



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

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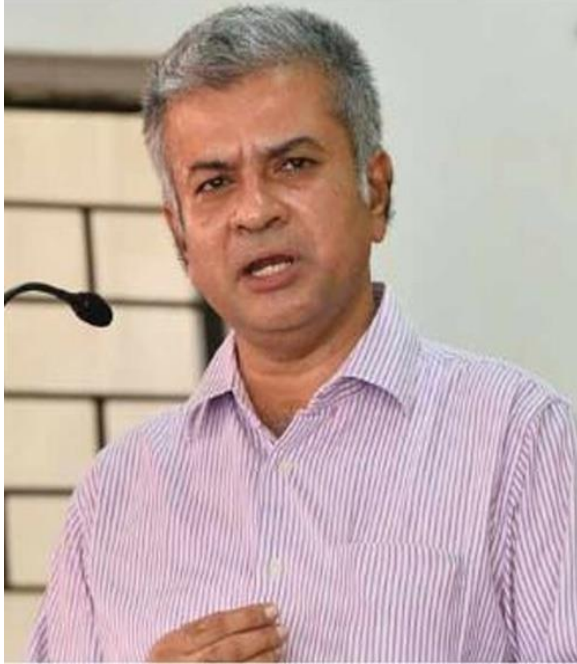
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Case commentary on Murli S. Deora v. Union of India

By- Satya Vrat Pandey & Avantika Srivastava

Case commentary on

Case Name: Murli S. Deora v. Union of India

Citation: AIR 2002 SC 40

Court: Supreme Court of India

Hon'ble Judge/ Coram: M.B.shah and R.P.Sethi

Decided on: 02.11.2001

(i) Introduction of the case

Smoking is the process of breathing in and breathing out the smoke created by burning tobacco. Active smoking is contributing to an increasing rate of death and illness. However, aside from this, non-smokers are also indirectly impacted by the adverse consequences of smoking in public places done by another person. A significant influence on the non-smokers who were affected by the people who smoke in a public place which deprives the life of non-smokers in public places made the case of *Murli S. Deora v. Union of India*¹. The risk of getting heart disease is higher for those who do not smoke but are subjected to indirect smoke, which is made up of both the smoke exhaled by smokers and the smoke from the burning portion of cigarettes. We also know that no individual should be deprived of his life without due process of law, as stated in Article 21², which protects people's fundamental rights. But in this case, the non-smoker is deprived of his life because of a person who smokes in public places not because of law so acknowledging the seriousness of the problem, taking into account the harmful effects of smoking, and defending the general public's health and the life of a non-smoker who is negatively impacted by someone smoking in public places was examined by the Hon'ble Supreme Court.

(ii) Background of the case

Tobacco-related illnesses kill approximately 800,000 people in India yearly, costing Rs. 13,500 crores in treatment. Tobacco-related illnesses are responsible for up to 7 million fatalities globally each year, with 60 million deaths in underdeveloped nations during the last 50 years, according to the World Health

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

² INDIA CONST. art. 21.

Organization³. Law enforcement authorities control tobacco product manufacture and marketing, as well as impose penalties for breaking the law, including the confiscation of tobacco goods. However, health experts slammed the measure for two reasons. First, it lacked laws governing the manufacture and use of no-cigarette tobacco items for example beedis, gutka and cigars. Second, and more significantly, the rule was based on the assumption that, because the tobacco business provided for a significant portion of public money, law enforcement authorities should only intervene in its operations when required. Act of 1975⁴, as well as the Bill of 2001⁵. Tobacco usage in public areas is similarly harmful since it hurts the health of nonsmokers, promoting lung cancer, another illness that has claimed the lives of many human beings. This is a clear picture of the infringement of Article 21, which states that no one shall be deprived of his life and liberty except by law.

(iii) Relevant fact of the case

In front of non-smokers, smoking in public areas can inflict internal injuries and increase the risk of lung disease, breathing problems such as asthma, and other illnesses. Therefore, smoking is considered illegal in public places because it violates people's freedom to exercise their right to live a healthy life and endangers the health of many smokers who are uninformed. It also hurts the environment in light of health concerns. Both the natural world as well as the ecological system were becoming more polluted as a result of it. At that time Act of 1975⁶ was enforced which dealt with tobacco smoking on public health but did not ban public smoking. Considering the health issues caused due to public smoking and also hurting the environment. Based on the rights to life and liberty guaranteed by Article 21 of the Constitution of India, Petitioner Murli S. Deora has filed a Public Interest Litigation in the Supreme Court of India under Article 32⁷ of the Constitution of India. Murli S. Deora, the Petitioner, has brought this problem to the public's attention based on the right to life and liberty guaranteed by Article 21⁸ of the Indian Constitution.

(iv) Matter in issue

1. Does smoking in public places deprive a non-smoker of his right to life under Article 21 of the Constitution of India?
2. Whether public places be prohibited from smoking?

(v) Arguments presented by the parties

³ MANUPATRA, <https://www.manupatrafast.com/> (last visited Jan. 16, 2024).

⁴ *Id.*

⁵ The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill of 2001, Bill No. 28, Bill of Parliament, 2001 (India).

⁶ The Cigarette (Regulation of Production, Supply and Distribution) Act, 1975, No. 49, Acts of Parliament, 1975 (India).

⁷ INDIA CONST. art. 32.

⁸ INDIA CONST. art. 21.

The petitioner said in the petition that nicotine, tar, carbon monoxide, potentially carcinogenic substances, irritants, asphyxiates, and smoke fragments are among the hazardous substances found in cigarettes that can lead to a variety of illnesses, including cancer. An astounding seven million tobacco-related fatalities are reported to occur annually, according to estimates from the World Health Organization. Smoking caused the deaths of almost sixty million people in developing nations alone during the second half of the 20th century, according to this group. It was claimed that smoking tobacco contributes to air pollution as well. In addition to cancer, tobacco use is the cause of many other deadly illnesses that affect people. It was further argued that among other things, the Act of 1975⁹ states that cigarette smoking is a bad addiction that over time might pose a serious risk. Similarly, smoking cigarettes poses several health risks according to the Bill of 2001¹⁰. Neither of them is outlawing smoking in public areas. Thus, the petitioner requested that the court, in the public interest, forbid smoking in public areas until the legislative measures are created and put into effect, given the negative effects of smoking in public areas. The learned attorney general of India submits, and every counsel representing the other parties concurs, stating that it would be in the best interests of the people to forbid smoking in public areas until a lawful provision is created and put into effect by legislative enactment. They argued that the actions of those who do not smoke could not force others who do not smoke to smoke or expose them to passive smoking. It was argued that certain states have outlawed smoking by their legislative authority.

(vi) Legal aspects

This Case¹¹ revolves around Article 21. Article 21¹² of the Constitution states that no person shall be deprived of his life and personal liberty except according to the procedure established by Law. Each individual has the right to choose whether or not to smoke, and such actions need to be kept to private environments. Nobody ought to be made to suffer because of the personal choices or lifestyle of some other person. Therefore, any behaviour that infringes against another person's rights ought to be prohibited in public spaces. The right to a healthy and secure environment is a basic right guaranteed by the Constitution's Article 21¹³. This right, together with nonsmokers' right to be free of the detrimental consequences of a person who smokes makes it the obligation of the judicial and the government to protect people who do not smoke from damage. They have an inherent right to breathe in fresh and clean air, which no one can take away from them, hence an outright prohibition on cigarette smoking in public spaces is an essential must.

(vii) Judgement of the Apex Court

⁹ The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, No. 49, Acts of Parliament, 1975 (India).

¹⁰ The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill of 2001, Bill No. 28, Bill of Parliament, 2001 (India).

¹¹ *Murli S. Deora v. Union of India*, AIR 2002 SC 40.

¹² INDIA CONST. art. 21.

¹³ *Id.*

The Supreme Court ruled that smoking in public places deprives the right to life of passive smokers. The Supreme Court ordered and outlawed smoking in public areas after envisaging the seriousness of the problem and considering into account the harmful effects on smokers and passive smokers because of smoking. Additionally, it gave instructions to the State Governments, the Union of India and the Union Territories on how to effectively enforce the ban on smoking in public areas¹⁴. These instructions included:

- A. Hospital Buildings
- B. Auditoriums
- C. Public Conveyances, including Railways.
- D. Public office
- E. Libraries
- F. Educational Institutions
- G. Health Institutions
- H. Court Buildings

(viii) Reasoning of the Court Decision

(Ratio decidendi)

To safeguard non-smokers' health, the Court ruled that smoking in public areas violates the non-smokers' right to life indirectly. It was concluded that smoking in public was harmful to the health of people who did not smoke, who were vulnerable to the air pollution induced by smoking.

(ix) Concurring and dissent opinion

(Obiter dicta)

The main concern in this case was does smoking in public spaces endangers the lives of non-smokers. The central question, in this case, was whether smoking in public spaces endangers the lives of non-smokers. The court stated that smoking in public spaces unquestionably takes the life of a non-smoker. The court highlighted that no one should be deprived of their life without due process of law, according to provisions of Article 21¹⁵ of the Constitution of India but a non-smoker is deprived of his life for no legal reason. But merely because he enters the public places.¹⁶

(x) Comment

The origins of smoking as an addiction date back literally thousands of years. "The single most important

¹⁴ MANUPATRA, <https://www.manupatrafast.com/> (last visited Jan. 16, 2024).

¹⁵ INDIA CONST. art. 21.

¹⁶ MANUPATRA, <https://www.manupatrafast.com/> (last visited Jan. 16, 2024).

preventable risk to human health and an important cause of premature death worldwide¹⁷ is smoking cigarettes, per the analysis. The thought of a smoking ban or moratorium is not unique. There have always been certain occasions, spots, and individuals who have made an effort to cease smoking, which in their opinion is a very disagreeable habit. The first known public smoking ban was put in place by Pope Urban VII in 1590¹⁸. Smoking is therefore impossible to hold smokers who smoke voluntarily responsible for the risks associated with smoking. But what these advocates very skilfully avoid pointing out is that, since passive smokers are put in danger for which they never gave their consent in the first place, they have every right to push for a smoking ban in public places¹⁹.

The case of *K. Ramakrishnan v. State of Kerala*²⁰ addressed the topic of whether a judge can direct a legislature to pass a law prohibiting tobacco smoking. Additionally, it came to light that smoking violates Sections 268²¹ and 278²² of the Penal Code of 1860, as well as Article 21 of the Indian Constitution.²³ Moreover, under common law, a person whose property, easement, or health has been damaged by another person's act or omission has the right to seek an injunction as well as damages. In addition, smoking might be seen as lying under the definition of air pollution outlined in the Air Act.²⁴ The central government issued an executive order prohibiting smoking in certain public areas where a high number of people could be present.²⁵ In the case of *Murli s. Deora v. Union of India*, the Supreme Court forbade smoking in public locations that included auditoriums, hospital buildings, health facilities, educational institutions, libraries, court buildings, public offices, and public means of transportation, including trains. In 2003, the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003 was passed, which included provisions governing the use of non-cigarette tobacco products, a ban on public smoking, tobacco product advertisement, the sale of tobacco products in certain contexts, and so on. Section 4 of COTPA²⁶ strives to reduce the prevalence of smoking in public areas. This aim is expressed in the Prohibition of Smoking in Public Places Rules, 2008, which went into effect on October 2nd, 2008. According to the new regulations, smoking is prohibited in auditoriums, health institutes, educational institutes, cinemas, modes of public transportation (planes, buses, taxis, train

¹⁷ Christina F. Pinto, *Measures to Control Tobacco Use*, 15 J. CONTEMP. HEALTH L. & POL'Y 307 (1998).

¹⁸ NATIONAL LIBRARY OF MEDICINE, <https://www.ncbi.nlm.nih.gov/books/NBK53018/> (last visited Jan. 17, 2024, 5:08 PM).

¹⁹ Howard G., *Some legal issues relating to passive smoking at the workplace*. 85(7) British journal of addiction, 873–882 1990., <https://doi.org/10.1111/j.1360-0443.1990.tb03717.x>

²⁰ *K. Ramakrishnan v. State of Kerala*, AIR 1999 Ker 385.

²¹ The Indian Penal Code, 1860, § 268, No.45, Act of Parliament, 1860 (India).

²² The Indian Penal Code, 1860, § 278, No.45, Act of Parliament, 1860 (India).

²³ INDIA CONST. art. 21.

²⁴ Air (Prevention and Control of Pollution) Act, 1981, § 2 (b) , No. 14, Act of Parliament, 1981 (India).

²⁵ Mehrotra, R; Mehrotra, V2; Jandoo, *Tobacco control legislation in India Past and present*, INDIAN JOURNAL OF CANCER, (Jan 19, 2024, 7:45),

https://journals.lww.com/indiancancer/fulltext/2010/47001/tobacco_control_legislation_in_india_past_and.16.aspx

²⁶ The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, § 4, No. 32, Act of Parliament, 2003 (India).

airports, bus stops/stations, railway stations, hotels and restaurants, all types of offices, malls, libraries, shopping canteens/refreshment rooms and post offices. Amusement parks, courts, discos, tavern bars, and coffee shops. The Railway Act of 1989 also outlaws smoking on trains.²⁷

Citation synopsis of the *Murli s. Deora v. Union of India* discussed below:

Total no. of times this case has been cited :	18
Cited by Supreme Court cases :	01
Cited by High Court cases :	17
Decision date of most recent cite :	Jan 28, 2022 (Andhra Pradesh)

Pertinent related to *Deora v.*

Cases *Murli s. Union of*

India, where there is a matter of Article 21, right to clean air, harmful effects of smoking in public places, rights of non-smokers, and public health involved:

S. No.	Name of the case	Decided on	Court
1	<i>Purushaindra Kumar Kaurav vs. Union of India (UOI) and Ors.</i> ²⁸	16.09.2002	Madhya Pradesh High Court
2	<i>Suresh Pandey vs. State of U.P. and Ors.</i> ²⁹	10.11.2004	Allahabad High Court
3	<i>Rajesh Kumar Srivastava vs. A.P. Verma and Ors.</i> ³⁰	01.02.2005	Allahabad High Court
4	<i>Mahesh Bhatt and Ors. vs. Union of India (UOI) and Ors.</i> ³¹	07.02.2008	Delhi High Court
5	<i>Avinash Vs. The Union of India (UOI) and Ors.</i> ³²	22.07.2008	Madhya Pradesh High Court

²⁷ Railways Act, 1989, No. 24, Act of Parliament, 1989 (India).

²⁸ *Purushaindra Kumar Kaurav vs. Union of India (UOI) and Ors*, 2004(2) MPHT416.

²⁹ *Suresh Pandey vs. State of U.P. and Ors.*, MANU/UP/0893/2004.

³⁰ *Rajesh Kumar Srivastava vs. A.P. Verma and Ors.*, 2004(2) AWC967.

³¹ *Mahesh Bhatt and Ors. Vs. Union of India (UOI) and Ors.*, 2008BUSLR366(DEL).

³² *Avinash Vs. The Union of India (UOI) and Ors.*, (2008) 4 MPLJ 49.

6	<i>Jagadish Narayan Singh vs. State of Orissa and Ors.</i> ³³	30.09.2008	High Court of Orissa
7	<i>Health for Millions vs. Union of India (UOI) and Ors.</i> ³⁴	22.07.2013	Supreme Court
8	<i>Vinkem Labs Ltd. and Ors. vs. Union of India and Ors.</i> ³⁵	30.09.2020	High Court of Madras
9	A.S. Vishnu Bharath and Ors. Vs. State of Karnataka and Ors. ³⁶	22.01.2021	High Court of Karnataka at Bengaluru
10	<i>Karukola Simhachalam Vs. Union of India and Ors.</i> ³⁷ & <i>Annepu Mahandhata Vs. Union of India and Ors.</i> ³⁸	28.01.2022	High Court of Andhra Pradesh at Amravati

Thus, based on the analysis of this case³⁹, it is apparent that the Supreme Court has prohibited smoking in public places through the "JUDICIAL ACTIVISM" procedure. The Judiciary sowed the seeds for the restriction of smoking in public places. In this scenario, the judiciary plays a significant role in prohibiting smoking in public areas, which has resulted in a drop in deaths each year. It not only banned smoking in public places, but it also stated that the right to a healthy environment is a basic right guaranteed by Article 21 of the Indian Constitution.

(xi) Conclusion

A comprehensive moratorium on the behaviour of smoking in public may be the only foolproof consider to ensure that smoking's harms cease to exist at least in the public arena. Despite the fact that such a restriction may infringe³⁹ on any individual's rights, it is certainly rational in terms of public interest and societal benefit. Even after landmark verdicts for public welfare and legislation adopted to outlaw smoking in public places, the situation remains somewhat unchanged. It is not related to the fact that the law stated or legislated by legislation is not strict, but rather to its

³³ Jagadish Narayan Singh vs. State of Orissa and Ors, MANU/OR/0786/2008.

³⁴ Health for Millions vs. Union of India (UOI) and Ors. 2014 (14) SCC 496.

³⁵ Vinkem Labs Ltd. And Ors. Vs. Union of India and Ors., MANU/TN/5571/2020.

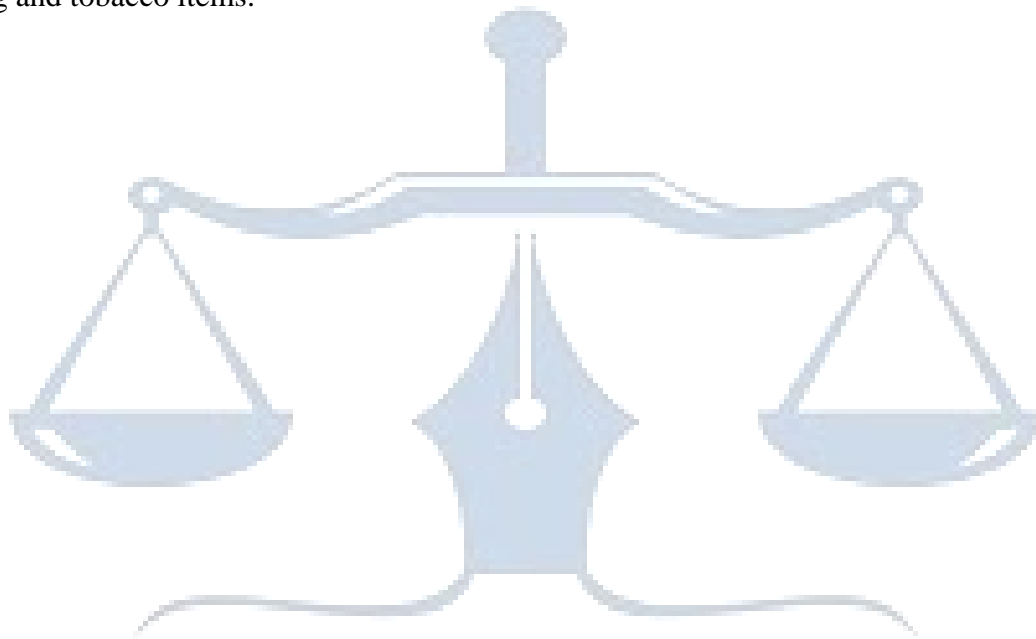
³⁶ A.S. Vishnu Bharath and Ors. Vs. State of Karnataka and Ors., Writ Petition 12629 of 2020.

³⁷ Karukola Simhachalam Vs. Union of India and Ors., Writ Petition (PIL) Nos. 164 of 2019.

³⁸ Annepu Mahandhata Vs. Union of India and Ors. WRIT PETITION (PIL) NO.236 of 2021.

³⁹ Murli S. Deora v. Union of India, AIR 2002 SC 40.

application. The issue of enforcing laws in such a way that the public follows them rather than seeing them as an imposition but rather as a civic duty continues an obstacle. In the foreseeable future of social media and news outlets should be encouraged to raise their awareness of the laws and the advantages they provide. Some important endeavours should be conducted on a regular basis to raise people's consciousness about health and pollution, all public places should have lots of pamphlets of smoking injurious to health, , enforce a fine or punishment or both on smokers caught smoking in public locations, which can be raise consciousness of the pollution affecting this environment and forbid the commerce of any kind of tobacco in the country so that people say no to smoking and tobacco items.



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