

## Opening doors of black market due to banning Gutka by State Government

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**ABSTRACT:** This research paper is based on Secondary Data Analysis of Pune District and session court various orders/ judgments related with Prosecution against selling/ manufacturing/ distributing/possessing/ transporting Gutka in State of Maharashtra. And also define reasons why such policy decision of State government result in stimulating Black market of Gutka in state of Maharashtra

### I. INTRODUCTION:-

Government of Maharashtra ban Gutka in year 2012-13 and also directing Police and FSS authority to lodged FIR against business man who violate said order of GOM. But after that also Gutka is selling in Maharashtra in black market. State Government prosecute against several business man who selling / distributing/ possessing/ transporting Gutka in Maharashtra but its really shocking that no one is convicted in prosecution since from 2013 to 2019 .Which result in stimulating growth of Gutka in black market

### II. BACKGROUND:-

Gutka is not ban in state of Gujarat and state of Karnataka but in year 2012-2013 government of Maharashtra ban Gutka in State of Maharashtra . There are several FIR u/s 328,272,273,188 of IPC and F.S.S Act came to register with various police Station against accused who violated said order of GOM. Moreover, the prosecution failed to prove seizure of property/Gutka could be Adulteration of food/ noxious food/ poisonous because

1) Department did not issue any public notice about the notification dated 17/07/2015 by publishing the said notice in daily newspaper and by any other mode informing the public in respect of the prohibition or ban of the articles in the notification. According to me, this is one of the serious lacuna in the present case of the prosecution. According to me, it was necessary for

the Food Safety Officer, the complainant to bring awareness of the said notification and knowledge of it to the general public that the articles mentioned in the notification have been prohibited for its consumption, sale, storage etc

2) There is no report by Food Analyst or by Chemical Analyzer to establish that the alleged seized food articles were containing tobacco or Nicotine or Magnesium Carbonate as ingredients which were prohibited under the order. In other words, the alleged seized food articles are the same which were prohibited by the Government by the order promulgated by the Commissioner, Food and Drug Administration.

3) Some time prosecution failed to perform Chemical Analyze sized property /Gutka

4) Some time prosecution failed to produced Chemical Analyzer report of sized property /Gutka

5) Even, the prosecution has not filed on record report of Chemical Analyzer to show that the alleged seized property was poisonous or any stupefying, intoxicating or unwholesome drug or noxious or was in a state unfit for food or drink or prohibited food articles. In absence of any such evidence, prosecution has miserably failed to prove either of the offence against the accused

6) That the informant didn't have basic educational qualification as required under Food Safety and Standards Act, 2006 and Rules 2011. Though, the question put forth to informant, which denied by him still he has disclosed that he is having only qualification i.e. B.Sc. Chemistry.

7) There is no report of the Chemical Analyzer wherein, expert opinion available that the said prohibited muddemal property contains poison, which is injurious to health of the General Public. Thus, the prosecution has failed to prove that the said prohibited muddemal property was kept in a contravention of the order of the Commissioner and that it was injurious to health of the General Public

8) Some time Accused acquitted due to whiteness and Punch whiteness

9) There is no certificate issued by the Food Analyst that Gutka or Pan Masala is adulterated food. Therefore, the contravention of the prohibitory order is not punishable under Sections 272 and 273 of the Indian Penal Code and etc

10) The Indian Penal Code does not define specifically what is food adulteration. But its defined in FSS Act 2006

As government is failed to prove Gutka could be Adulteration of food/ noxious food/ poisonous food due to wick 99% accused are acquitted . Which result in growth of black market distribution /selling /manufacturing / and storing of Gutka.

### **III. METHODOLOGY:-**

Disposed Case Status Search by Food and safety Act Type on official website of District court in time span of 2013 to 2019, after search we download all disposed cases and analyse it individually

### **IV. RESULTS:**

-54 out of 54 -100% session cases are acquitted 5 out of 5-100% criminal review is allowed

### **V. CONCLUSION:**

After ban of Gutka in Maharashtra still its selling/ manufacturing/distributing/possessing/transporting in market in black . Further in Pune Convention rate is nearly equal to 0%