

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) No. \_\_\_\_\_ of 2022**

**IN THE MATTER OF PUBLIC INTEREST LITIGATION**

**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

(Petition under Article 32 of the Constitution of India in the nature of Public Interest Litigation & seeking issuance of appropriate writ, order and / or direction in the nature of Mandamus and / or any other appropriate writ directing respondents to remove/cover designated smoking zones from commercial places and airports, increasing the age of smoking, banning sale of cigarettes near educational institutions, healthcare institutions and places of worship, increasing the penalty for smoking at public places.)

**IN THE MATTER OF:**

**SHUBHAM AWASTHI & ANR.**

**...PETITIONERS**

**VERSUS**

**UNION OF INDIA & ORS.**

**...RESPONDENTS**

**[PAPERBOOK]**

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**ADVOCATE FOR THE PETITIONER**

**DEVENDRA SINGH**

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## **LIST OF DATES**

- 10.06.1860 Indian Penal Code was enacted with Punishments for Public Nuisance.
- 15.08.1947 India attains Independence.
- 26.11.1949 India adopts the Constitution of India.
- 26.01.1950 Constitution of India comes into force.
- 1989 The Railways Act, 1989 regulates smoking on trains.
- 2003 The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) is the principal comprehensive law governing tobacco control in India, was passed.
- 2009 Cable Television Networks (Regulation) Act, 1995 (CTNA) and its 2009 implementing rules prohibit direct advertising of tobacco products on Indian cable networks, but permit the indirect advertising of such products under certain circumstances.
- .05.2022 Hence this Writ Petition is being preferred by the Petitioner.



**PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA IN THE NATURE OF  
PUBLIC INTEREST LITIGATION & SEEKING  
ISSUANCE OF APPROPRIATE WRIT, ORDER AND / OR  
DIRECTION IN THE NATURE OF MANDAMUS AND /  
OR ANY OTHER APPROPRIATE WRIT DIRECTING  
RESPONDENTS TO REMOVE/COVER DESIGNATED  
SMOKING ZONES FROM COMMERCIAL PLACES AND  
AIRPORTS, INCREASING THE AGE OF SMOKING,  
BANNING SALE OF CIGARETTES NEAR  
EDUCATIONAL INSTITUTIONS, HEALTHCARE  
INSTITUTIONS AND PLACES OF WORSHIP,  
INCREASING THE PENALTY FOR SMOKING AT  
PUBLIC PLACES.**

To  
THE HON'BLE THE CHIEF JUSTICE AND  
HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT

THIS HUMBLE PETITION OF  
THE PETITIONERS ABOVE  
NAMED

**MOST RESPECTFULLY SHOWETH**

1. This is a Public Interest Litigation. This is a Writ Petition under Article 32 of the Constitution of India praying for a direction to the Union of India and others

seeking a writ or order or direction in the nature of Mandamus and / or any other appropriate writ directing respondents to formulate new guidelines to remove smoking zones from commercial places and airports, increasing the age of smoking, banning sale of loose cigarettes near educational institutions, healthcare institutions and places of worship.

2. Petitioners are preferring the present Petition in the interest of general public and has no personal interest in the litigation and the Petitioners in no way are guided by self-gain or for gain of any other person/institution/body etc. and that there is no motive other than public interest in filing the present writ petition.
3. Petitioners are filing the present petition under article 32 of the Constitution of India for the issuance of appropriate writ in nature of Mandamus directing Respondent No. 1 to exercise its power in rightful manner, and initiate scientific studies and other steps like bans to control the sale and addiction of tobacco, herein specifically cigarettes in the country as such products affect citizen's right to health and influence them wrongly.
4. The Petitioners have not approached any other court for the reliefs claimed in the present Writ Petition. No representation has been filed with any authority and the reliefs claimed can only be granted by this Hon'ble Court.

5. The Petitioners are male citizen of India and a Hindu by religion. Petitioners are practicing Advocates and feel for the plight of the fellow citizens and the way they are being targeted through the increased menace of smoking and are influenced to take up smoking by making cigarette smoking more accessible.
6. Petitioners Name is Shubham Awasthi, Age: 28 years, Father's Name is Mr. Ramesh Awasthi, Address: A-97, Sector 46, Noida, Gautam Buddha Nagar, UTTAR PRADESH - AADHAAR: 246033907021, Email ID [shubhamawasthi@gmail.com](mailto:shubhamawasthi@gmail.com) and Phone Number: 8285002222, Occupation Advocate and Annual Income:
7. Petitioners Name is Sapta Rishi Mishra, Age: 31 years, Father's Name is Late. Shri. Chandra Shekhar Mishra, H. No. G-12, FF-1, Keshav Kunj Govinpuram, Ghaziabad, 201013 Uttar Pradesh - AADHAAR: 64530236806104, Email ID saptmishra20@gmail.com and Phone Number: 9990063761, Occupation Advocate and Annual Income: .....
8. That another friction point in filing of this petition pertains to the growing cigarette smoking in India among teens and among young population.
9. That in 2018, WHO released its factsheet on the prevalence on tobacco consumption in India. It has



quoted younger population in India to be at increased chances of Cardio-Vascular Diseases and tobacco among which cigarettes are a major contributor killing 9 million people in India or 9.5% of all deaths in India. True copy of WHO Factsheet 2018 on Tobacco Consumption in India is annexed herewith as **ANNEXURE-P1. (Page No. \_\_\_\_\_ to \_\_\_\_\_)**

10. That the young people getting addicted to smoking of tobacco products do so in order to look cool or under peer pressure. They see adults smoking and it becomes a rite of passage or their inducement to initiate smoking to show that they are matured now.

11. That in October 2021, a survey of Bangalore revealed that only 1.9% of establishments which had smoking zones had the designated license to have smoking zones. True Copy of the News Report in The Hindu dated 21<sup>st</sup> October 2021 is annexed herewith as **ANNEXURE-P2. (Page No. \_\_\_\_\_ to \_\_\_\_\_)**

12. That with lax enforcement and a growing middle class with access to more money due to the advancing of economy, tobacco products are more accessible to people now. It is quite common to see individuals smoking at every nook and corner in the country. It is really regretful that India ranks as one of the countries with the lowest quitting rates. True Copy of news report in The Hindu about India having lowest quitting rate

dated November 18, 2021 is annexed herewith as **ANNEXURE-P3. (Page No. \_\_\_\_\_ to \_\_\_\_\_)**

13. That in the present times, the rate of smoking has been growing since the last two decades and it has grown into such a epidemic that India now ranks 2<sup>nd</sup> in the smokers category for the 16-64 age group. True Copy of the News Report about failures of Health Ministry to regulate smoking dated 1<sup>st</sup> December 2021 is annexed herewith as **ANNEXURE-P4. (Page No. \_\_\_\_\_ to \_\_\_\_\_)**

14. That a study published in the Journal of Nicotine and Tobacco Research has flagged the severe economic burden of second hand smoke exposure in India. The study revealed that second hand smoke causes Rs. 567 billion in health care costs annually. This accounts for eight per cent of total annual health care expenditure, on top of Rs. 1,773 billion in annual economic burden from tobacco use. True Copy of the news report about the Economic Impact of Smoking dated 25<sup>th</sup> March 2022 is annexed herewith as **ANNEXURE-P5. (Page No. \_\_\_\_\_ to \_\_\_\_\_)**

15. That smoking not only affects lungs but also causes vision loss. In a country like India with one of the highest population of blindness which could have been prevented, it is a cause of serious concern. True Copy of the news report about ill effects of smoking on eyes

dated 5<sup>th</sup> April 2022 is annexed herewith as **ANNEXURE-P6. (Page No. \_\_\_\_\_ to \_\_\_\_\_)**

16. That the outcome of the present Petition would benefit all the Citizens of India who believe that their right to freedom of expression of living in a healthy environment and amongst others in a right to living their life to the fullest as modern pillars of a participative democracy.
17. That it is further stated that the Petitioners have nothing to do with the Respondents nor are the Petitioners in any manner connected to the Respondents and has no hidden purpose to achieve. Petitioners only seeks to for safe environment, health of the citizens and opportunities for holistic development of citizens.
18. Petitioners have the means to pay the costs, if any, imposed by this Hon'ble Court and Petitioners undertakes to pay the same.
19. While the impugned acts of the Respondents are violative of Article 19 & 21 of the Constitution of India, the same are also violative of Directive Principles.
20. This Hon'ble Court being the guardian of Rule of Law could prevent such possible evils through its activism, and therefore, Petitioners are filing the instant petition.

21. In the circumstances, Petitioners are left with no other efficacious remedy except to file the present Petition. It is further stated that the Petitioners have not preferred any such petition/PIL before this Hon'ble Court or any other Court in India.
22. That the Petitioners seek liberty to add/alter grounds at the time of hearing of the present Petition.
23. That the Writ Petition is sought on the following grounds inter alia:

### **GROUND**

#### **INTERNATIONAL LAWS, HUMAN RIGHTS AND RIGHT TO HEALTH**

- A. Because as human beings, our health and the health of those we care about is a matter of daily concern. Regardless of our age, gender, socio-economic or ethnic background, we consider our health to be our most basic and essential asset. Ill health, on the other hand, can keep us from going to school or to work, from attending to our family responsibilities or from participating fully in the activities of our community. By the same token, we are willing to make many sacrifices if only that would guarantee us and our families a longer and healthier life.

B. Because human rights are interdependent, indivisible and interrelated. This means that violating the right to health may often impair the enjoyment of other human rights, such as the rights to education or work, and vice versa. The importance given to the “underlying determinants of health”, that is, the factors and conditions which protect and promote the right to health beyond health services, goods and facilities, shows that the right to health is dependent on, and contributes to, the realization of many other human rights. These include the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications.

C. Because the right to the highest attainable standard of health is a human right recognized in international human rights law. The International Covenant on Economic, Social and Cultural Rights, widely considered as the central instrument of protection for the right to health, recognizes “the right of everyone to the

enjoyment of the highest attainable standard of physical and mental health.” It is important to note that the Covenant gives both mental health, which has often been neglected, and physical health equal consideration.

D. Because Children face particular health challenges related to the stage of their physical and mental development, which makes them especially vulnerable to malnutrition and infectious diseases, and, when they reach adolescence, to sexual, reproductive and mental health problems.

E. Because Children who have experienced neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment also require specific protection by States. The Convention on the Rights of the Child (art. 39) stresses the responsibility of the State for promoting children’s physical and psychological recovery and social reintegration. While adolescents are in general a healthy population group, they are prone to risky behaviour, sexual violence and sexual exploitation. Adolescent girls are also vulnerable to early and/or unwanted

pregnancies. Adolescents' right to health is therefore dependent on health care that respects confidentiality and privacy and includes appropriate mental, sexual and reproductive health services and information.

F. Because Convention on the Rights of Persons with Disabilities requires States to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, including their right to health, and to promote respect for their inherent dignity (art. 1). Article 25 further recognizes the “right to the enjoyment of the highest attainable standard of health without discrimination” for persons with disabilities and elaborates upon measures States should take to ensure this right.

G. Because States parties are required to give effect to these rights within their jurisdictions. More specifically, article 2 (1) of the International Covenant on Economic, Social and Cultural Rights underlines that States have the obligation to progressively achieve the full realization of the rights under the Covenant. This is an implicit recognition that States have resource

constraints and that it necessarily takes time to implement the treaty provisions. Consequently, some components of the rights protected under the Covenant, including the right to health, are deemed *subject to progressive realization*.

- H. Because taking steps to realize the right to health requires a variety of measures. As the most feasible measures to implement the right to health will vary from State to State, international treaties do not offer set prescriptions. The International Covenant on Economic, Social and Cultural Rights in article 2 (1) simply states that the full realization of the rights contained in the treaty must be achieved through “all appropriate means, including particularly the adoption of legislative measures.”

## **TOBACCO CONSUMPTION AND HEALTH**

- I. Because Tobacco use (Herein in global perspective tobacco only refers to cigarettes, cigars and usually excludes gutkhas, pan masalas and all) is one of the main causes of global morbidity and mortality,



responsible for up to 7 million deaths annually as of 2017 (WHO Tobacco Fact Sheet, 2017). Economic losses linked to tobacco use are quantified at approximately \$1.4 trillion annually, making it a developmental problem and a major cause of poverty and social inequity besides a health tragedy (US National Cancer Institute, WHO, The Economics of Tobacco and Tobacco Control, 2016). The health effects of tobacco, and the role of the tobacco industry in concealing them as well as the addictive nature of nicotine, have become progressively clear since the 1950s.

- J. Because the WHA launched the negotiation of the WHO Framework Convention on Tobacco Control (FCTC) in 1999 and 2000 (resolutions WHA52.18 and WHA53.16). The FCTC was eventually adopted by consensus on 21 May 2003 (resolution WHA56.1).
  
- K. Because the essence of the text of the Framework Convention on Tobacco Control is encapsulated in the preamble and the objective (Article 3), in particular the priority of the “right to protect public health”, the need

for wide international cooperation to fight a global problem, and the aim of the FCTC “to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke”

- L. Because the commercialization and consumption of a lawful but inherently unhealthy consumer product together with alcohol consumption, unhealthy diets and lack of physical exercise, tobacco use is a main contributor to the pandemic of Non-Communicable Diseases, such as cancer and respiratory diseases responsible for up to 65 percent of global mortality, with most deaths occurring in developing countries. Tobacco control is therefore a health goal in its own right as well as part of the broader fight against NCD, which was the object of a high-level declaration by the United Nations General Assembly in 2011 (General Assembly resolution 66/2 of 19 September 2011). Both the declaration as well as Goal 3 of the 2015 Sustainable Development Goals mention specifically strengthening the implementation of the FCTC as one of the main

contributing factors to sustainable development from a public health perspective.

M. Because the human right to life is a fundamental right recognised in Universal Declaration of Human Rights Article 3, ICCPR article 6 and for children in Convention on Rights of the Child Article 6. The human right to health is recognised in ICESCR Article 12. Human rights may be ‘positive’ or ‘negative’: for example, an entitlement *to* state provision and funding for programmes that contribute to good health (positive) or a right to be free *from* the actions of others that may impair health (negative). Thus, the dangers posed to non-smokers by second-hand smoke (SHS) can be construed as an infringement of a non-smoker's negative rights. The effects of SHS, especially in children, are worth noting: passive exposure to parental smoking leads to middle ear infections, respiratory diseases including asthma, the worsening of serious conditions such as cystic fibrosis and asthma, and in some cases, death. Given these clear risks, it could be argued that failing to prevent child exposure to SHS affects their

basic rights to life and health, and their right to ‘a clean and safe environment’ under CRC Article 14.

N. Because human right principles can also be invoked to justify protecting individuals from the harms of active smoking. Most smokers start before adulthood, at a time when the capacity for rationalised, long-term decision-making is not yet fully developed. Many adolescents are lured into cigarette smoking as a rite of passage into adulthood, usually through their peers, unable to fully conceive of the addictive grip of nicotine, and the health impacts they will later experience. Yet, under CRC Article 6: ‘governments should ensure that children survive and develop healthily’.

O. Because under ICESCR article 12, adults are also entitled to: ‘the enjoyment of the highest attainable standard of physical and mental health’, including the ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases. Active smoking is an epidemic that claims over 6 million lives per year; nicotine addiction can significantly impact the liberty, health and mental wellbeing of an individual.

P. Because the human right to liberty is recognised in UDHR article 3 and ICCPR article 9; the right to self-determination in ICESCR article 1 and ICCPR article 1, where it is defined as the right to ‘freely pursue ... economic, social and cultural development’. Tobacco-related illnesses and deaths have adverse socioeconomic consequences for families, communities, healthcare systems and public resources, while SHS can affect children and non-smokers. Thus, smoking affects others, both directly and indirectly.

### **PERILS OF SMOKING**

Q. Because as per America’s Centre for Disease Control and Prevention (CDC), Secondhand smoke is the combination of smoke from the burning end of a cigarette and the smoke breathed out by smokers. Secondhand smoke contains more than 7,000 chemicals. Hundreds are toxic and about 70 can cause cancer. Since the 1964 Surgeon General's Report, 2.5 million adults who were nonsmokers died because they breathed secondhand smoke. There is no risk-free level of exposure to secondhand smoke. Secondhand smoke

causes numerous health problems in infants and children, including more frequent and severe asthma attacks, respiratory infections, ear infections, and sudden infant death syndrome (SIDS). Smoking during pregnancy results in more than 1,000 infant deaths annually. Some of the health conditions caused by secondhand smoke in adults include coronary heart disease, stroke, and lung cancer. Exposure to secondhand smoke has immediate adverse effects on the cardiovascular system and can cause coronary heart disease and stroke. Secondhand smoke causes nearly 34,000 premature deaths from heart disease each year in the United States among nonsmokers. Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing heart disease by 25-30%. Secondhand smoke increases the risk for stroke by 20%. Secondhand smoke exposure causes more than 8,000 deaths from stroke annually. Breathing secondhand smoke can have immediate adverse effects on your blood and blood vessels, increasing the risk of having a heart attack. Breathing secondhand smoke interferes with the normal functioning of the heart,

blood, and vascular systems in ways that increase the risk of having a heart attack. Even brief exposure to secondhand smoke can damage the lining of blood vessels and cause your blood platelets to become stickier. These changes can cause a deadly heart attack. People who already have heart disease are at especially high risk of suffering adverse effects from breathing secondhand smoke and should take special precautions to avoid even brief exposures.

- R. Because as per the National Health Service of United Kingdom, Secondhand smoke is dangerous, especially for children. The best way to protect loved ones is to quit smoking. At the very least, make sure you have a smokefree home and car. When you smoke a cigarette (or roll-up, pipe or cigar), most of the smoke doesn't go into your lungs, it goes into the air around you where anyone nearby can breathe it in. Secondhand smoke is the smoke that you exhale plus the "sidestream" smoke created by the lit end of your cigarette. When friends and family breathe in your secondhand smoke – what we call passive smoking – it isn't just unpleasant for them, it can

damage their health too. People who breathe in secondhand smoke regularly are more likely to get the same diseases as smokers, including lung cancer and heart disease. Pregnant women exposed to passive smoke are more prone to premature birth and their baby is more at risk of low birthweight and cot death. And children who live in a smoky house are at higher risk of breathing problems, asthma, and allergies.

### **JUDICIAL APPROACH**

S. Because the Peruvian Supreme Court had the opportunity to look into issues arising from the WHO Framework Convention on Tobacco Control and when Citizens claimed that ban on smoking was an impediment to their Right to Liberty. In Claim filed by 5000 citizens against Article 3 of Law 28705, the Peruvian Supreme Court had opined that,

“73. So, this Court agrees with the stipulations of the Constitutional Court of Colombia that —the WHO Framework Convention on Tobacco Control (...) constitutes an important international instrument for preventing and counteracting the dreadful consequences of tobacco use, especially on health and the environment. (...). The aim of the Convention, shown in its Article 3, is framed in the protection of present and future generations in the



face of the health, social, environmental and economic consequences of tobacco use and the exposure to tobacco smoke and therefore, it develops the principles contained in Articles 49, 78 [protection of the fundamental right to health] and 79 [right to enjoy a healthy environment] of the Charter. Thus, these regulations show the State's obligation on healthcare and a healthy environment (...), show everyone's duty to secure comprehensive care of his health and that of his community (cf. Judgment C-665 de 2007).

74. Apart from this, apparently the obligations imposed by the Convention are merely an indispensable minimum, for nothing prevents the State from adopting stricter measures to protect the basic right to health to the highest degree possible. It has been expressly set forth in the Convention: —In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law (Article 2.1).”

T. The Constitutional Court of Guatemala while dealing with the issues of creation of Smoke Free Zones and Environment as violation of the Right to Trade and it being arbitrary had opined in Docket No. 2158/2009 that,

“With respect to the first grounds of the challenge, this Court considers that the alleged violation of Article 43 of the Constitution does not exist, inasmuch as the establishing of limits on smoking

in certain places does not imply, as alleged by the claimant in its brief, that the State has promoted a limitation of the freedom of industry and commerce of the entities manufacturing, producing, distributing and marketing tobacco products, as the purpose of the challenged norm is not to regulate such activities, but to regulate their consumption to protect the right to health of the consumers themselves, and that of nonsmokers.

In reference to the second grounds of contradiction claimed between the challenged norm and the Political Constitution of the Republic, stating that the fact that the law in question does not define “enclosed public places” goes against personal security, this Court finds that a regulatory statement without a claim of exhaustiveness is not grounds for unconstitutionality, inasmuch as its intellection is satisfied by the very meaning of its words, or inferred from its text, context, purpose and other procedures of hermeneutics, with the exception of cases stated confusingly, contradictorily or unintelligibly, which does not occur in the case in point, as the item is deemed to be related to the purpose of protecting non smokers exposed forcefully to second- hand smoke in places that, due to their enclosed structures, retain the smoke for a certain time forcing its inhalation.”

U. Because in *K Ramakrishnan v State of Kerala and Anr.*, the Kerala High Court had the opportunity to look at the negative effects of Environmental Smoke or smoke from cigerrates in the Environment. It had remarked,

“13. Environmental tobacco smoke (ETS) also contributes to respiratory morbidity of children. Increased platelet aggregation also occurs when a nonsmoker smokes or is passively exposed to smoke. Although environmental tobacco smoke (ETS) differs from "mainstream smoke" in several ways, it contains many of the same toxic substances. Infants and toddlers may be especially at risk when exposed to environmental tobacco smoke (ETS). Considering the substantial morbidity, and even modality of acute respiratory illness in childhood, a doubling in risk attributable to passive smoking clearly represents a serious paediatric health problem. Exposure to environmental tobacco smoke (ETS) has been associated with increased asthma-related trips to the emergency room of hospitals. There is now sufficient evidence to conclude that passive smoking is associated with additional episodes and increased severity of asthma in children who already have the disease. Exposure to passive smoking may alter children's intelligence and behavior and passive smoke exposure in childhood may be a risk factor for developing lung cancer as an adult. Environmental tobacco smoke (ETS) contains more than 4000 chemicals and at least 40 known carcinogens. Nicotine, the addictive drug contained in tobacco leads to acute increase in heart rate and blood pressure. ETS also increases platelet aggregation, or blood clotting. It also damages the endothelium, the layer of cells that line all blood vessels, including the coronary arteries. In addition, nonsmokers who have high blood pressure or high blood cholesterol are at even greater risk of developing heart diseases from ETS exposure". An investigation in Bristol has found that the children of smokers have high levels

of cotinine, a metabolite of nicotine, in their saliva. The results indicated that children who had two smoking parents were breathing in as much nicotine as if they themselves were smoking 80 cigarettes a year. A study published in the "New England Journal of Medicine" found that the children of smoking mothers were less efficient at breathing. A study conducted by the Harvard Medical School in Boston, concluded that passive exposure to maternal cigarette smoke may have important effects on the development of pulmonary function in children. An important discovery is that the cocktail of chemicals in a smoky room may be more lethal than the smoke inhaled by the smoker. The "sidestream" smoke contains three times as much benzo(a)pyrene (a virulent cause of cancer) six times as much toluene another carcinogen, and more than 50 times as much dimethyl nitrosamine. It has been commended by Dale Sandler of the National Institute of Environmental Health Studies in the United States that the potential for damage from passive smoking may be greater than has been previously recognised."

V. *Because In Ratlam Municipality v. Vardhichand*, AIR 1980 SC 1622 Krishna Iyer, J. speaking for the Bench ruled that,

“The imperative tone of Section 133, Cr.P.C. read with the punitive temper of Section 188, IPC make the prohibitory act a mandatory duty. If a complaint is filed under Section 188, IPC, there is an embargo for the Magistrate to take cognizance under Section 195(1), Cr.P.C. as cognizance can be taken for the offence on the complaint in writing

of the public servant concerned or of some other public servant to whom he is administratively subordinate. This embargo will disappear if there is a complaint in writing by the public servant concerned. Where there existed a public nuisance this. Court could require the executive under Section 133. Cr.P.C. to abate the nuisance by taking affirmative action on a time bound basis. Otherwise, it will pave the way for a profligate statutory body or pachydermic governmental agency to defy the law by wilful in action. Section 133, Cr.P.C. is categorical although reads discretionary. Judicial discretion when facts for its exercise are present, has a mandatory import. Therefore, when the Magistrate has, before him all the information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The responsibility of the Magistrate under Section 133. Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceedings. Failure to comply with the direction will be visited with a punishment contemplated by Section 188, IPC.”

W. Because the word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence

from conception to death. Life does not merely connote a continued drudgery through life. The expression 'life' has a much wider meaning bringing within its sweep some of the finer graces of human civilisation which makes life worth living. As per the decision in Board of Trustees of the Port of Bombay v. D. R. Nadkarni, AIR 1983 SC 109,

“Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. The amplitude of the word 'life' is so wide that the danger and encroachment complained of would impinge upon the fundamental rights of citizens as in the present case. The apex Court has interpreted Article 21 giving wide meaning to 'life' which includes the quality of life, adequate nutrition, clothing and shelter and cannot be restricted merely to physical existence. The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to the expression 'life' to enable a man not only to sustain life but to enjoy it in a full measure. The sweep of right to life conferred by Article 21 of the Constitution is wide and far-reaching so as to bring within its scope the right to pollution free air and the "right to decent environment.”

X. Because in *Narinder S Chadha and Ors. V. Municipal Corporation of Greater Mumbai*, Civil Appeal 10836/2014, the Supreme Court had looked into the

reason behind enactment of the Cigarettes Act and had remarked:-

“8. The Cigarettes Act was really in implementation of World Health Assembly Resolutions and was enacted to put a total ban on advertising of tobacco products and to prevent the sale of tobacco products to minors. It is also legislation which seeks to implement Article 47 of the Constitution which reads as under:-

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.””

### **PREVIOUS ATTEMPTS AT LEGISLATIONS AND PRACTICES TO BAN SMOKING.**

U. Because Under the Delhi Prohibition of Smoking and Non-smoking Health Protection Act, 1996, a person should not smoke in public places, in public vehicles or public work or use. The offence is punishable with a fine which may extend to one hundred rupees and in the case of the second or subsequent offence shall be punishable with a minimum fine of two hundred rupees which may

also extend to five hundred rupees. No person should advertise in any place and any public service vehicle which may promote smoking or the sale of cigarettes and beedis, etc. Also, no person shall sell cigarettes, beedis or any other tobacco product to any child below the age of eighteen years. Further, no person shall store, sell or distribute cigarettes or beedis or any other such smoking substance within an area of one hundred metres around by college, school or educational institution. All the above offences should be punishable with fine which may extend to five hundred rupees and in the case of a second or subsequent offence shall be punishable with imprisonment which may extend to three months or with a minimum fine of five hundred rupees but may extend to one thousand rupees or both.

V. Because Maharashtra has Maharashtra Opium Smoking Act, whoever smokes opium shall on conviction be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. Similarly,



Maharashtra has banned the sale of loose cigarettes but the implementation of the said ban is abysmal.

W. Because Tamil Nadu passed an Anti-Tobacco legislation, i.e., The Tamil Nadu Prohibition of Smoking and Spitting Act, in February 2003, to provide for the prohibition of smoking and spitting in public places and public vehicles.

X. Because In 2003, India passed the Cigarettes and Other Tobacco Products Act (COTPA), which prohibits tobacco advertisements through most forms of mass media. Smoking is banned in all public places, with the exception of airports and certain capacity hotels and restaurants with designated smoking areas. In 2003, India passed the Cigarettes and Other Tobacco Products Act (COTPA), which prohibits tobacco advertisements through most forms of mass media. Smoking is banned in all public places, with the exception of airports and certain capacity hotels and restaurants with designated smoking areas. In 2003, India passed the Cigarettes and Other Tobacco Products Act (COTPA), which prohibits tobacco advertisements through most forms of mass

media. Smoking is banned in all public places, with the exception of airports and certain capacity hotels and restaurants with designated smoking areas.

Y. Because the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) is the principal comprehensive law governing tobacco control in India. The Act was passed before India became a Party to the WHO Framework Convention on Tobacco Control. In 2004, the Ministry of Health and Family Welfare exercised the powers granted to it in Section 31 of COTPA by promulgating a first set of rules, which, with respect to smoke free and tobacco advertising issues, have been stayed by court order or superseded. With respect to general enforcement of COTPA, G.S.R. 1866(E) lists certain officers who are authorized to carry out the entry, search, and seizure provisions of the Act.

Z. Because following the passage of COTPA in 2003, various rules implementing COTPA address smoke free policies or provide useful definitions. These include

G.S.R. 561(E) (defining the term “educational institutions”); G.S.R. 417(E) (superseding the 2004 Rules and establishing new rules covering designated smoking areas, and enforcement obligations, authorities and penalties, among other items); G.S.R. 680(E) (authorizing certain persons to collect fines for violations of smoke free rules); and G.S.R. 500(E) (amending the 2008 rules established by G.S.R. 417(E)). The Railways Act, 1989 also regulates smoking on trains.

AA. Because with regard to tobacco advertising, promotion and sponsorship, G.S.R. 345(E) amends the 2004 Rules by substituting new provisions on point of sale advertising and adding a definition of indirect advertising. G.S.R. 619(E) provides additional point of sale rules, and G.S.R. 786(E) establishes rules for television and film and print and outdoor media. G.S.R. 708(E) updates the rules for television and film. Additionally, the Cable Television Networks (Regulation) Act, 1995 (CTNA) and its 2009 implementing rules prohibit direct advertising of

tobacco products on Indian cable networks, but permit the indirect advertising of such products under certain circumstances. A subsequent Ministry of Information and Broadcasting Directive, however, appears to prohibit indirect advertising of tobacco products until guidelines called for by the CTNA Rules are issued. Finally, Guidelines issued pursuant to Section 5B(2) of the Cinematograph Act of 1952, require the Central Board of Film Certification to ensure that certain types of smoking scenes do not appear in movies.

BB. Because packaging and labeling provisions are included in several implementing rules enacted following COTPA's passage in 2003. G.S.R. 182(E) (Packaging and Labeling Rules of 2008) contains certain definitions and establishes the components (i.e., content, size, rotation, etc.) of the health warnings, but various provisions in subsequent rules replace certain language in the 2008 regulations. For example, G.S.R. 693(E) requires that health warnings be printed, pasted or affixed on external packaging such as cartons. G.S.R. 305(E) updates the definition of "package" and the

location of the health warnings, deleting the requirement that the warnings be located on both sides of tobacco product packaging. G.S.R. 985(E) changes the rotation period of the health warnings from one year to two years and re-establishes the warnings published in G.S.R. 182(E). (G.S.R. 985(E) caused the diseased lungs and scorpion health warnings to continue in effect instead of new health warnings which were supposed to come into force in December 2010.) The government implemented new rounds of warnings on December 1, 2011 (via G.S.R. 417(E)) and on April 1, 2013 (via G.S.R. 724(E)).

**CC.** Because On October 15, 2014, the government introduced new larger warnings via G.S.R. 727(E) that, among other things, increased the warning size from 40 percent of one side of tobacco product packaging to 85 percent of both sides of tobacco packaging and amended the rotation scheme prescribed in G.S.R. 985(E). Although the rules announced by G.S.R. 727(E) were to have gone into effect on April 1, 2015, G.S.R. 739(E) establishes April 1, 2016 as the implementation date of

the 85-percent health warnings. The government implemented new rounds of warnings on September 1, 2018 (G.S.R. 331(E)) and December 1, 2020 (G.S.R. 458(E)). Provisions prohibiting misleading descriptors and obscuring the health warnings on the package remain in G.S.R. 182(E) unaltered.

**DD.** Because Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 dated 1st August 2011, issued under the Food Safety and Standards Act, 2006 by the Food Safety & Standards Authority of India (FSSAI), lays down that tobacco and nicotine shall not be used as ingredients in any food products and as such Gutkha is banned.

**EE.** Because As per Section-77 of the Juvenile Justice (Care and Protection of Children) Act, 2015, whoever gives, or causes or be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

FF. Because in *Murali S Deora V. Union of India*, the

Hon'ble Apex Court had held that,

“Realising the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, we direct and prohibit smoking in public places and issue directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places, namely:

1. Auditoriums
2. Hospital Buildings
3. Health Institutions
4. Educational Institutions
5. Libraries
6. Court Buildings
7. Public Office
8. Public Conveyances, including Railways.”

### **INFLUENCES LEADING TO SMOKING AMONG GENERAL POPULACE.**

GG. Because most smokers start before adulthood, at a time when the capacity for rationalised, long-term decision-making is not yet fully developed. Many adolescents are lured into cigarette smoking as a rite of passage into adulthood, usually through their peers,

unable to fully conceive of the addictive grip of nicotine, and the health impacts they will later experience.

HH. Because the dedicated smoking zones at Airports, Restaurants, Clubs etc. are usually left with transparent windows/glass walls wherein the people passing through the Airport can watch people inside smoking. Such onlookers include people from various walks of the society and various age groups. Among the young populace such imageries creates a false sense of masculinity or alpha stereotypes leading to imitations from the young and inducement to start smoking from early ages. Such incidents lead to growth issues and health complications amongst the adolescents as the majority of the first-time smokers are between the age of 13 to 15.

II. Because due to non-action of different state actors, there has been rampant mushrooming of small stalls selling cigarettes and other tobacco products around different institutions. Recent years have seen the exponential increase in the number of smokers and in order to facilitate such demands, the stalls have opened up around schools, colleges, institutions, hospitals etc. This creates a situation



of easy supply and thus helps in making people take up smoking en masse.

JJ. Because there is never an identity check when under age citizens buy cigerrates or tobacco products. This makes sure that these intoxicants end up in the hands of kids. It is usually seen that due to lax enforcement, parents usually send their kids to buy cigerrates and this in turn influences the population to take up smoking only in order to imitate their elders.

KK. Because amongst western countries and countries banning smoking in public places, we have seen that the sale of loose cigerrates is banned and generally discouraged. The sale of loose cigerrates in India acts as a catalyst towards fueling the addiction of general populace. It takes away the deterrence as anyone can afford loose ones rather than buying a pack and it becomes affordable rather than being a luxury. Since cigarettes are sold loose, they become economically more accessible to people, especially the students. At the same time, they miss the messaging and warning on packs.

## **WAYS TO MITIGATE**

LL. Because smoking and its harmful effects are a serious nuisance in the society and it needs to be mitigated. A ban on sale of loose cigerrates would make sure that there is a deterrence when it comes to buying cigarettes for pleasure.

MM. Because a ban on sale of cigerrates and tobacco products near schools, colleges, hospitals, institutions etc. would make sure that the target audience of adolescents does not fall prey to such habits.

NN. Because increasing the prices of cigerrates and tobacco products would create an economic deterrence and thus force people to give away smoking.

OO. Because regular checks of places selling cigerrates and tobacco products only to be consumed at their premises like hotels, airports etc. and covering their smoking zones or removing those smoking zones would not only contribute towards the goal of stopping increased smoking amongst general populace but also help in mitigating future pandemics or communicable outbreaks as the sharing of cigerrates or smoking in such closed environment adds to be the perfect host for such contagious transmissions. COVID-19 is most likely to be spread by smokers, as the act of smoking includes the removal of masks and the fingers [and possibly

contaminated cigarettes] in contact with lips, which increases the possibility of transmission of virus from hand to mouth. COVID-19 infected smokers can spread the virus through floating of contaminated aerosol particles in the air, settling of contaminated particles on objects and surfaces, coughing, sneezing, disposal of contaminated cigarette butts, etc.

PP. Because strict enforcement of identity checks when one buys cigerrates and tobacco products would keep the children safe and even pave the way for increasing the age for smoking from present 18 to 21 years. In cases of failure to check ids, we propose hefty penalties upwards of five thousand rupees alongwith imprisonment for proper implementation and compliance.

QQ. Because designated smoking area that are set up are non-compliant to law and seep the cigarette smoke to non-smoking or common area. The COTPA needs to be amended to not permit smoking on any premises, and make it completely smoke-free in the best interest of public health

### **PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to pass the following orders in the interest of justice and in the facts and circumstances of the present case:-

- (I) Issue a writ of Mandamus and/or any other appropriate writ directing Respondents to come up with plans on tackling cigarette/smoking addiction.
- (II) Issue directions for the creation of guidelines to handle filtration of air at places which have smoking zones.
- (III) Issue directions for information sharing and support between different segments of the government agencies and bodies for tackling sale of cigarettes/tobacco products to minors and enforcement of strict identity checks and creation of a penalty regime for its implementation.
- (IV) Issue guidelines and directions for keeping the dedicated smoking zones at Airports, Clubs, Restaurants, Hotels, Public Places and even in Private Properties used for commercial purposes covered so as not to induce smoking among non-smokers.
- (V) Issue guidelines and directions for closing the dedicated smoking zones at Airports, Clubs, Restaurants, Hotels, Public Places and even in Private Properties being used for commercial purposes in a phased manner so as not to induce smoking among non-smokers.
- (VI) Issue directions for removal of shops selling cigarettes near educational institutions, public buildings, places of worship etc.

(VII) Issue directions towards the ban of sale of loose cigerrates.

(VIII) Issue directions towards increasing the age to smoke from 18 to 21 years.

(IX) Issue directions towards the creation of interim guidelines till the time proper guidelines could be formulated by the State.

(X) Pass any other or further orders, as this Hon'ble Court may deem fit and proper.

**AND FOR THIS ACT OF KINDNESS, THE  
HUMBLE PETITIONERS IN DUTY BOUND  
SHALL EVER PRAY**

Drawn by:

Shubham Awasthi Adv.

Sapta Rishi Mishra Adv.

Settled by:

Vivek Narayan Sharma, Adv.

Drawn on: 14.05.2022

Filed on: 17.05.2022

**(DEVENDRA SINGH)**

Counsel for Petitioners

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**WRIT PETITION (CIVIL) No. \_\_\_\_\_ of 2022**  
**IN THE MATTER OF PUBLIC INTEREST LITIGATION**  
**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

**IN THE MATTER OF:**

SHUBHAM AWASTHI & OTHERS                      ...PETITIONERS

VERSUS

UNION OF INDIA & OTHERS                      ...RESPONDENTS

**AFFIDAVIT**

I, Shubham Awasthi, S/o Shri Ramesh Awasthi, aged about 28 years, R/o Flat No. 3033 Tower 3 ACE Golfshire, Sector 150 Noida, Gautam Buddha Nagar-Uttar Pradesh – 201301 on behalf of all the Petitioners do hereby solemnly affirm and declare as under:

1. I am petitioner above named and well acquainted with the facts of the case as such competent to swear this affidavit.
2. I have read and understood the contents of accompanying Writ Petition Paras No. \_\_\_\_ to \_\_\_\_ Pages No. \_\_\_\_ to \_\_\_\_, which are true and correct to my knowledge and belief.
3. Annexure filed with petition is true copy of their originals.
4. I have not filed any other petition either in this Hon'ble Court or any other Court seeking same or similar directions prayed in this petition.
5. I have no personal interests, individual gain, private motive or oblique reasons in filing this Petition. It is not guided for gain

o any other individual person, institution or body. There is no motive other than the larger public interest and interest of justice.

6. There is no civil, criminal or revenue litigation, involving applicant, which has or could have legal nexus, with issue involved in this.
7. There is no requirement to move concerned government authority for relief sought in this petition. There is no other remedy available except approaching this Hon'ble Court by way of instant petition.
8. I have gone through the Article 32 and Supreme Court Rules and do hereby affirm that present application is in conformity thereof.
9. I have done whatsoever enquiry/investigation, which was available; and which was relevant for this Hon'ble Court to entertain this application.
10. I haven't concealed any data/material/information in this petition; which may have enabled this Hon'ble Court to form an opinion, whether to entertain this or not and/or whether to grant any relief or not.
11. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this affidavit is false or fabricated, nor has anything material been concealed there from.

**DEPONENT**

**VERIFICATION**

I, Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of

this affidavit is false nor has anything material been concealed there from.

Verified at New Delhi on this 17<sup>th</sup> May 2022.

**DEPONENT**