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LEGAL REGULATION OF ULTRA-PROCESSED FOODS IN INDIA: ASSESSING STATE POWER TO MANDATE FRONT-OF-PACKAGE WARNINGS, TAX SUGARY BEVERAGES, AND RESTRICT JUNK FOOD MARKETING TO MINORS

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Abstract

India faces a rapidly growing burden of diet-related non-communicable diseases (NCDs) alongside the expanding market penetration of ultra-processed foods (UPFs). This paper asks whether, and how far, the Indian State may use law to mandate front-of-package warnings (FOPW), tax sugary beverages and restrict the marketing of unhealthy foods to children. It argues that the constitutional case for such measures is strong. Article 21 (as interpreted to include health), Article 47 and Articles 39(e)–(f) supply a positive obligation, and the Seventh Schedule gives both Union and States overlapping competence. The real constraints lie elsewhere: the doctrinal uncertainty over commercial speech under Article 19(1)(a), the narrow grounds listed in Article 19(2), the post-2017 collapse of independent State taxing power under the Goods and Services Tax (GST) regime, and the failure of the Food Safety and Standards Authority of India (FSSAI) to convert a decade of consultation into binding rules. Drawing on Indian jurisprudence and on the experience of Chile, Mexico, the United Kingdom, Canada, the United States and Australia, the paper concludes that a proportionality-based framework, grounded in an evidence record and anchored in the Food Safety and Standards Act 2006, is the most defensible route to regulation.

Keywords: *ultra-processed foods; right to health; front-of-package labelling; sugar tax; commercial speech; GST; FSSAI; proportionality.*

1. Introduction

The Indian diet is changing faster than Indian law. The ICMR-INDIAB study estimated that about 101 million Indians live with diabetes and 136 million with prediabetes.¹ The National Family Health Survey-5 recorded that roughly 24 per cent of women and 23 per cent of men aged 15–49 were overweight or obese.² Packaged snacks, instant noodles, sweetened beverages, confectionery and

¹Anjana RM and others, 'Metabolic non-communicable disease health report of India: the ICMR-INDIAB cross-sectional study' (2023) 11 *Lancet Diabetes & Endocrinology* 474.

²International Institute for Population Sciences, *National Family Health Survey (NFHS-5), 2019–21: India Report*

reformulated “ready-to-eat” products are now sold in the smallest villages, and are advertised heavily to children through television, digital media and school-adjacent retail.

The scientific vocabulary for this problem is the NOVA classification, which defines ultra-processed foods as industrial formulations made mostly from substances extracted from foods, together with additives that mimic or intensify sensory qualities.³ A randomised crossover trial showed that participants given ultra-processed diets consumed about 500 kcal more per day than those on minimally processed diets,⁴ and an umbrella review of meta-analyses found consistent associations between UPF exposure and adverse cardiometabolic and mental health outcomes.⁵ These findings are contested in detail: critics question the breadth of the NOVA category and the causal pathways. But the regulatory question does not require scientific certainty, because Indian food law is expressly built on risk analysis and the precautionary principle.⁶

This paper examines three regulatory instruments:

1. **Mandatory front-of-package warnings or ratings**, which compel disclosure by producers;
2. **Fiscal measures**, principally taxes on sugar-sweetened beverages (SSBs); and
3. **Restrictions on marketing to minors**, which limit commercial speech.

Each instrument raises a distinct constitutional question: compelled speech and the right to know; legislative competence and the scope of the GST; and the status of commercial speech. Part 2 sets out the constitutional and statutory framework. Parts 3 to 5 take each instrument in turn, integrating comparative experience. Part 6 offers recommendations and Part 7 concludes.

The paper relies on primary Indian sources (the Constitution, statutes, regulations and case law) and on comparative materials. It does not claim that UPFs are uniformly harmful. Its claim is narrower: the State has constitutionally sufficient power to regulate them, provided it acts through properly reasoned, proportionate and procedurally fair measures. Regulatory developments in this field, particularly front-of-pack rule-making and GST rate schedules, move quickly; the paper states the position as understood at the time of writing, and readers should consult current Gazette notifications and court orders.

2. The Constitutional and Statutory Framework

2.1 Health as a constitutional value

The Supreme Court has long treated health as part of the right to life. In *Vincent Panikurlangara v. Union of India* the Court held that maintenance and improvement of public health is a constitutional

(2021).

³Monteiro CA and others, ‘Ultra-processed foods: what they are and how to identify them’ (2019) 22(5) *Public Health Nutrition* 936.

⁴Hall KD and others, ‘Ultra-processed diets cause excess calorie intake and weight gain’ (2019) 30(1) *Cell Metabolism* 67.

⁵Lane MM and others, ‘Ultra-processed food exposure and adverse health outcomes: umbrella review of epidemiological meta-analyses’ (2024) 384 *BMJ* e077310.

⁶Food Safety and Standards Act 2006 (India), ss 3, 16, 18, 23, 24, 92.

obligation, linking Article 21 with Article 47.⁷ *Parmanand Katara v. Union of India* held that preservation of life is of paramount importance and that State obligations in this regard are non-negotiable.⁸ In *Consumer Education and Research Centre v. Union of India* the Court held that the right to health and medical care is a fundamental right under Article 21,⁹ and *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* held that failure to provide timely medical treatment violates Article 21.¹⁰

Article 47 directs the State to regard raising “the level of nutrition and the standard of living of its people and the improvement of public health” as among its primary duties.¹¹ Articles 39(e) and 39(f) require that children be given opportunities and facilities to develop in a healthy manner.¹² These provisions are directive principles and not directly enforceable, but the Court has repeatedly used them to give content to Article 21 and to uphold laws that advance them.

The right to health imposes limits on State inaction, but the Court has also recognised resource constraints. In *State of Punjab v. Ram Lubhaya Bagga* the Court accepted that the State’s financial capacity shapes the extent of its welfare obligations.¹³ This matters for UPF regulation because the instruments discussed here are relatively inexpensive and shift costs to industry rather than to the exchequer. That strengthens the argument that failure to adopt them is hard to justify.

International law reinforces the point. India is a party to the Convention on the Rights of the Child, and the Committee on the Rights of the Child has explained that States must regulate the marketing of unhealthy foods to children and the impact of business on child health.¹⁴ In *Vishaka v. State of Rajasthan* the Court held that international conventions consistent with fundamental rights may be read into domestic law in the absence of contrary legislation.¹⁵ The World Health Organization’s 2010 recommendations on marketing foods to children, endorsed by the World Health Assembly, supply a technical benchmark.¹⁶

2.2 The statutory scheme

The Food Safety and Standards Act 2006 (FSS Act) consolidated earlier food laws and created the FSSAI. Several provisions are central to UPF regulation:

⁷*Vincent Panikurlangara v. Union of India* (1987) 2 SCC 165.

⁸*Parmanand Katara v. Union of India* (1989) 4 SCC 286.

⁹*Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42.

¹⁰*Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996) 4 SCC 37.

¹¹Constitution of India, arts 14, 19, 21, 39(e)–(f), 47, 246, 246A, 254, 265, 279A and Seventh Schedule (Lists II and III).

¹²Constitution of India, above n 11.

¹³*State of Punjab v. Ram Lubhaya Bagga* (1998) 4 SCC 117.

¹⁴UN Committee on the Rights of the Child, General Comment No 15 (2013) on the right to the enjoyment of the highest attainable standard of health (art 24); General Comment No 16 (2013) on State obligations regarding the impact of the business sector on children’s rights.

¹⁵*Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

¹⁶World Health Organization, *Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children* (2010) (endorsed by World Health Assembly Resolution WHA63.14).

- **Section 16** gives the Authority responsibility for specifying standards, including for labelling, and for promoting general awareness of food safety and nutrition.¹⁷
- **Section 18** requires that regulation be guided by risk analysis, the precautionary principle where scientific evidence is incomplete, and the protection of consumer interests, including fair trade practices and information.¹⁸
- **Section 23** provides that no person shall manufacture, sell or distribute packaged food unless it is labelled as prescribed by regulations.¹⁹
- **Section 24** prohibits misleading advertisements and unfair trade practices and empowers the Authority to regulate advertising.²⁰
- **Section 92** authorises the Authority, with Central Government approval, to make regulations, including on labelling and advertising.²¹

Subordinate instruments include the Food Safety and Standards (Labelling and Display) Regulations 2020,²² the Advertising and Claims Regulations 2018,²³ and the Safe Food and Balanced Diets for Children in School Regulations 2020, which restrict the sale and advertisement of foods high in fat, sugar or salt (HFSS) in school premises and within 50 metres of them.²⁴ Parallel regimes include the Consumer Protection Act 2019, which empowers the Central Consumer Protection Authority (CCPA) to act against misleading advertisements,²⁵ and the Cigarettes and Other Tobacco Products Act 2003 (COTPA), a useful analogue for graphic warnings and advertising restrictions.²⁶

2.3 Division of legislative power

Under the Seventh Schedule, public health and sanitation is Entry 6 in List II (State List) and also Entry 6 in List III (Concurrent List). Adulteration of foodstuffs is Entry 18 of List III, and trade and commerce in foodstuffs is Entry 33 of List III.²⁷ States therefore have concurrent power to legislate on food safety and labelling, but under Article 254 a State law repugnant to a Union law on the same subject is void to the extent of repugnancy unless it has received Presidential assent.²⁸ The Supreme Court's

¹⁷FSS Act, above n 6.

¹⁸FSS Act, above n 6.

¹⁹FSS Act, above n 6.

²⁰FSS Act, above n 6.

²¹FSS Act, above n 6.

²²Food Safety and Standards (Labelling and Display) Regulations 2020; FSSAI, draft amendment on front-of-pack labelling (Indian Nutrition Rating) (2022).

²³Food Safety and Standards (Advertising and Claims) Regulations 2018.

²⁴Food Safety and Standards (Safe Food and Balanced Diets for Children in School) Regulations 2020.

²⁵Consumer Protection Act 2019 (India); Central Consumer Protection Authority, Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022; GST Council, 56th Meeting (September 2025).

²⁶Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003.

²⁷Constitution of India, above n 11.

²⁸Constitution of India, above n 11.

repugnancy jurisprudence asks whether the State and Union laws occupy the same field and whether they can operate together.²⁹ Since the FSS Act was drafted as a comprehensive code and expressly overrides inconsistent food laws, State attempts to impose their own labelling formats are exposed to repugnancy challenges. States retain more room to regulate sales near schools, retail environments and public institutions under health and police powers.

The *Godawat Pan Masala* decision illustrates both sides of this. The Supreme Court upheld the Maharashtra gutka ban imposed under food-adulteration law, accepting that the State could prohibit articles injurious to health.³⁰ It did so within a statutory scheme that expressly permitted such prohibitions. A UPF measure should therefore be anchored in an explicit statutory source rather than in inherent State power alone.

2.4 The standard of review

Restrictions on fundamental rights are now assessed through proportionality. In *Modern Dental College v. State of Madhya Pradesh* the Court articulated a four-part test: a legitimate goal, a rational connection, necessity (the absence of less restrictive, equally effective alternatives) and a proper balance between rights and public interest.³¹ *K.S. Puttaswamy v. Union of India* embedded proportionality in Article 21 analysis,³² and *Anuradha Bhasin v. Union of India* applied it to restrictions on speech and trade.³³ *Shayara Bano* added that legislation may be struck down as manifestly arbitrary under Article 14.³⁴ Any UPF regulation will in practice be tested against this framework, and the strength of the evidentiary record will determine the outcome.

3. Front-of-Package Warnings

3.1 The Indian regulatory history

Front-of-package labelling (FOPL) is the area where India's gap between law and administration is most visible. The FSS Act's labelling mandate already requires nutrition information on the back of the pack, but studies and consumer groups argued that such tables are difficult to read and compare. The FSSAI floated a draft in 2018 proposing "high in" style warnings using colour coding. Following consultation, its Authority approved in 2022 an "Indian Nutrition Rating" (INR), a star-rating system rating foods from half a star to five stars, and a draft amendment was published for comment.³⁵ Public health groups criticised the star

²⁹*M. Karunanidhi v. Union of India* (1979) 3 SCC 431.

³⁰*Godawat Pan Masala Products I.P. Ltd v. Union of India* (2004) 7 SCC 68.

³¹*Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) 7 SCC 353.

³²*K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.

³³*Anuradha Bhasin v. Union of India* (2020) 3 SCC 637.

³⁴*Shayara Bano v. Union of India* (2017) 9 SCC 1.

³⁵Labelling and Display Regulations / FSSAI draft, above n 22.

system because it can make a heavily processed product appear healthier than the consumer would otherwise conclude, and comparative evidence suggests that interpretive, warning-style labels are more effective than summary ratings in reducing purchases of unhealthy products.³⁶ Litigation has been the principal driver. In *3S and Our Health Society v. Union of India*, a public interest petition in the Delhi High Court asked the court to direct the FSSAI to finalise FOPL regulations.³⁷ The High Court repeatedly directed the regulator to complete its process, and the Supreme Court, in related proceedings, subsequently pressed the FSSAI to adopt a clear timeline.³⁸ In 2024 the Authority also approved a proposal to display total sugar, salt and saturated fat in bold on labels. The status of the final regulation should be confirmed against the most recent Official Gazette notification and court orders, as developments have been rapid. The pattern is a familiar one in Indian administrative law: the substantive power exists, the authority concedes the problem, and the delay is the problem. Mandamus is available against inaction where a statutory duty exists, and sections 16 and 18 of the FSS Act supply the duty to act on available evidence.³⁹

3.2 Is a mandatory warning compelled speech?

Industry challenges to FOPW will rely on Article 19(1)(a) (freedom of speech, which includes the freedom not to speak) and Article 19(1)(g) (freedom to carry on trade). In *Bijoe Emmanuel v. State of Kerala* the Court held that compelling students to sing the national anthem violated their freedom of conscience and speech, implying a right to silence.⁴⁰ A producer may argue that a stark warning forces it to carry a government message disparaging its own product.

Indian courts have, however, treated disclosure obligations differently from compelled ideological speech. First, the Court has recognised the citizen's right to information as part of Article 19(1)(a). In *Union of India v. Association for Democratic Reforms* the Court held that voters have a right to know about candidates' backgrounds,⁴¹ reasoning that may be applied by analogy to consumers. Second, the regulation of packaging and label content is a settled feature of food law, and extensive labelling requirements are readily treated as regulation of trade under Article 19(6). Third, the tobacco warning regime provides the nearest precedent. In

³⁶Taillie LS and others, 'Changes in food purchases after the Chilean policy on food labelling, marketing, and sales in schools: a before and after study' (2020) 17(2) *PLOS Medicine*.

³⁷*3S and Our Health Society v. Union of India* (Delhi High Court and Supreme Court proceedings concerning front-of-pack labelling regulations).

³⁸*3S and Our Health Society v. Union of India*, above n 37.

³⁹FSS Act, above n 6.

⁴⁰*Bijoe Emmanuel v. State of Kerala* (1986) 3 SCC 615.

⁴¹*Union of India v. Association for Democratic Reforms* (2002) 5 SCC 294.

Health for Millions v. Union of India the Supreme Court addressed the enforcement of mandatory pictorial warnings under COTPA and the rules framed under it,⁴² and in *Murli S. Deora v. Union of India* the Court was strongly supportive of tobacco control as part of the State's Article 21 obligation.⁴³

The distinction is that tobacco is inherently harmful in any quantity, whereas UPFs are heterogeneous. A warning on a product that exceeds defined thresholds for sugar, sodium or saturated fat is, however, a statement of fact about nutrient content, not an opinion. If the warning language is factual ("High in sugar") and based on defined criteria, it is closer to compelled commercial disclosure than to compelled ideological expression. A court applying proportionality would ask whether a less intrusive measure, such as an interpretive but non-warning format, would achieve the same objective. The comparative evidence suggests it would not, which supports the necessity limb.⁴⁴

3.3 Procedural fairness and the limits of delegated rule-making

The principal Indian legal risk lies in process. In *Nestlé India Ltd v. Food Safety and Standards Authority of India* the Bombay High Court set aside the FSSAI's nationwide order banning Maggi noodles, holding that the order violated principles of natural justice and was not based on proper testing.⁴⁵ The decision is a warning about the consequences of hasty and poorly documented action, and its lesson for FOPW is to build an evidentiary record. That record should include consumer-behaviour studies on Indian populations, a transparent explanation of the nutrient thresholds, a regulatory impact assessment and genuine consultation. Delegated legislation can be struck down if it exceeds the enabling Act or is manifestly arbitrary,⁴⁶ but a regulation made under section 92 on a detailed record is likely to survive.

3.4 Comparative experience

Chile. Law 20.606 of 2012 and its implementing decree introduced black octagonal "high in" warnings for calories, sugar, saturated fat and sodium, restrictions on marketing to children under 14, and a ban on sale in schools.⁴⁷ Taillie and colleagues' evaluation found that purchases of beverages high in sugar fell by roughly a quarter after implementation, with reductions also

⁴²*Health for Millions v. Union of India* (2014) 14 SCC 496.

⁴³*Murli S. Deora v. Union of India* (2001) 8 SCC 765.

⁴⁴Taillie and others, above n 36.

⁴⁵*Nestlé India Ltd v. Food Safety and Standards Authority of India* 2015 SCC OnLine Bom 4378 (Bombay High Court).

⁴⁶*Shayara Bano v. Union of India*, above n 34.

⁴⁷Ley 20.606 sobre composición nutricional de los alimentos y su publicidad (Chile, 2012).

in other categories.⁴⁸ The measure was upheld domestically and has since been adopted, with variations, in Peru, Uruguay, Mexico and Colombia.

Mexico. NOM-051, as amended in 2020, requires black octagons and bans the use of cartoon characters and other child-directed features on products carrying warnings.⁴⁹

Canada. Amendments to the Food and Drug Regulations require a “high in” symbol on products exceeding thresholds for sugars, sodium or saturated fat, with compliance required from 2026.⁵⁰

United States. The picture here is less favourable and instructive. *Zauderer v. Office of Disciplinary Counsel* permits compelled factual and uncontroversial commercial disclosures reasonably related to a legitimate interest.⁵¹ But in *American Beverage Association v. City and County of San Francisco* the Ninth Circuit, sitting en banc, struck down a sugary-drink warning ordinance because the warning was unduly burdensome and not purely factual,⁵² and *NIFLA v. Becerra* tightened scrutiny of compelled speech.⁵³ The US cases show that the legal risk lies in the wording and prominence of the warning, not in the concept.

Trade law. Chile’s regime attracted extensive questioning in the WTO Committee on Technical Barriers to Trade, and several Members argued that it was more trade-restrictive than necessary. Under Article 2.2 of the TBT Agreement, a measure must not be more trade-restrictive than necessary to fulfil a legitimate objective, and the WTO panels in the plain-packaging disputes accepted that public health is a legitimate objective.⁵⁴ An Indian measure would be defensible if it applies equally to domestic and imported goods.

3.5 Assessment

The Indian constitutional position on FOPW is stronger than the American one. India lacks an equivalent of the First Amendment’s heightened scrutiny of compelled speech, recognises a right to information, and has a proportionality jurisprudence that accommodates evidence-based measures. The principal obstacles are regulatory delay, industry lobbying, and the temptation to adopt a weaker format (star ratings) because it is more acceptable to industry. A

⁴⁸Taillie and others, above n 36.

⁴⁹Norma Oficial Mexicana NOM-051-SCFI/SSA1-2010, as amended 2020 (Mexico).

⁵⁰Regulations Amending the Food and Drug Regulations (Nutrition Symbols, Other Labelling Provisions, Vitamin D and Hydrogenated Fats or Oils), SOR/2022-168 (Canada).

⁵¹*Zauderer v. Office of Disciplinary Counsel*, 471 US 626 (1985).

⁵²*American Beverage Association v. City and County of San Francisco*, 916 F.3d 749 (9th Cir. 2019) (en banc).

⁵³*National Institute of Family and Life Advocates v. Becerra*, 585 US 755 (2018).

⁵⁴*JT International SA v. Commonwealth* (2012) 250 CLR 1 (High Court of Australia); WTO Panel Report, *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* (DS435 etc.) (2018).

warning-based system with clear thresholds, aligned with the WHO nutrient profile model and validated on Indian consumers, is the most legally and scientifically defensible option.

4. Taxing Sugar-Sweetened Beverages

4.1 The fiscal rationale and the evidence

Taxes on SSBs have been implemented in a large number of jurisdictions. The WHO has indicated that taxes must be sufficiently high, in the region of 20 per cent of the retail price, to change consumption. Mexico's 2014 excise of one peso per litre was associated with a reduction in purchases of taxed beverages of about 6 per cent in the first year, larger among low-income households.⁵⁵ The United Kingdom's Soft Drinks Industry Levy, structured as a tiered levy that rewards reformulation, was associated with a substantial drop in the sugar content of drinks.⁵⁶ For India, a modelling study estimated that a 20 per cent SSB tax could avert a meaningful number of cases of overweight, obesity and type 2 diabetes over a decade.⁵⁷

4.2 The constitutional constraint: who can tax?

Taxation is the instrument where Indian federalism most sharply limits State autonomy. Article 265 requires that no tax be levied except by authority of law.⁵⁸ Before 2017, States could levy sales tax and VAT on goods under Entry 54 of List II, and some experimented with health-oriented taxes. Kerala's 2016 "fat tax" of 14.5 per cent on burgers, pizzas and similar products sold by branded outlets is the best-known example.⁵⁹ It was short-lived, because the Constitution (101st Amendment) Act 2016 inserted Article 246A and subsumed most State taxes on goods and services within the GST.⁶⁰ Entry 54 of List II now survives only for a narrow set of goods such as petroleum products, while alcohol for human consumption remains outside the GST under Entries 8 and 51 of List II.⁶¹

The consequence is that a State cannot independently impose a health tax on sugary beverages. Any such tax must be incorporated into the GST structure through the GST Council under

⁵⁵Colchero MA and others, 'Beverage purchases from stores in Mexico under the excise tax on sugar sweetened beverages: observational study' (2016) 352 *BMJ* h6704.

⁵⁶Scarborough P and others, 'Impact of the announcement and implementation of the UK Soft Drinks Industry Levy on sugar content, price, product size and number of available soft drinks in the UK, 2015–19' (2020) 17(2) *PLOS Medicine* e1003025.

⁵⁷Basu S and others, 'Averting obesity and type 2 diabetes in India through sugar-sweetened beverage taxation: an economic-epidemiologic modeling study' (2014) 11(1) *PLOS Medicine* e1001582.

⁵⁸Constitution of India, above n 11.

⁵⁹Kerala Budget 2016–17; Kerala Finance Act 2016 (14.5% tax on branded burgers, pizzas and similar items).

⁶⁰Constitution of India, above n 11.

⁶¹Constitution of India, above n 11.

Article 279A, or imposed through a Union law such as a cess. In *Union of India v. Mohit Minerals* the Supreme Court held that GST Council recommendations are not binding on the Union or the States, characterising the GST as an exercise in “cooperative federalism” with a recommendatory institution.⁶² The implication for sugar taxation is two-sided. A State cannot act alone, but the Council may recommend higher rates on health grounds, and the Union and States each retain the legislative competence to enact the rate.

India has already used the GST as a de facto health tax. Aerated and sweetened beverages were placed in the highest slab, with an additional compensation cess. Following the Council’s September 2025 restructuring into mainly two standard slabs plus a higher “sin” rate, carbonated and sugar-sweetened drinks were reported to attract the 40 per cent rate.⁶³ The detail of the current schedule should be confirmed against current notifications.

4.3 Is a health tax constitutional?

Within the permissible legislative framework, the substantive question is whether a tax with a regulatory purpose is valid. Indian courts give the legislature wide latitude in taxation. In *R.K. Garg v. Union of India* the Court held that economic and fiscal legislation is entitled to greater deference in classification under Article 14, and that the legislature may select commodities for taxation without strict equality.⁶⁴ Taxes may also serve non-fiscal objectives. The Court accepted this in the context of liquor, where *State of Bombay v. F.N. Balsara* recognised the State’s power to regulate and discourage consumption consistent with the Directive Principle on prohibition in Article 47,⁶⁵ and later authority such as *Khoday Distilleries v. State of Karnataka* held that there is no fundamental right to trade in intoxicants.⁶⁶

Article 19(1)(g) challenges to taxation rarely succeed unless the tax is prohibitive or confiscatory. An SSB tax raises no ordinary constitutional difficulty if the classification of “sugar-sweetened beverages” is rationally defined. The better-designed approach, following the UK model, is a volumetric levy tiered by sugar content, which avoids arbitrary distinctions between brands or product categories and creates a clear incentive for reformulation. A tax limited to carbonated drinks would invite an Article 14 argument that fruit drinks and energy drinks with equivalent sugar are treated differently, although such under-inclusiveness is

⁶²*Union of India v. Mohit Minerals Pvt Ltd* (2022) 10 SCC 700.

⁶³Consumer Protection Act / CCPA Guidelines / GST Council, above n 25.

⁶⁴*R.K. Garg v. Union of India* (1981) 4 SCC 675.

⁶⁵*State of Bombay v. F.N. Balsara* AIR 1951 SC 318.

⁶⁶*Khoday Distilleries Ltd v. State of Karnataka* (1995) 1 SCC 574.

generally tolerated under *R.K. Garg*.⁶⁷

4.4 Earmarking and the question of State autonomy

A distinct problem is the use of revenue. Several jurisdictions, including Philadelphia, earmark SSB revenue for health or education programmes. In *Williams v. City of Philadelphia* the Pennsylvania Supreme Court upheld the city's beverage tax against a challenge that it duplicated the state sales tax.⁶⁸ In India, a GST-based measure would be shared between the Union and the States, and the constitutional design makes earmarking by a State difficult. A separate health cess, as with the Health and Education Cess, would be Union revenue, with the possibility of an explicit allocation to national nutrition programmes. This is a policy design issue and not a constitutional bar.

4.5 Comparative cautions

New York's attempt to regulate portion sizes of sugary drinks (a regulatory cap rather than a tax) was struck down in *New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Department of Health* on separation-of-powers grounds, because the city's health board had exceeded its delegated authority.⁶⁹ The lesson for India is the same as for FOPL: clear statutory authority matters. In Mexico the tax survived political challenge and was later increased. The principal Indian vulnerability is not constitutionality but regressivity and enforcement. Because lower-income households spend a larger share of income on beverages, health advocates note that the health benefits accrue disproportionately to them, but the revenue should be visibly redeployed toward nutrition.

4.6 Assessment

Constitutionally, the sugar tax is the least contentious of the three instruments, since India has substantial doctrinal support for taxation with regulatory purposes. The real constraint is structural: after the GST, health taxation is a question for the Council, not for individual States. The best available reform is therefore a sugar-content-based levy, whether through a tiered GST rate or a specific cess, supported by an explicit health objective in the Council's recommendation.

⁶⁷*R.K. Garg v. Union of India*, above n 64.

⁶⁸*Williams v. City of Philadelphia*, 188 A.3d 421 (Pa. 2018).

⁶⁹*New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Department of Health*, 23 NY3d 681 (2014).

5. Restricting Marketing of Unhealthy Foods to Minors

5.1 The problem

Children are a particularly sensitive audience because they lack the cognitive capacity to recognise persuasive intent. The WHO's recommendations urge States to reduce both the exposure of children to, and the power of, marketing of foods high in saturated fat, trans fat, free sugars or salt.⁷⁰ The Committee on the Rights of the Child has taken the position that States are responsible for regulating private-sector conduct that affects child health.⁷¹ The Indian environment is a mixture of broadcasting, outdoor, digital and in-school promotion, much of it using celebrity endorsement, cartoon characters and premium offers.

5.2 The existing Indian regime

Current regulation is fragmented and weak:

- **FSS Act s 24 and the Advertising and Claims Regulations 2018** prohibit misleading claims, but do not restrict the advertising of lawful, accurately described products to children.⁷²
- **The School Regulations 2020** prohibit sale and advertisement of HFSS foods in school premises and within 50 metres.⁷³ This is a significant measure, but compliance and enforcement are patchy.
- **The Consumer Protection Act 2019 and the CCPA's 2022 guidelines** address misleading advertisements and endorsements and introduce liability for endorsers, but deal with deception, not with the health impact of accurate advertisements.⁷⁴
- **Self-regulation** by the Advertising Standards Council of India (ASCI) includes provisions on advertisements targeted at children, and industry coalitions have made voluntary pledges. Self-regulation lacks statutory force, and the evidence from other jurisdictions shows that voluntary pledges tend to be narrow in scope.⁷⁵

5.3 Commercial speech under Article 19(1)(a)

This is where the constitutional analysis is most difficult, for two reasons.

First, *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd* held that commercial advertising is

⁷⁰WHO Recommendations, above n 16.

⁷¹CRC General Comments 15 and 16, above n 14.

⁷²FSS Act, above n 6; Advertising and Claims Regulations, above n 23.

⁷³School Regulations, above n 24.

⁷⁴Consumer Protection Act / CCPA Guidelines / GST Council, above n 25.

⁷⁵WHO Recommendations, above n 16.

protected speech under Article 19(1)(a), because of the public's interest in the free flow of commercial information, but that this protection does not extend to false, misleading, unfair or deceptive advertising.⁷⁶ A restriction on truthful advertising of a lawful product therefore engages Article 19(1)(a).

Second, Article 19(2) permits restrictions only on specified grounds: the sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation and incitement to an offence.⁷⁷ "Public health" is not on the list. This is a major textual limit. Unlike restrictions on trade under Article 19(6), which can be imposed in the "interests of the general public", restrictions on speech cannot be justified simply by reference to health.

There are three doctrinal routes through this difficulty.

- (a) **The *Hamdard Dawakhana* route.** In *Hamdard Dawakhana v. Union of India* the Court upheld the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954, holding that advertisements that propagate trade and do not "propagate ideas" or convey information of value fall outside the protected freedom of speech.⁷⁸ This case remains the foundation for regulating promotional content, but *Tata Press* later moved the law toward greater protection of commercial speech. A court might still hold that advertising which exploits the vulnerability of children is not protected "information" in the *Tata Press* sense, since its aim is not informed choice but unreflective inducement.
- (b) **The "decency or morality" and "public order" route.** This is a strained argument for food marketing and is unlikely to be persuasive standing alone.
- (c) **The Article 19(1)(g) and 19(6) route.** If the restriction is framed as a regulation of the conduct of trade (restricting where, when and how HFSS products are promoted, in particular to children), as opposed to a restriction on the content of speech, it falls under Article 19(6), which permits reasonable restrictions in the public interest. The Court looks at the "direct and immediate" effect of the law. If the object and effect of the law is to regulate marketing as a commercial activity and not to suppress ideas, this characterisation is plausible. The Court supported reasoning of this kind in the tobacco context when it upheld the policy of COTPA's advertising restrictions and the

⁷⁶*Tata Press Ltd v. Mahanagar Telephone Nigam Ltd* (1995) 5 SCC 139.

⁷⁷Constitution of India, above n 11.

⁷⁸*Hamdard Dawakhana v. Union of India* AIR 1960 SC 554.

restriction on sale near educational institutions.⁷⁹

A conscientious drafter would therefore rely on several mutually reinforcing grounds: (i) the vulnerability of children makes certain forms of advertising inherently unfair, bringing them within the unprotected category recognised in *Tata Press*; (ii) the measure regulates trade practices under Article 19(6); and (iii) the measure is necessary to discharge the State's duties under Articles 21, 39(f) and 47 and under the Convention on the Rights of the Child, and is proportionate under the *Modern Dental College* test.⁸⁰

5.4 Proportionality and design

Proportionality favours narrowly tailored measures. A blanket ban on all advertisement of all packaged foods would likely fail the necessity limb. The more defensible design options are:

- A restriction limited to **foods exceeding nutrient thresholds** (HFSS foods), defined by a nutrient profile model;
- Restrictions on **child-directed techniques** (cartoon characters, toys and gifts, celebrity endorsements, promotional tie-ins) rather than on all advertising;
- **Time-based restrictions** on broadcast media during children's viewing hours, and equivalent restrictions on child-directed digital advertising; and
- **Settings-based restrictions** around schools, which the 2020 Regulations already begin to implement.⁸¹

Such limits are best understood as proportionate restrictions, since they leave adults and general-audience promotion untouched.

5.5 Comparative experience

Canada. In *Irwin Toy Ltd v. Quebec (Attorney General)*, the Supreme Court of Canada upheld Quebec's prohibition of commercial advertising directed at children under 13. Although the ban limited freedom of expression, it was justified under section 1 of the Charter because children are susceptible to manipulation and the legislature was entitled to protect a vulnerable group.⁸² This is the most closely analogous constitutional precedent for India and is persuasive in a system that applies proportionality.

United States. *Central Hudson Gas v. Public Service Commission* requires that restrictions on

⁷⁹COTPA, above n 26; *Murli S. Deora v. Union of India*, above n 43.

⁸⁰*Modern Dental College and Research Centre v. State of Madhya Pradesh*, above n 31.

⁸¹School Regulations, above n 24.

⁸²*Irwin Toy Ltd v. Quebec (Attorney General)* [1989] 1 SCR 927 (Supreme Court of Canada).

lawful, non-misleading commercial speech directly advance a substantial government interest and be no more extensive than necessary.⁸³ *Lorillard Tobacco Co v. Reilly* struck down Massachusetts's tobacco advertising restrictions as overbroad, while recognising the State's interest in protecting minors,⁸⁴ and *Sorrell v. IMS Health* signalled still greater scepticism of content-based commercial restrictions.⁸⁵ The US position shows how a different constitutional text, one without an enumerated list of permissible grounds for restricting speech but with strong judicial scrutiny, produces a very different result. India's textual constraint under Article 19(2) is one the First Amendment does not have, but Indian proportionality review has historically been less exacting than US commercial speech scrutiny.

United Kingdom. The UK has legislated to restrict paid advertising of HFSS products on television before 9 pm and online, after repeated delays. The commencement dates have shifted over time and should be confirmed against current government announcements.

Chile and Mexico. Both countries prohibit the use of child-directed design techniques, such as characters and toys, on products that carry warning labels.⁸⁶ This avoids the problem of imposing a blanket ban by linking the restriction to the nutrient profile of the product.

Tobacco and plain packaging. In *JT International SA v. Commonwealth* the High Court of Australia upheld tobacco plain packaging against a challenge based on the constitutional guarantee of just terms for acquisition of property, and the WTO panel report on plain packaging reached a comparable conclusion on the trade-law claims.⁸⁷ In *Philip Morris v. Uruguay* an ICSID tribunal rejected an investment treaty challenge to Uruguay's tobacco measures, recognising a State's police powers to protect public health.⁸⁸ These cases underline that health measures can survive scrutiny where they are based on evidence and applied non-discriminatorily.

5.6 Assessment

The marketing restriction is the most legally vulnerable of the three instruments in India, owing to the combination of *Tata Press* and the absence of "health" in Article 19(2). Yet the child-protection rationale, the existing school regulations and the tobacco precedents give a feasible path. The safest approach is a statute or an FSS Act regulation that is explicitly framed around

⁸³*Central Hudson Gas & Electric Corp v. Public Service Commission*, 447 US 557 (1980).

⁸⁴*Lorillard Tobacco Co v. Reilly*, 533 US 525 (2001).

⁸⁵*Sorrell v. IMS Health Inc*, 564 US 552 (2011).

⁸⁶Ley 20.606, above n 47; NOM-051, above n 49.

⁸⁷*JT International*; WTO Panel Report, above n 54.

⁸⁸*Philip Morris Brands Sàrl v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award (8 July 2016).

the protection of children, defines its coverage by a nutrient profile model, and targets techniques of persuasion directed at minors.

6. Recommendations

Table 1 summarises the comparative analysis of the three instruments. The recommendations that follow draw on it.

Table 1: Comparative summary of the three regulatory instruments

Instrument	Principal constitutional hurdle	Competent authority	Key comparative authority	Overall risk
Front-of-package warnings	Compelled speech (Art. 19(1)(a)); procedural fairness	FSSAI under FSS Act, ss 16, 18, 92	Chile Law 20.606; <i>Zauderer</i> ; <i>San Francisco Beverage Ass’n</i>	Low to moderate
Sugar-sweetened beverage tax	Federal competence after Art. 246A; Art. 14 classification	GST Council (Art. 279A); Union and States	Mexico excise; UK levy; <i>Williams</i> (Philadelphia)	Low (structural rather than rights-based)
Marketing restrictions for minors	Commercial speech; no “health” ground in Art. 19(2)	Union (FSS Act s 24) or new statute	<i>Irwin Toy</i> (Canada); <i>Central Hudson</i> ; Chile and Mexico	Moderate to high

Source: Author’s analysis.

- 1. Finalise a warning-based FOPL regulation under section 92 of the FSS Act.** The regulation should use interpretive “high in” warnings with clear nutrient thresholds, and a star-rating system should be avoided. The FSSAI should publish its evidence base, including Indian consumer-testing results, to withstand arbitrariness review and avoid the procedural defects identified in *Nestlé*.⁸⁹

⁸⁹*Nestlé India Ltd v. Food Safety and Standards Authority of India*, above n 45.

2. **Adopt a nutrient profile model** as the common regulatory foundation for labelling, school food, fiscal and marketing measures. A single, transparent model avoids inconsistency and supports the necessity limb of proportionality. The ICMR-NIN Dietary Guidelines for Indians 2024 provide a domestic scientific basis.⁹⁰
3. **Use the GST Council for fiscal measures.** The Council should consider a tiered, sugar-content-based levy on beverages with an express health rationale, and consider designating a portion of the revenue to nutrition programmes. States should advocate within the Council, since independent State action is foreclosed.
4. **Enact a statutory marketing restriction for children.** Either through a regulation under section 24 of the FSS Act, supported by an amendment if necessary, or through standalone legislation, India should restrict child-directed promotion of HFSS foods, including cartoon characters, premiums, celebrity endorsement and digital targeting. The drafting should explicitly cite Articles 21, 39(f) and 47, and the Convention on the Rights of the Child.
5. **Strengthen enforcement and monitoring.** The School Regulations 2020 should be backed by inspection regimes and published compliance data. Regulations should provide for periodic review, which assists proportionality by showing that the measure remains necessary as evidence develops.
6. **Allow State innovation within the limits of repugnancy.** States may adopt stricter measures on sales in and around schools and public institutions, consistent with Article 254, and may seek Presidential assent for measures that go beyond Union rules.
7. **Pursue mandamus where the regulator fails to act.** Public interest litigation remains a legitimate mechanism to enforce statutory duties under sections 16 and 18, as the *3S and Our Health Society* proceedings demonstrate.⁹¹

7. Conclusion

The Indian State has both the constitutional authority and the statutory architecture to regulate ultra-processed foods. The jurisprudence that locates health within Article 21, the directive principles on nutrition and child welfare, and the proportionality framework developed since *Modern Dental College* all support measured, evidence-based intervention. Front-of-package warnings rest on firm ground, because compelled disclosure of factual nutrient information is

⁹⁰ICMR–National Institute of Nutrition, *Dietary Guidelines for Indians* (2024).

⁹¹*3S and Our Health Society v. Union of India*, above n 37.

closely tied to the right to know and to the accepted regulation of labelling. Sugar taxation is constitutionally unproblematic but structurally constrained: the GST regime removed State fiscal autonomy and relocated the decision to the GST Council. Restrictions on marketing to minors are the most doctrinally sensitive, because of the protection afforded to commercial speech in *Tata Press* and the absence of a health ground in Article 19(2), but the child-protection rationale, the *Hamdard* line of authority, the tobacco precedents and the persuasive Canadian decision in *Irwin Toy* offer a defensible route.

The principal obstacles are not constitutional but institutional: delay in rule-making, a preference for industry-friendly formats, a fragmented enforcement system and a reliance on self-regulation. Comparative experience shows that the countries that have acted, notably Chile, Mexico and the United Kingdom, have done so through clear statutory mandates, thresholds based on nutrient profiles and monitored implementation, and that courts have generally upheld such measures when they are evidence-based and carefully tailored. The challenge for India is to translate the constitutional promise of Article 47 into regulation that is both legally robust and effective.

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