



2ND NLUO-PHFI PUBLIC HEALTH LAW NATIONAL MOOT COURT COMPETITION, 2022

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ORGANISED BY

**CENTRE FOR PUBLIC HEALTH LAW
(NATIONAL LAW UNIVERSITY ODISHA)**

IN ASSOCIATION WITH



MOOT PROPOSITION

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1. “Union of Diana” (Diana), a democratic republic country in South Asia, with 130 crore people, is the world’s second-most populous country. It is a religiously and ethnically diverse nation. The Constitution of Diana safeguards the interest of each community as it aims to treat everyone at parity and promote fraternity among all. It has adopted a quasi-federal structure and has 15 states and 5 union territories.
2. Diana is the second-largest producer and third largest exporter of tobacco in the world. In the global scenario, Diana’s tobacco accounts for 10% of the area and 9% of the total production.
3. According to Diana Tobacco Research University Report, 2021, tobacco contributes Rs. 4,400/- crores towards foreign exchange earnings accounting for 4% of the country’s total agri-exports and Rs. 14,000 crores to excise revenue which is more than 10% of the total excise revenue collection from all sources.
4. According to another research by Diana National Medical Institute, 28% of Diana’s population use tobacco in some form. It is estimated that 99.5 million adults currently smoke tobacco, and 199.4 million adults use smokeless tobacco. Tobacco consumption is responsible for more than 13.5 lakhs death every year. It causes cancer, particularly oral and lung cancer, respiratory disorders, stroke, and cardiovascular diseases, and is the risk factor for many other fatal diseases. The Union and the State exchequers collectively incur an annual medical expense

of 1.8 lakh crores in the treatment of patients affected by tobacco use in India.

5. Union of Diana has ratified WHO's Framework Convention on Tobacco Control in May, 2003 and in furtherance of the Convention has enacted the Cigarettes and other Tobacco Products (Control and Regulation) Act, 2003. In 2019, it enacted another law called E-Cigarettes Prohibition Act, 2019.
6. One Mr. Prominent is a citizen of Diana born on 11th November, 1971. He studied at Diana Management College and has been working in a private company as a Customer Relations Officer. He is currently drawing a salary of Rs. 20,000 per month.
7. Mr. Prominent has been smoking cigarettes and consuming pan-masala that contains tobacco, since 1991. He has been experiencing shortness of breath and pain in the chest since the beginning of 2021. On 05th June, 2021 he was diagnosed with lung cancer by a team of doctors at Diana National Medical Institute. The doctors are of the opinion that the cancer has been caused due to cigarette smoking. They have advised him to undergo chemotherapy and asked him to deposit Rs. 5 lakh as advance for the treatment. The total cost of the treatment is estimated to be Rs 15 lakh.
8. In regard to the funding of his treatment, he contacted the insurance company. He has an annual health insurance cover of up to 10 lakh rupees from Lord's Insurance Company (a government limited

company incorporated in Diana) valid up to 31st March, 2022. However, the insurance contract has a special exclusion clause as follows:

“Tobacco Exclusion: This insurance does not apply to:

Any damages, loss, cost, or expense arising out of the actual or alleged emergence, contraction, aggravation, or exacerbation of any form of cancer, carcinoma, cancerous or precancerous condition, arteriosclerosis, heart disease or any other injury, sickness, disease or conditions of the human body as a result of the consumption or use of or exposure to the consumption or use of any “tobacco product”.

The investigation or defence of any claim made, suit brought or proceeding instituted against any insured; any cost, fine or penalty; or any other expenses for loss related to any of the above.”

9. Lord’s Insurance Company has, vide letter dated 10th July, 2021, written to Mr. Prominent and refused to provide any cover for the cancer treatment.

10. Mr. Prominent has given a representation to Ministry of Health and Family Welfare vide letter dated 21st July, 2021 and requested them to declare that exclusions based on tobacco use are irrational. He has also claimed compensation from the State for his treatment. He has also urged the government to ban all cigarette and tobacco products as they are carcinogenic in nature.

11. Mr. Prominent has filed a writ of mandamus before the Hon'ble Supreme Court of Diana against Union of Diana and impleaded Federation of Tobacco companies, insurance regulatory development authority of Diana, Lord's Insurance Company as respondents claiming that by permitting sale of tobacco products, the State has violated his right to health. He claims that the classification between cigarettes and e-cigarettes is irrational and arbitrary and the import, sale, distribution, storage and circulation of all forms of tobacco must be prohibited within the country. He has also claimed that the tobacco companies are liable to pay compensation for causing cancer to him. He has also claimed compensation from the State as the State permitted sale of harmful products.

12. An NGO, Jan Swaasth Seva, registered in a State in Diana, has separately filed a PIL under Article 32 of the Constitution seeking fast-track implementation of the ban and extending the ban to all forms of tobacco available for consumption in India, on the grounds of public health, increasing youth mortality rate, etc.

13. Federation of Tobacco Companies has challenged the validity of tobacco regulation, ban, and prohibition of public smoking as enabled by abovementioned two legislations. The federation is claiming their fundamental right to trade and commerce.

14. The Supreme Court has clubbed the three petitions and decided to hear the matters together.

15. The Court has framed following issues:

- i.* Whether the regulation of cigarettes and ban on e-cigarettes, to protect the right to public health can override the right to trade and commerce of the federation companies?
- ii.* Whether the classification between cigarettes and e-cigarettes, for the purpose of the ban, is arbitrary and irrational?
- iii.* Whether Mr. Prominent is entitled to compensation by State for permitting the sale of cigarettes and other tobacco products; and by tobacco companies on account of harm caused due to the use of their products?
- iv.* Whether the special exclusion in the insurance contract relating to tobacco use is constitutional?

For queries, contact [Centre for Public Health Law](#) at:

cphl@nluo.ac.in

[LinkedIn](#) & [Instagram](#)