacco from tax under the Act” ?
9.	Income Tax Act 1961- ITA	Cigarettes (filters)	- Question of law - Decision of the Tribunal with regard to application of the law: whether (cigarette) filters could be claimed as deductibles?
10.	Karnataka Sales Tax Act, 1957-KSTA	Gutka, paan masala (tobacco products); zarda	- Challenging the order passed by the revisional authority - (State) questioning the decision of the Appellate Authority - Application/interpretation of law – nature of power
11.	Central Excises and Salt Act, 1944 & Central Excises Rules 1944	Cigarettes; Tobacco; cigarettes & tobacco products; gutka; unmanufactured tobacco	- Question of law - Challenging the order passed by the Tribunal - Procedural: whether refund was justified? - Operation of law: questioned the legality of show cause notice

We now provide a narrative summarizing the arguments/disputes specific to each of the major laws using key litigations.

Tobacco Specific Law (Cigarette and Other Tobacco Products Act, 2003)

The Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 is India's landmark legislation on tobacco. In alignment with the WHO Framework Convention on Tobacco Control -2003, COTPA prohibits the sale of tobacco products to minor; mandates pictorial health warnings on tobacco packs; prohibits smoking in public places as well as tobacco advertisements and promotion.

Most of the cases litigated involve the industry challenging the implementation of provisions of COTPA. In *Shaikh Musa vs. The State of Karnataka*⁶ 2017 the proprietor – trading in tobacco products - contested the police raid conducted on his business. Despite having obtained the license mandated by law, the police had seized tobacco products; and booked the Petitioner for violating section 7 of COTPA and the Rules. Referencing the letter dated 20.05.2016 issued by the Government of India, the Petitioner averred that the time for implementation of the Pictorial Warning Rules 2014 had been extended and the case was prematurely registered. Adhering to the Petitioner's contentions and the court held that the raids – conducted prior to the extended period – were an abuse of power and hence the criminal proceedings were ultimately quashed. Similarly, in *Tobacco Institute of India and Ors. vs. Union of India*⁷ 2017 the Petitioners challenged the validity of the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 as amended by the Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014. The aforesaid amendment sought to increase the health warning on the package to at least 85% (65% pictorial health warning and 25% textual).

Contrasting this general trend of the tobacco industry challenging the implementation of tobacco control provisions, some of the tobacco control advocates/organizations used Public Interest Litigations (PIL) to enhance the implementation of COTPA and to challenge the

⁶ MANU/KA/1924/2017

⁷ MANU/KA/3117/2017

tobacco industry interference with the law. In *Rahul Joshi vs. Union of India and Ors*⁸ 2017 a practicing advocate prayed for the better implementation and enforcement of the Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014. The tobacco control community has often used public interest litigations to ensure that the tobacco industry doesn't flout the existing regulatory framework. Similarly, in the *Institute of Public Health v. The State Government of Karnataka, et al.*, 2010, the Court was tasked with having to issue directions to the Tobacco Board to withdraw sponsorship of the Global Tobacco Networking Forum 2010 (a global tobacco industry promotional event) as this was in dereliction of COTPA, 2003.

Food Laws (Prevention of Food Adulteration Act, 1954 and the Food Safety and Standards Act, 2006)

Food laws have been strategically used, especially by state governments in India to ban certain forms of chewing tobacco – predominantly gutka and paan masala – within their jurisdictions. Giving effect to the Regulation 2.3.4, the state of Karnataka issued a notification prohibiting gutka and paan masala – as food products with tobacco and nicotine as ingredients – in the state. Prior to this, the Prevention of Food Adulteration Act, 1954 and its Rules 1955, were used to incidentally regulate chewing tobacco products as food. In light of this framework, the litigations adjudicated by the Karnataka High Court can be broadly classified as the tobacco industry challenging (chewing) tobacco control efforts.

In *Malnad Areca Marketing Co-operative Society Ltd. and Ors. vs. Union of India*,⁹ 2007 the petitioner challenged the constitutionality of the amendment to Rule 42 zzz (6) of the Prevention of Food Adulteration Rules 1955 that mandated that every packet of chewing tobacco bear health warnings. Similarly, in *Ghodawat Pan Masala vs. State of Karnataka*,¹⁰ 2013 the petitioner – engaged in the trading and manufacturing of paan masala, locally – contested the (state) notification prohibiting the manufacture, storage, sale or distribution of gutka and paan masala. They strongly maintained that the aforementioned Regulation does not find applicability in the context of items mentioned in the COTPA Schedule.

⁸ MANU/KA/3019/2017

⁹ MANU/KA/7098/2007

¹⁰ W.P. No. 78378-78380/2013, High Court of Karnataka, Dharwad (2013).

Indirect Tax Laws (Karnataka Sales Tax Act 1957, Karnataka Tax on Entry of Goods Act, 1979, and Karnataka Value Added Tax Act 2003)

The Karnataka Tax on Entry of Goods Act, 1979 enables the levy of tax on the entry of goods – mentioned in the First Schedule – into a local area for consumption, use or sale.¹¹

Litigations under the Act, predominantly deal with the controversy of whether unmanufactured tobacco should be taxed. Entities trading in this form of tobacco, dispute notifications extending the levy of tax on tobacco, on grounds that it is exclusively provided for – as an entry – in either the First or Second Schedule of the Act.

In *Giriraj Enterprises and Ors. vs. State of Karnataka and Ors*¹², 2019 the Petitioner – engaged in the business of unmanufactured tobacco – challenged the notification including the levy of tax on unmanufactured tobacco in a sealed container. They maintained that the distinct classification of unmanufactured tobacco – by the State Government – as a separate entry meant that the goods are not intended to be part of sub–item (i);¹³ and hence not in conformity with the goods described the First Schedule of the Act.¹⁴ On these grounds, the petitioner contested the power of the State Government to levy entry tax on unmanufactured tobacco as contravening Article 301 and 304 (b) of the constitution. In *ITC Limited vs. State of Karnataka*¹⁵ 2019 the petitioner submitted that the Assessment Order subjecting unmanufactured tobacco products to (1 percent) tax as a commodity mentioned in the notification issued by the state government¹⁶, was inconsistent with provisions of the Act. The logic invoked by the petitioner in their submission was that unmanufactured tobacco is subsumed under Entry 2 of the Second Schedule of the Act (concerning *Agricultural Produce*) and consequentially should be exempt from entry tax.

Previously, in *P.V. Sindhur vs. Assistant Commissioner of Commercial Taxes, Haveri and Ors*¹⁷, 1996, the Karnataka High Court was tasked with deciding whether tendu/beedi leaves were within the purview of *Agricultural Produce* and therefore exempt from tax. The

¹¹ See section 3(1) of the Karnataka Tax on Entry of Goods Act, 1979

¹² MANU/KA/7713/2019

¹³ (5) (i) Tobacco products of all description including cigarettes, cigars, churuts, zarda, quimam, etc., but excluding snuff.

(ii) Unmanufactured tobacco in sealed container.

¹⁴ First Schedule 96. "Tobacco products of all description including beedies, cigarettes, cigars, churuts, zarda, quimam, etc.,"

¹⁵ MANU/KA/9249/2019

¹⁶ NO FD 11 CET 2002, dated 30th March 2002 see <http://ctax.kar.nic.in/latestupdates/notifications0002.pdf>

¹⁷ MANU/KA/0200/1996

petitioners – engaged in the manufacturing of beedis – were aggrieved by the notices (for assessment of tax) issued against them.

For the longest time, under the *Karnataka Sales Tax Act 1957*, tobacco was exempt from sales tax. In 1997 this changed as an amendment to the law was proposed by which tobacco products, including gutka, are now subject to the tax.

In *Suresh Agencies vs. Commissioner of Commercial Taxes, Karnataka and Ors*¹⁸. 2011, the Assesse – a trader dealing with gutka, paan masala and tobacco products – paid the tax for the assessment year; and thereafter submitted that the tax was not charged to his customers. In line with the Supreme Court’s decision that the State Government was not authorised to impose sales tax (on gutka), the assessee filed for rectification of the assessment order and a subsequent refund.

Whether the notification exempting unmanufactured tobacco, including tobacco used in the manufacture of beedis, from tax under the Karnataka Value Added Tax Act 2003 is *ex abundanti cautela* was presented before the Karnataka High Court in *Damodar Enterprises and Ors. vs. Deputy Commissioner of Commercial Taxes and Ors.*¹⁹ 2010. The Petitioner -- a partnership firm carrying on the business of manufacture and sale of beedis -- tactically premised their argument on the manufacturing process (of beedis) and the socio-economic group that consumes this form of tobacco. They submitted that beedis have historically taken the form of cottage industry produce and are known to provide sustenance/livelihood to the poor. Additionally, this form of tobacco is also sold via petty traders. Hence an overview of these collective factors, should ideally exempt the sale of beedis from both: Karnataka Sales Tax Act 1957 as well as the Karnataka Value Added Tax Act 2003. The Petitioner strengthened their claim by referencing that Parliament had enacted the Duties Act 1957²⁰ to enable the levy and collection of additional excise on certain goods (which was to be distributed amongst states, ultimately feeding into Karnataka’s revenue) and that unmanufactured tobacco as well as tobacco used in the manufacture of beedi were cast as goods of special importance in interstate trade and commerce. In furnishing copious documentation, the Petitioner sought to cull out the intention of the State in exempting the

¹⁸ MANU/KA/2712/2011

¹⁹ MANU/KA/0593/2010

²⁰ Additional Duties of Excise (Goods of Special Importance) Act, 1957

products -- in question -- from being taxed. Flagging the discrepancy, the Petitioner filed representation seeking a coherent clarification regarding the (tax) exemption.

Other Laws

Karnataka Municipal Corporation Act, 1976

Litigations under the Karnataka Municipal Corporation Act 1976 deal with the cancellation of trade licences of certain business establishments serving hookah. In *Concepts and More and Ors. vs. Bruhath Bengaluru Mahanagara Palike and Ors.*,²¹ 2012 the petitioners – Owner of cafes/restaurants serving hookah – contested the seizure of hookahs, from their premise by the Bruhath Bengaluru Mahanagara Palike (BBMP). The Court ordered for representation to be made before the (Commissioner of) BBMP; following which the owner’s trade licenses were cancelled. And subsequently, they were prevented from setting up hookahs within BBMP limits. Hence, the owner approached the Karnataka High Court, challenging order of cancellation of licenses: as per section 66 of the Act, the Commissioner is not authorised to delegate this –quasi-judicial – power to a sub-ordinate officer. The owner of the establishment serving hookah went on to aver that the provisions of COTPA, 2003 regulated the use of hookah; and hence the BBMP had no jurisdiction to carry out the seizure.

A similar set of facts presented itself in *Aticara Hospitality Pvt. Ltd. vs. State of Karnataka and Ors.*,²² 2018 wherein the petitioner – a bar and restaurant owner - was serving hookah to its customers. They contended that the required trade license to run the business had been obtained; and hence no separate license for serving hookah was mandated. Hence, making the claim that the notice dated 6.2.2017, stating that the petitioner is carrying out hookah business without taking licence from BBMP, has been issued *without any authority*.

Tobacco Board Act 1975

The Tobacco Board Act 1975 was enacted by the Government of India to enable the setting up of the Tobacco Board. The Board is mandated under the Act to systematically streamline the production and curing of Virginia tobacco (almost 50 percent of Virginia tobacco produced in India is exported).

²¹ MANU/KA/0923/2012

²² MANU/KA/3081/2018

In *Nazeer Pasha vs. Tobacco Board, Ministry of Commerce, Guntur and Ors*, 2013, the Petitioner's tobacco was confiscated for want of appropriate documents; and he was subsequently charged under Section 10, 12, 13 and 25 of the Tobacco Board Act, 1975²³. During this time the produce – being perishable – was sold; and hence the petitioner was claiming reimbursement of the amount recovered from the sale.

A Circular Prohibiting the Electronic Nicotine Delivery Systems

The Government of Karnataka issued a circular dated 15.06.2016 prohibiting the sale, manufacture, distribution, trade, import and advertisement of Electronic Nicotine Delivery Systems (ENDS).²⁴ In *Council for Harm Reduced Alternatives vs. State of Karnataka*²⁵ 2019, the petitioner challenged the power of the state government to issue the impugned order. They relied on decisions passed by the Bombay and Delhi High Court that held: ENDS is not a drug within section 3(b) of the Drugs and Cosmetics Act, 1940; and hence negated the validity of the ban. The Petitioner drew from the availability of scientific evidence evidencing ENDS as the lesser harmful than cigarettes to contest the ban. Lastly, they ploughed at the constitutionality of the ban by claiming that it violates Article 14 of the Constitution. Cigarettes -- containing tobacco -- were merely regulated but ENDS (despite being less harmful) were completely banned by the impugned order. The Court reprimanded the petitioner for abusing its jurisdiction and saddled them with a heavy fine. However, it lucidly stated its intention to refrain from exploring the legality and validity of the impugned order.

Petitioners

We now focus on mapping the petitioners filed these litigations before the Karnataka High Court. Table-2 provides details of the petitioners and the various issues presented by them before the Court. As evidenced below, most of the petitioners were either part of/closely linked to the tobacco industry (manufacturers, traders, sellers, industry representatives) or incidentally deal with tobacco products in the following capacity: transporters, restaurants/cafes owners serving tobacco products like hookah etc. Amongst these entities,

²³ See provisions of the Tobacco Board Act, 1975 available at https://commerce.gov.in/writereaddata/aboutus/actspdfs/tb_act_1975.pdf.

²⁴ No.HFW/126/CGE/2016

²⁵ MANU/KA/6586/2019

the cigarette and smokeless tobacco industry comprises a large share; the remaining being public agencies/officers and public-spirited citizens/organizations.

Table-2 Petitioners, their claims, and summary court judgements in the Karnataka High Court

Year	Petitioner	Type of Entity	Product	Contentions before the Karnataka High Court*	Outcome*	Case citation (See Annex for details)
1950	Commissioner of Income Tax, Mysore	Public office/officer	NA			38
1980 & 2019	ITC Ltd.	Manufacturer of tobacco products	Tobacco products	C1. Challenging the legality of show cause notice. C2. Challenging the Circular and Assessment Order: subjecting unmanufactured tobacco products to tax.	C1. The show cause notice (and all proceedings pursuant) is <i>quashed as illegal, without justification and authority of law</i> . C2. The question is to be answered by the Appellate Authority (constituted under the Act) and not via this writ jurisdiction. Hence, the petitioner is to first comprehensively exhaust statutory remedies available under the Act.	34, 13
1980	Mysore Tobacco Co. Ltd.	Public sector company established in 1937; and involved in the procurement of tobacco. It was shut down in 1983.	Tobacco	Challenging an order of Commissioner of Income-tax: seeking relief in regard to the assessment made by the Income Tax Officer.	Court held : <i>The Commissioner is given power to grant relief under S. 263 & 264 of the Act</i> . The power of the Commissioner is to be viewed from the specific provisions conferring the power. Hence, the Commission was right in rejecting the application. Writ petition dismissed.	25

1985	Mohamed Samiullah	Engaged in the business of manufacture and sale of tobacco products	Tobacco products	Challenged the constitutional validity of section 22-A of the Karnataka Sales Tax Act and the show cause notice issued by the Commissioner.	<p><i>“Whether S. 22 -A of the Karnataka Sales Tax Act, 1957, confers power on the Commissioner to interfere with an order made by an appellate authority under section 20 of the Act?”</i></p> <p>S. 22-A empowers the Commissioner to both: recall an order as well as revise an order passed by their subordinate. And this applies to whatever the nature of the power exercised (under the Act). In this regard, the section is self contained and limited by the section itself.</p> <p><i>“Whether section 22-A of the Act is void (as it violates Article 14?”</i></p> <p>S. 22- A is not violative of Article 14</p>	29
1985	Union of India	National government	NA			33
1986	Inspector of Central Excise	Public office/officer	NA	Payment of duty under the Central Excises and Salt Act, 1944		32
1991	Suvasini Beedis Pvt. Ltd.	Manufacturer of tobacco products	Beedi	Whether raw beedi is beedi for purpose of entry 2 of Schedule (Karnataka Tax on Entry of Goods Act 1979)?	<p>Court held: The Assessing Authority erred in its findings and raw beedies have been mistaken as khulla beedis. Raw beedies are not marketed and if not heated they would inevitably decay.</p> <p><i>“Whether khulla beedies are finished products, after being heated appropriately, beyond the state of raw beedies?”</i></p> <p>As the term is merely used for convenience and there is a coherent distinction between “raw beedi” and “beedi”, the contention of the Revenue Officer -- that the former is a taxable subject under entry 2 of the Schedule -- is unacceptable. Writ petitions are allowed; and the impugned orders of assessment - to the extent of levying taxes on the entry of raw beedi - is set aside.</p>	12

1994	Jagdish Narain Sapru	Former chairman of ITC Ltd.	Cigarette	Quashing of criminal proceedings in a case involving economic offences under the Central Excise Act, 1944 and Rules.	Court held: The allegations made out in the present case are sufficient to constitute an offence against the accused (but guilt of all accused persons must be properly established).	31
1995	Neelakantappa Vishwanathappa		Cigarettes and beedis	Challenging the (re)opening of an assessment order that had been correctly concluded.	Case is remanded to the revisional authority; with the following direction - a fresh and properly drafted show cause notice be served accordingly.	30
1996	P.V Sindhur	Engaged in the business of manufacturing beedis; they also import tendu leaves for manufacturing process	Beedis	Whether beedi leaves can be held to be agricultural produce in an absolute sense; and consequently exempt from tax?	Court held: The SC has previously confirmed that products of land - like tendu, timber etc - do not necessarily fall within the category of <i>agriculture produce</i> . Whether the produce falls within this category is contingent on the (nature of) activities carried out on the land.	16
2000	Mangalore Ganesh Beedi Works	A partnership firm engaged in the manufacture and marketing of beedis.	Beedis	Whether collection of octroi duty was illegal?	Court held: What's important in this case is whether the goods imported were meant for use, sale or consumption (within the local area). And the burden of proving that the goods brought into the local area for sale, were not for ultimate consumption of the user - rest with the person making the claim. In this case, the failure of the Plaintiff to establish that the sale was not completed within the local area; or the goods not used or consumed within the local area must result in a dismissal of his claim (for refund).	22
2007	Malnad Areca Marketing Co-operative Society Ltd	Registered society providing scientific market facilities.	Areca nut	Whether the amendment to Rule 42 zzz(6) (of the Prevention of Food Adulteration Rules 1955) is unconstitutional?	Court held : Arecanut in its original form (or supari) is not harmful to health - it has medicinal value; and maybe used as a digestive aid. Hence, the rule - mandating the warning: "Chewing supari is injurious to health" - is arbitrary. As the statutory warning on supari bags, lacks scientific evidence and has the ability to affect farmers livelihoods, the amendment is	9

					ultra vires the Act (as well as the Constitution).	
2008	Dickenson Fowler Ltd.	Manufacturer of tobacco products	Cigarette	Composition of tax	The matter was remanded to the assessing officer for fresh consideration as per the law.	28
2009	Raju Laxman Pachapure	Manufacturer of tobacco products	Gutka	Whether magnesium carbonate – anticaking agent, prevented by the PFA Rules – is (inherently) a raw material in gutka or part of the preparatory process; and hence prohibited ?	Court held : In this case magnesium carbonate is not found during consumption but contained in the sample itself (as it may be present in the raw material). Further, the PFA and COTPA are in conflict with each other - as the SC held in Godawat case. However, the circumstances in Godawat case were different and not applicable to the current case. Hence, the court directs respondent (5 -7) to take appropriate action against respondent 6 (industry) in accordance with the law.	10
2010	Damodar Enterprises	Partnership firm carrying on the business of manufacture and sale of beedies in the name and style of Mangalore Ganesh Beedi.	Beedi	Whether the notification Annexure-"D" is ex abundanti cautela the policy of the State exempting unmanufactured tobacco from tax ?	Notification issued under S. 5(1) is declared to be ex abundanti cautela. Hence the notice initiating action for reassessment of tax on sale of beedis - is quashed.	18
2010	State of Karnataka	State government	NA			27
2011	Suresh Agencies	Trader dealing with gutkha, paan masala - tobacco products.	Gutkha, paan masala	Challenging the order passed by the revision authority under section 22A (ii) of the Karnataka Sales Tax Act, 1957.	Referring to the materials on record, the Court confirmed the Commissioner's findings - that the amount collected by the assess included the tax component - as it was based on legal evidence.	26

2011 & 2015	Cancer Patients Aid Association	Voluntary organization	NA	C1. Implementation of section 6 of COTPA: Writ petition directing state departments to ensure that all heads of educational institutions (across Bengaluru) disallow the sale of cigarettes/tobacco products within a 100 yards of the institution. C2. The Central government and relevant authorities to consider stopping subsidies and incentives extended to farmers for growing tobacco.	Court held in C1. In case of any violation the state government shall take appropriate action. C2. The concerned departments within central and state governments in coordination shall take steps to reduce local demands and supply of tobacco; while also considering measures to enable the rehabilitation of tobacco growers and workers.	2, 39
2011	Institute of Public Health	Academic institute in public health research	NA	The Tobacco Board is to withdraw sponsorship awarded to the Global Tobacco Networking Forum 2010 and refrain FROM participating in it as it violates COTPA. The Venue of the event, State government of Karnataka need to follow and enforce the relevant COTPA provisions for the event and the Union of India to frame a policy to avoid similar events in future.	Interim order : The Tobacco Board was not to participate in the Global Tobacco Networking Forum. Further the Board was prevented from making any financial contributions and other enabling support to the forum. In the final order the Court acknowledged the Petitioner's Code of Conduct submission; and the Assistant Solicitor General submitted that the Code would be considered by the Union of India while framing the Code of Conduct for public officials.	1
2012	Concepts and More	Owner of Cafes/restaurant selling hookah.	Hookah	<i>Challenging the order issued by the Health Officer (BBMP) cancelling the petitioner's trade license and confiscated their hookahs during a series of raids.</i>	<i>Whether the Commissioner is authorised to delegate their power to cancel the licence ... ?</i> The power exercised by the commissioner is quasi - judicial and it is well settled that such a power cannot be delegated unless explicitly provided for in the law. Hence, delegation of power by the Commissioner is <i>bad in law</i> . <i>Whether the second respondent has the authority to cancel the licence (as he has issued it) under S. 21 of the Karnataka General Clauses Act, 1899 ?</i> S.21 does not apply to a quasi - judicial decision relating to	21

					the rights of parties. The (judicial) power exercised by courts/tribunals is inherent to a sovereign state (and transferable only to institutions like the courts). Hence, the power cannot be inferred from S.21 - unless it is conferred by a statute or delegated by law. Petitions are allowed and the order passed by the health officer is quashed.	
2013	Vittal.A.Nayak	A proprietor engaged in the business of trading "unmanufactured tobacco" along with other commodities.	Unmanufactured tobacco	Challenged the order: imposition of Entry tax on unmanufactured tobacco (Karnataka Tax on Entry of Goods Act 1979)	Impugned order is set aside.	
2013	Nazeer Pasha	Person engaged in transporting tobacco	Tobacco	Claiming reimbursement from sale of tobacco seized.		15
2013	Bruhath Bengaluru Mahanagara Palike	Public office (Municipal Corporation)	NA			20
2017	Tobacco Institute of India	A representative body of tobacco farmers, manufacturers, exporters.	Tobacco	Validity of COTPA Rules 2008 as amended by 2014 Rules have been challenged: <i>The Rules are illegal, invalid and ultra vires the 2003 Act and the Constitution of India.</i>	Court opined: The Health Ministry based its decision to enact 85% special warnings without evaluating any concrete material (as evidence from the RTI). And this has an adverse impact on stakeholders. The petitioners have a case in averring that the rules are arbitrary and unreasonable; and hence are liable to be set aside. Rule framing authority (Article 77 (3) of the Constitution) may redo the exercise as per the law. The challenge made to the validity of the Rules is dismissed.	5

2017	Shaikh Musa	Proprietor of M/s. KBN Traders - business of trading consumables, consumer goods, and tobacco products	Tobacco products	Quash proceedings in violation of S.7 of COTPA, 2003.	As the raid was conducted by the police prior to the extended date for implementation of the health warnings (under COTPA and the Rules), it is an abuse of process. Criminal proceedings are quashed.	4
2017	Mudassar Pasha	Seller	Hookah	That the smoking of hookah in a snack bar does not require license/permission under COTPA.	Prayer made by the petitioners is premature.	3
2017	Rahul Joshi	Public spirited citizen (advocate)	NA	Implementation and enforcement of the Cigarette and Other Tobacco Product (Packaging and Labeling) Rules Amendment Rules 2014.	<i>Direction to implement Amendment Rules, 2014:</i> Petitioner sought direction to the Union (and other respondents) <i>to frame, promulgate and implement plain packaging rules.</i> It is neither desirable nor permissible for courts to direct the legislature or executive to frame laws/subordinate legislation. Further, this being a policy consideration, courts cannot direct the executive to adopt a particular policy. <i>... prohibit the sale and distribution of cigarettes and other products till implementation of plain tobacco packaging in the State of Rajasthan.</i> Does not fall within the purview of the Court as it is for the government - centre or state - to take such a decision in accordance with the law. <i>.. prohibit the sale and distribution of loose cigarettes and other tobacco products.</i> Can not be ordered by the Court	6

2013 & 2018	Ghodawat Pan Masala Pvt. Ltd.	A company engaged in the trade and manufacturing of paan masala	Gutkha/Pan masala	- Challenging the notification issued under Regulation 2.3.4 by the Food Commissioner prohibiting gutka and paan. - Whether the Inspecting Authority was justified in invoking S. 77(2) of the KVAT Act; and section 52(1)(j) of the same Act?	C1. Court held : From the language of the impugned notification it is clear that the Food Safety Commissioner is not exercising power under S. 26 but only enforcing regulation 2.3.4. Hence it cannot be maintained that the Commissioner lacks jurisdiction.	8, 17
2018	Trishul Arecanut Granuels Pvt. Ltd.	Manufacturer	Gutkha	Aggrieved by the order passed by CESTAT. And whether gutka is notified for the purpose of S. 3A of the Act.	Court held: It is satisfied with the findings of the Tribunal with regard to the show cause notice and estimation of evasion of duty. Appeals filed by the assessee are <i>devoid of merit</i> .	36
2018	Md. Ethesham	Engaged in trading consumables, consumer goods, and tobacco products.	Tobacco products	Time for implementation of Pictorial Warning Rules, 2014 had been extended; and hence not in violation of COTPA. Prayer to quash criminal proceedings under S. 482 Cr.P.C.	Court held: As the raid was conducted by the police prior to the date for implementation of the COTPA Rules - mandating 85% pictorial health warning - it is an abuse of process; as if deprived the Petitioner of the opportunity to comply with the rules within the extended date. Criminal proceedings are quashed.	7
2018	Aticara Hospitality Pvt. Ltd.	A company engaged in the business of selling hookah to customers: bar & restaurant.	Hookah	Whether a separate license (from the BBMP) is required for smoking hookah ?	Reaffirming the position of the SC in <i>Narinder S. Chadha v. Municipal Corporation of Greater Mumbai</i> , the Court held: a separate license for hookah is not mandated, as the petitioner has already obtained a license from the concerned authority.	19
2019	P and P Ventures Partnership Firm	Engaged in running a restaurant permitting customers to smoke hookah.	Hookah	Non-interference in the petitioner's (hookah) business.	Court held : Hookah cannot be prohibited if it is used for smoking only tobacco (and no other prohibited substance). However, if the premise is being used for illegal activities, the police may intervene as per the law. Additionally, the petitioner must demarcate separate place(s) - for smoking hookah - within the hotel premise, after obtaining the required license. Petitions are disposed of by	37

					imposing the above-mentioned conditions; and the respondent is directed not to interfere with the (legal) activities of the petitioner.	
2019	Giriraj Enterprises	Engaged in the business of unmanufactured tobacco in the brand names Ghai Chhap Zarda, Thambaku, Bradshaw, Singam.	Unmanufactured tobacco	Challenged the Notification relating to the amendment made: (therein) specifying "unmanufactured tobacco in sealed container" for levy of entry tax at 5%?	Court held : <i>..the challenge to the impugned notification fails on all counts.</i>	14
2019	Council for Harm Reduced Alternatives	A company promoting harm reduction through ENDS in India	ENDS	Whether the State has power to issue the circular prohibiting the sale of ENDS?	The Petitioner has abused the PIL jurisdiction of the court and hence slapped with a fine of Rs. 1 lakh.	11

*Italicized text has been directly reproduced from the reported case available on Manupatra.

Conclusions and implications

Our study of tobacco-related litigations in Karnataka High Court demonstrates that various tobacco control measures administered either through tobacco-specific laws (such as the COTPA 2003) or through taxation and other laws (especially, food laws, drugs and cosmetic laws, municipal laws) have been litigated. A majority of litigations were brought in by tobacco industry or industry-linked stakeholders who challenged these measures by (1) disputing the application and/or interpretation of law; (2) challenging the power of public offices/officers issuing the regulations under the prevailing laws; or (3) disputing the procedures/operationalization of the regulations. A few public-spirited citizens/organizations used public interest litigations to demand better implementation of tobacco control regulations and to challenge tobacco industry interference in public policy related to tobacco.

These findings could inform the State Anti Tobacco Cell (Government of Karnataka) and the stakeholders interested in tobacco control about the role of litigation in tobacco control. As

documented nationally in India, and in several countries, the industry seem to be using litigation as a tactic to challenge, delay and possibly dilute tobacco control regulations in Karnataka. As also documented in India and in South Asia, the public interest litigation seems to enhance tobacco control.

The kind of claims and legal arguments used by petitioners in past would help the State Anti Tobacco Cell (and related agencies) to anticipate and pre-empt kind of legal challenges around future tobacco control regulations in the state. The sheer number and the diversity of claims made by petitioners in these litigations imply that the State Anti Tobacco Cell (and related regulatory agencies interested in reducing tobacco use through regulatory measures) might benefit from dedicated legal support bringing legal expertise across several domains (specific and generic laws; diverse sectors including health, food, agriculture, trade, taxation) in order to better address the legal challenges. So, having a lawyer/legal consultant or assured support from legal agency would be crucial for the State Anti Tobacco Cell to effectively address the challenges brought by litigations. Such resource would also be of help in careful drafting and framing of regulations/notifications as well as a source of constant legal inputs in the functioning of the Cell.

It would also imply need for coordination across the public agencies (tobacco control agencies within health department; food safety regime; tax and finance authorities; drug controller; police, revenue and other implementing agencies) and across the levels of administration (especially, district, state and national). This is the leadership role that tobacco control bodies like, High-Powered Committee on Tobacco Control and the State Anti Tobacco Cell would need to continue to provide. Measures such as enhancing legal awareness among officers working for tobacco control, better drafting and legal scrutiny of regulations/notifications, ensuring appropriate issuing authority for regulations might help reduce unnecessary legal challenges.

Annex-1 List of the cases analysed for this study

1. The Institute of Public Health v. The State Government of Karnataka, et al., W.P. No. 27692/2010, High Court of Karnataka at Bangalore (2011).
2. Cancer Patients Aid Association v. Karnataka, et. al., WP 17958, High Court of Karnataka at Bangalore (2011).
3. Mudassar Pasha and Ors. vs. The State of Karnataka and Ors. (31.01.2017 - KARHC): MANU/KA/0242/2017
4. Shaikh Musa vs. The State of Karnataka (17.07.2017 - KARHC): MANU/KA/1924/2017
5. The Tabacco Institute of India and Ors. vs. Union of India and Ors. (15.12.2017 - KARHC) : MANU/KA/3117/2017
6. Rahul Joshi vs. Union of India and Ors. (15.12.2017 - KARHC): MANU/KA/3019/2017
7. Md. Ehtesham vs. The State of Karnataka (09.02.2018 - KARHC): MANU/KA/0793/2018
8. Ghodawat Pan Masala v. State of Karnataka, W.P. No. 78378-78380/2013, High Court of Karnataka, Dharwad (2013).
9. The Malnad Areca Marketing Co-operative Society Ltd. and Ors. vs. Union of India (UOI) and Anr. (04.04.2007 - KARHC) : MANU/KA/7098/
10. Raju Laxman Pachapure vs. State of Karnataka and Ors. (17.03.2009 - KARHC): MANU/KA/0367/2009
11. Council for Harm Reduced Alternatives vs. State of Karnataka (27.08.2019 - KARHC): MANU/KA/6586/2019
12. Suvasini Beedies Pvt. Ltd. vs. Additional Commercial Tax Officer, III Circle, Mangalore and Ors. (11.02.1991 - KARHC) : MANU/KA/0316/1991
13. ITC Limited vs. State of Karnataka and Ors. (19.12.2019 - KARHC): MANU/KA/9249/2019
14. Giriraj Enterprises and Ors. vs. State of Karnataka and Ors. (22.10.2019 - KARHC): MANU/KA/7713/2019
15. Vittal A. Nayak vs. The Commissioner of Commercial Taxes (13.11.2013 - KARHC): MANU/KA/3273/2013
16. P.V. Sindhur vs. Assistant Commissioner of Commercial Taxes, Haveri and Ors. (19.03.1996 - KARHC): MANU/KA/0200/1996
17. Ghodawat Pan Masala Products (I) Pvt . Ltd . vs . Addl . Commissioner of Commercial Taxes , Zone II , Vanijya Therige Karyalaya and Ors . (07.09.2018 - KARHC)
18. Damodar Enterprises and Ors. vs. Deputy Commissioner of Commercial Taxes and Ors. (22.06.2010 - KARHC) : MANU/KA/0593/2010
19. Aticara Hospitality Pvt. Ltd. vs. State of Karnataka and Ors. (23.07.2018 - KARHC): MANU/KA/3081/2018
20. Bruhath Bengaluru Mahanagara Palike and Health Officer vs. Mahtani Ventures (27.02.2013 - KARHC): MANU/KA/0526/2013
21. Concepts and More and Ors. vs. Bruhath Bengaluru Mahanagara Palike and Ors. (08.03.2012 - KARHC): MANU/KA/0923/2012
22. Mangalore Ganesh Beedi Works vs. The Corporation of the City of Mangalore (05.09.2000 - KARHC): MANU/KA/0756/2000
23. Nazeer Pasha vs. Tobacco Board, Ministry of Commerce, Guntur and Ors. (18.11.2013 - KARHC): MANU/KA/3613/2013

24. The Commissioner of Income Tax and Ors. vs. ITC Filtrona Limited (18.07.2012 - KARHC) : MANU/KA/2522/2012
25. Mysore Tobacco Co. Ltd. vs. Commissioner of Income Tax, Karnataka (10.11.1980 - KARHC): MANU/KA/0063/1980
26. Suresh Agencies vs. Commissioner of Commercial Taxes, Karnataka and Ors. (13.01.2011 - KARHC): MANU/KA/2712/2011
27. State of Karnataka vs. Anjana Zarda Agencies (25.02.2010 - KARHC) : MANU/KA/1824/2010
28. Dickenson Fowler Ltd. vs. Additional Commissioner of Commercial Taxes (14.01.2008 - KARHC): MANU/KA/0742/2008
29. Mohamed Samiullah vs. Commissioner of Commercial Taxes (21.01.1985 - KARHC) : MANU/KA/0106/1985
30. Neelakantappa Vishwanathappa vs. Deputy Commissioner of Commercial Taxes (Admn.), Davanagere Division, Davanagere (19.12.1995 - KARHC): MANU/KA/0222/1995
31. Jagdish Narayan Sapru vs. Asst. Collector of C. Ex. (Legal), Bangalore (12.08.1998 - KARHC): MANU/KA/0814/1994
32. Inspector of Central Excise and Ors. vs. S.T. Venkataramanappa and Ors. (06.02.1986 - KARHC): MANU/KA/0100/1986
33. Union of India and Ors. vs. I.T.C. Limited and Ors. (07.06.1985 - KARHC): MANU/KA/0072/1985
34. I.T.C. and Ors. vs. The Union of India, The Superintendent of Central Excise and Ors. (10.09.1980 - KARHC) : MANU/KA/0180/1980
35. I.T.C. Ltd. and Ors. vs. Union of India and Ors. (04.02.1980 - KARHC): MANU/KA/0027/1980
36. Trishul Arecanut Granuels Private Limited and Ors. vs. Commissioner of Central Tax, Bangalore North West Commissionerate (14.06.2018 - KARHC): MANU/KA/2077/2018
37. P and P Ventures Partnership Firm and Ors . vs . The State of Karnataka and Ors. (11.06.2019 - KARHC)
38. Commissioner of Income Tax, Mysore vs. Imperial Tobacco Co. of India Ltd. (26.09.1949 - KARHC): MANU/KA/0001/1950
39. Cancer Patients Aid Association Vs. The State Government of Karnataka and Ors. (01.06.2015 – KARHC)