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Case Comment: Murli S. Deora v Union of India - Navigating the Legal and Public Health Landscape of Smoking

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An illustration of the intricate equilibrium between constitutional rights and public health considerations is the legal discourse pertaining to smoking in public spaces, as demonstrated by the Murli S. Deora v Union of India case.¹ This particular case emphasised the critical nature of safeguarding the right to life of passive smokers, who are exposed to the detrimental consequences of second-hand smoke. The Supreme Court of India deliberated on the potential consequences for the health of individuals who do not smoke, in accordance with the protections promised by Article 21 of the Indian Constitution, which safeguards the rights to life and personal freedom.² The court's ruling to prohibit smoking in public spaces and implement rigorous regulations demonstrated its recognition of the grave health hazards linked to smoking and its dedication to protecting the well-being of the public. However, it underscored the persistent imperative to enhance tobacco control legislation, rectify deficiencies, and guarantee

¹ *Murli S. Deora v Union of India* AIR 2002 SC 40

² Constitution of India 1950, art 21

efficient enforcement in order to alleviate the detrimental impacts of smoking on the general populace's health.

In addition to regulatory aspects, the legal discussion surrounding smoking in public spaces encompasses wider societal conventions, economic factors, and ethical responsibilities. The pervasiveness of smoking, despite widespread knowledge of the hazards associated with it, continues to present a formidable obstacle to public health initiatives. The preservation of public welfare and the protection of constitutional rights are both significantly influenced by judicial interventions. In order to reconcile the mutual obligation to safeguard public health with the intricate legal terrain, the judiciary is confronted with the task of navigating this maze.

The result of this legal discourse will possess extensive ramifications for constitutional law in India and public health endeavours; it will also represent a momentous achievement in the ongoing struggle against health concerns associated with tobacco use.

FACTS OF THE CASE

In nations with predominantly agricultural economies like India, tobacco usage is widespread in both smoking and non-smoking forms, leading to a range of health issues. It is estimated that tobacco consumption causes nearly 800,000 deaths annually in India, with the treatment of related diseases costing the country around Rs. 13,500 crore each year. Globally, over the past fifty years, approximately seventy million deaths have been attributed to tobacco use, with around sixty million of those deaths occurring in non-industrialised countries.

The use of tobacco products in public spaces is perilous because it adversely harms non-smoker's health, damages lung cells, and contributes to a significant number of fatalities. This practice violates Article 21³, which explicitly prohibits depriving any person of their life or personal property, except in accordance with the methods prescribed by law.

³ Constitution of India 1950, art 21

Given the importance of the right to life and liberty guaranteed by Article 21,⁴ Murli S. Deora viewed this case as being in the public interest. The relevant legislations during the consideration of the case were the Cigarettes (Regulation of Production, Supply, and Distribution) Act 1975⁵, and the COTPB 2001⁶. Although these measures may not be comprehensive or entirely real, they address the root causes of tobacco use, smoking, and overall public health.

ISSUES INVOLVED

1. Does smoking in public spaces violate the right to life of non-smokers as guaranteed by Article 21 of the Indian Constitution?
2. Should smoking be prohibited in public areas?

ANALYSIS OF ARGUMENTS

The petitioner expressed worries over the potentially dangerous substances included in tobacco, including tar, nicotine, carbon monoxide, irritants, asphyxiates, and possible carcinogens. These drugs have been connected to several diseases, including cancer. Three million people are estimated to die each year from diseases associated with tobacco use; one million of those people are believed to be from emerging nations like India. The WHO predicts that smoking-related deaths can result in up to seven million deaths annually. According to this group, smoking-related deaths in developing countries alone throughout the second half of the 20th century have killed about 60 million people.⁷ Air pollution rises with increased tobacco usage. It is the cause of several other fatal disorders that harm humans, in addition to cancer. The petitioner said that, in accordance with Article 21⁸, no one may be deprived of their life without first completing the

⁴ *Ibid*

⁵ The Cigarettes (Regulations of Production, Supply and Distribution) Act 1975

⁶ Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Bill 2001

⁷ Kavita Thakur, 'THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2013' (*Scribd*, 24 November 2017) <<https://www.scribd.com/document/389312895/DOC-20171124-WA0009-1-pdf>> accessed 06 February 2024

⁸ Constitution of India 1950, art 21

necessary legal procedures. On the other hand, non-smokers with lung or heart cancer suffer negative consequences from smoking in public places.

Moreover, it was contended that the Cigarettes (Regulation of Production, Supply, and Distribution) Act, 1975⁹, among other things, declared that smoking cigarettes is a harmful habit that may become dangerous in the long run. Similar to this, the COTPB, 2001¹⁰, lists certain health hazards associated with cigarette smoking. Both of them do not forbid smoking in public places. Given the detrimental impacts of smoking in public places, the petitioner argued that the court should, in the public interest, prohibit smoking in these locations until appropriate legislative remedies are developed and implemented.

Both the Attorney General and the respondents' attorneys argued that smoking should be outlawed in public places due to the negative consequences of smoking. A knowledgeable Attorney General also advocated the issuance of an appropriate order prohibiting smoking in public areas. Counsel for further respondents concurred with the perspective. Additionally, it was said that legislation prohibiting smoking in public areas is being developed and that a bill filed in Parliament is awaiting discussion by a select committee. Act No. 14 of 2000¹¹, according to the State of Rajasthan, forbids smoking in public areas and in state-owned automobiles used for public transportation. Additionally, it was stated that smoking is not allowed in any public areas in Delhi.

JUDGEMENT

According to the Supreme Court, passive smokers lose their right to life when they smoke in public areas. The Supreme Court ordered and outlawed smoking in public areas after understanding the seriousness of the problem and the harmful effects smoking has on both smokers and passive smokers. Additionally, it gave the Union of India, Union Territories, and

⁹ The Cigarettes (Regulations of Production, Supply and Distribution) Act 1975

¹⁰ Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Bill 2001

¹¹ The Rajasthan Prohibition of Smoking And Non-Smokers Health Protection Act 1999

State Governments instructions on how to effectively enforce the ban on smoking in public areas. These instructions included the following:

1. Educational Institutions
2. Libraries
3. Public conveyances, including railways.
4. Auditoriums
5. Court Buildings
6. Health Institutions
7. Public office
8. Hospital Buildings

The Learned Attorney General for India gave the court the assurance that the UOI will take the appropriate, practical measures to widely publicise this ruling through print and electronic media, thereby increasing public awareness of the smoking ban.

Furthermore, as stated in our orders dated August 31 and September 28, 2001, of this Court, we direct the Registrar General to notify the State Governments, the Commissioners of Police, and Union Territories, and to give them instructions to submit their compliance reports to this Court within five weeks of today. The earliest possible answer from the Union of India is also required. The list follows a six-week period.¹²

RATIO DECIDENDI

The bench in this instance defended its ruling by stating that smoking in public areas violates the right to life¹³ of non-smokers. The Supreme Court ruled that smokers' actions in public put the lives of passive smokers at risk by exposing them to smoke in public areas, more so than any statutory restriction. The Court mandated that major efforts be made to enforce the smoking

¹² *Murli S. Deora v Union of India* AIR 2002 SC 40

¹³ Constitution of India 1950, art 21

prohibition in public locations by the Union of India, the Union Territories, and the State Governments.

OBITER DICTA

In this case, the main question is whether or not smokers' presence in public places lowers the quality of life for non-smokers. The court ruled that it is obvious that people who choose not to smoke in public spaces have shorter lives than those who do. A non-smoker's life is not taken for legal reasons, the court said, despite Article 21¹⁴ guaranteeing that no one may be robbed of their life without first completing the required legal procedures. However, the major reason for this is that he must go to public areas.

ANALYSIS

Previously, the Cigarettes (Regulation of Production, Supply, and Distribution) Act 1975¹⁵, was the only law in India covering tobacco products. This Act required the display of health warnings on cigarette cartons, packaging, and advertisements. It gave law enforcement organisations the authority to control the manufacturing and sale of tobacco products.

Nonetheless, there were primarily two criticisms of this legislation: First off, the manufacturing and consumption of non-cigarette tobacco products, including gutka, beedis, cheroots, and cigarettes, were unrestricted. Second, the law was based on the tobacco industry's substantial financial contribution to the government. Only in dire circumstances should law enforcement become involved in the sector's operations.

The central government issued an executive order prohibiting smoking in 1990 in areas where a sizable gathering of people may occur. A modification to the 1940 Drugs and Cosmetics Act¹⁶ forbade the production and use of tobacco products in dental pastes and powders in 1992.

¹⁴ *Ibid*

¹⁵ The Cigarettes (Regulations of Production, Supply and Distribution) Act 1975

¹⁶ The Drugs and Cosmetics Act 1940

The COTPA¹⁷ was passed into law in 2003. It incorporates provisions from the 1975 Act as well as additional regulations about the advertising of tobacco products, public smoking bans, usage of non-cigarette tobacco products, and the sale of tobacco goods under certain circumstances.

Section 4¹⁸ of the 2003 COTPA aims to limit the hazards caused by public smoking. This objective is expressed by the Prohibition of Smoking in Public Places Rules, 2008¹⁹, which went into force on 02 October 2008. The new policy prohibits smoking in auditoriums, health facilities, educational institutions, movie theatres, amusement parks, railway stations, pubs, bars, coffee shops, post offices, airports, courts, bus stops/stations, hotels and restaurants, discotheques, as well as all types of offices, libraries, shopping malls, and canteens/refreshment rooms. In 1989, the Railway Act prohibited smoking on trains as well²⁰.

Despite the adoption of legislation such as the COTPA in 2003, there are still significant gaps that need to be fixed. There are arguments for doing away with designated smoking zones, as they effectively undermine the law against smoking in public locations. In addition, it is crucial to forbid tobacco product displays and point-of-sale advertisements in order to stop tobacco items from unintentionally being promoted. The proposed restriction on advertising through new online channels is a positive move, but it doesn't specifically address social media sites. The plan, which is praiseworthy, to increase the selling age from 18 to 21 should be supported by explicit guidelines and procedures for enforcement, particularly with regard to the ban on single sticks, loose tobacco, and smaller packs. For the sake of public health, content and emission regulations—which should forbid the use of flavoured tobacco—are essential. The effective implementation of these reforms, however, will depend on close attention to detail and ongoing monitoring, especially with regard to the fines, which should be raised to provide strong deterrents against regulatory infractions²¹. Refining these aspects is key to the success of the

¹⁷ The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003

¹⁸ The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003, s 4

¹⁹ Prohibition of Smoking in Public Places Rules 2008

²⁰ The Railways Act 1989, s 167

²¹ Prof. (Dr.) Ashok R. Patil, 'Report On Tobacco Control Laws In India: Origins And Proposed Reforms' Ministry of Health and Family Welfare, Government of India

proposed reforms, which, in essence, constitute important steps towards a more complete and effective regulatory system.

CONCLUSION

Consequently, the case analysis makes it clear that the Supreme Court employed 'JUDICIAL ACTIVISM' to impose smoking bans in public areas. As a result, the law created the framework for the prohibition of smoking in public places. In this instance, the court was instrumental in enacting a public smoking ban, which has decreased the number of fatalities that occur annually. It went so far as to declare that smoking is forbidden in public areas and that the Indian Constitution's Article 21²² guarantees the basic right to a healthy environment. It was not until the judiciary rendered rulings that the legislature moved forward with outlawing smoking in public areas. Even if there has been a noticeable influence from the Indian government's initiatives, much more work has to be done to fan the flames of progress that they have ignited.

²² Constitution of India 1950, art 21