

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH

C.W.P. (PIL) No 14597 of 2007

Burning Brain Society

...Petitioner

Versus

Union of India and others

...Respondent

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Note: - No notice of caveat petition has been received by the petitioner.

Note:-1. The main law points involved in the writ petition are in para no. 35 at page nos. 17 and 18 of the writ petition.

2. Relevant Rules and Statues:-

- i. Constitution of India
- ii. Drugs and Cosmetic Act 1940 and Rules
- iii. Prevention of Food Adulteration Act and Rules
- iv. Indian Penal Code
- v. Cigarette and other Tobacco Products Act 2003 and Rules
- vi. Poisons Act, 1919.

3. Any Other Case:- Nil

Chandigarh (A.P.S Shergill) (Kavita Mahajan) (P. C. Rana)

Dated:-15.09.2007 Advocates for the Petitioner

Enrolment No. P-810/1993

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH.

Civil Misc. No. _____ of 2007

IN

C.W.P. (PIL) No 14597 of 2007

Burning Brain Society

....Petitioner

Versus

Union of India and others

....Respondent

Application under Section 151 C. P. C. for granting exemption from filing
the translated, certified & fair typed copies of the Annexures P-1 to P-14
and permission to file the Photostat copy of Annexure P-14.

RESPECTFULLY SHOWETH:-

1. That this application is being filed with the accompanying civil writ petition before this Hon'ble Court and this application may be read as a part of grounds of writ petition.
2. That filing of the Annexures P-1 to P-14 are necessary for the kind perusal of this Hon'ble Court. Due to paucity of time petitioner is unable to produce the certified copies of the Annexures before this Hon'ble Court.
3. That the all the Annexures are quite legible. It may take lot of time to retype. Wherever necessary the relevant extracts and translations have been provided.
4. That in the interest of justice filing of fair typed, complete translation and certified copies of the Annexures P-1 to P-14 may kindly be exempted so that petition could be heard by this Hon'ble Court on merit.

It is therefore respectfully prayed that this application may kindly be allowed and filing of certified & fair typed copies and complete translations of Annexures be dispensed with and permission to place on record the Photostat copies of the same.

Chandigarh

(A.P.S Shergill) (Kavita Mahajan) (P. C. Rana)

Dated:-15.09.2007

Advocates for the Petitioner

LIST OF DATES AND EVENTS

10/04/1940	The Drugs and Cosmetics Act, 1940 comes into force.
21/12/1945	The Drugs and Cosmetics Rules, 1945 comes into force.
29/9/1954	Prevention of Food Adulteration Act, 1954 comes into force.
12/9/1955	Prevention of Food Adulteration Rules, 1955 made u/s 23 of the Act and applicable to whole of India comes into force.
16/7/2005	G.S.R. 549(E) notifies extend of limitation for sale and supply of Nicotine gum subject to the condition that it be manufactured under license.
2005 to till date	various restaurants/bars/hotels/restaurant start supplying addictive and dangerous Nicotine (Drug) laced products for oral consumption and inhalation. No action taken till date by any enforcement agency.
21/7/2007	Formal Complaint made to Home Secretary, Chandigarh, SSP, Chandigarh Police, Director of Health Service, Food and Drug Inspectors.
06/9/2007	Reply from Director Health Services that no action can be taken and the sample can not be tested.
	Hence, this writ petition is being filed before this Hon'ble Court.

Chandigarh

(A. P. S. Shergill) (Kavita Mahajan) (P. C. Rana)

Dated:-15.09.2007

Advocates for the Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH

C.W.P. (PIL) No **14597** of 2007

Burning Brain Society through its Chairperson, Hemant Goswami, S/o Sh B. M. Goswami of #3, Glass office, Shivalikview Business Arcade, Sector 17-E, Chandigarh 160017.

.....Petitioner

Versus

1. Union of India through Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, Maulana Azad Road, New Delhi
2. Chandigarh Administration through Health-cum-Home Secretary, Deluxe Building, Sector 9-D, Chandigarh.
3. Chandigarh Police, UT, Chandigarh through it's Inspector General, Sector 9, Police Headquarters, Chandigarh Police, Chandigarh
4. Drugs Technical Advisory Board through its Chairperson, Director-General of Health Services, Nirman Bhawan, Maulana Azad Road, New Delhi
5. Directorate General of Commercial Intelligence and Statistics (DGCI&S), (under the Ministry of Commerce, Government of India) through Director General of Commercial Intelligence and Statistics, Council House Street, Kolkata-700 001, India,

..... Respondents

Civil Writ Petition under Articles 226/227 of Constitution of India for issuance of a writ in the nature of mandamus, Certiorari or any other appropriate writ thereby **directing the respondents in general and respondent No 2 and 3, to register the First Information Report and initiate criminal proceedings** against all establishments providing

addictive and poisonous substance and drug like Nicotine for inhalation and/or oral consumption as is reflected from news item **Annexure P-2** to **P-9**.

And

A writ in the nature of Mandamus be issued, directing the Respondent No. 1, 2 and 4, **to seize the stock available anywhere in Chandigarh or elsewhere and get the sample of material tested** at the Central Drug Laboratory, Food Testing Laboratory and in such other places where the complete constitution, flavouring agents and adulterants with regard to the consumption of the product as a drug or food can be ascertained.

And

A writ in the nature of Mandamus be issued, directing the respondent no. 1, 2 and 3 to proceed against all the establishments/hotels/restaurants where the people are served and exposed to dangerous gases and chemicals having potential of causing serious damage to the health of human beings and to cancel licences of such establishments/hotels/restaurants as per the law.

And

A writ in the nature of Mandamus be issued, directing the respondent no. 5 to prevent import and trade of unregulated and unlicensed Nicotine and with regard to import and supply of Nicotine products till date with respondents no. 1,2, 3 and 4.

And

A writ in the nature of Mandamus directing the respondent No.1 and 2 to frame the rules in respect of the poisonous substance namely 'Nicotine' (used as insecticide as reflected in **Annexure P-1**) and notify the said

substance as poison in terms of **Section 3 and 4 of Poisons Act, 1919** by invoking the provision of **Section 8** of said Act.

And

A writ in the nature of mandamus directing the respondent No. 1 and 2 to prohibit import, manufacturing and sale of Nicotine by invoking the powers provided under **Section 10A and 18, respectively of Drugs and Cosmetic Act, 1940.**

And

Any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the facts circumstances of the case.

RESPECTIVELY SHOWETH:

1. That the Petitioner is a Civil Society Organisation registered in India as a non-political, charitable society under the Societies Registration Act, 1860 and is competent to invoke the extra-ordinary Writ jurisdiction of this Hon'ble Court under Articles 226 / 227 of the Constitution of India by way of this Public Interest Litigation. The Chairperson of the petitioner society is authorized to institute and file litigation in public interest on behalf of the petitioner society.
2. That the petitioner is actively engaged in various social, public interest and civil rights activities. "Burning Brain Society" (Hereinafter referred as "BBS" in abbreviated form) also works for providing guidance to the young people and to help them find a positive and healthy direction in life. Emphasis is laid on to contribute in a field for which one has aptitude and interest instead of getting into aberrations and following others with herd mentality. BBS also works against Tobacco & Substance abuse and aggressively follows a policy of encouraging positive activities and discourages aberrations by providing proper guidance & information to the general public and citizenry.

3. That various restaurants, hotels and other outlets in Chandigarh have started providing flavoured (and unflavoured) Nicotine laced material for consumption and inhalation. The present writ petition is directed against **unregulated sale and supply of poisonous drugs like “Nicotine” and thereby protect the life of people as guaranteed to be protected under Article 21 of the Constitution and directed by Article 47 of the Constitution and as regulated by the Drugs and Cosmetic Act 1940.** And to ensure that various restaurants, hotels and outlets in Chandigarh which are freely providing Nicotine and Nicotine laced material for consumption and inhalation through water-pipe (also called Shisha/Hooka) are restrain from indulging in such kind of business causing serious damage to the health of users as this is exposing all users to harmful and dangerous gases present as a result of emitted smoke, side-screen smoke and exhalation. This is all going on despite the fact that any unlicensed sale of the drug Nicotine (Other than that found in raw tobacco products) is prohibited by law and many complaints have been made in this regard. Still Chandigarh Administration i.e. respondent No. 2 has turned a blind eye and refused to take lawful action against violators under the Drug and Cosmetic Act and/or under the Indian Penal Code or any other provision of law.

4. That the respondent No. 1 and 5 i.e. Union Government and the Directorate General of Commercial Intelligence and Statistics have also failed in their duty to regulate such drugs at the first stage itself, to unambiguously regulate, manage, control and provide specific guidelines for the import and trade of Nicotine. It is shocking indeed that this product comprising heavy quantity of Nicotine in each of the pack is being imported as food item and is licensed to be imported by the respondent No. 5 as food item, whereas the Nicotine in extracted form and imported in any quantity or in the shape of a product comprising Nicotine as an additive has to be covered under drugs and imported by way of licence of import under the category of drug and not as food item. It is a fraud being played by unscrupulous elements causing serious damage to the society at

large and particularly the young generation who are getting addicted to this dangerous drug without there being any law to check this activity.

5. That many of such restaurants, hotels and other outlets in Chandigarh mark and promote their product by labelling them as containing no tobacco and zero percent tar.

6. That Nicotine is a poisonous drug also known by chemical name of $C_{10}H_{14}NO_2$. In its extracted form, it is a clear oily liquid turning yellowish-brown after coming in contact with air and is distinguished by a characteristic pungent odour; extracted from the dried leaves of *Nicotiana tabacum* and *Nicotiana rustica*. One single drop of Nicotine in the blood stream is sufficient to kill a person. The fatal dose, sufficient to result in immediate death of a person is a single dose of 40 mg to 60 mg. Extracts of information available from Centre for Drug Control, and Institute for Occupational Safety and Health (NIOSH Publication No. 2005-149, NIOSH Pocket Guide to Chemical Hazards) is attached at **ANNEXURE P-1**.

That this has also been widely reported in many new-papers and the media. In one of the news item Annexure P-3 personal experience of one Mr. Vikramjit Singh has been reported wherein he saw a youngster standing outside gasping for breath. Sing perform a choke removal procedure on him. At once, he stabilised and they got into a conversation. When singh ventured into the Hooka Café, to his shop, he found 90% of those smoking the Hooka be kids. Some were even in their school uniforms. Mr. Vikramjit then took it upon himself to educate kids on harmful effects of hookahs. He visits these cafes and speaks to children about harmful effects of inhaling the hookah.

According to Singh, most people mistakenly believe hookahs do not contain tobacco and when they smoke, they inhale herbal products, but they should realise that it is far more dangerous than cigarette smoking because the amount of nicotine in hookahs cannot be measured due to difference in

packaging. The facts pertaining to these hookahs providing inhalation of Nicotine which is quite dangerous drug have been reported time and again in the newspapers, but the authorities have failed to notice the activity and to initiate remedial measures. Copies of some of the newspaper are annexed as **ANNEXURE P-2 to P-9**

7. The drug Nicotine is provided for Inhalation in restaurants, hotels and other outlets by burning of the Nicotine laced viscous material by the means of specially constructed water-pipe, also called Shisha and erroneously referred to as Hooka.

8. That Health Department has issued license to such restaurants, hotels and other outlets to operate unconcerned by the fact that Nicotine and other such substances are offered for human consumption there. The health department did not cancel the license of such establishments even after having complete knowledge that deleterious gases are emitted in the restaurant/hotel which are inhaled by everyone and that the product offered for human consumption is a drug.

9. That Nicotine is a known drug and its sale, supply, import, manufacturing and trade can only be done through a proper license obtained under the Drugs and Cosmetic Act 1940 and other laws in force.

10. The only exemption for sale of Nicotine without license is provided in "Schedule K" of "Drugs and Cosmetic Rules 1945" as item number 33 wherein the extent of exemption is to the limits of 2 mg of Nicotine and the exemption is only applicable to Nicotine Chewing Gums meant for de-addiction of tobacco addicts. The exemption is subject to the provisions of chapter IV of the Drug and Cosmetic Act 1940 and is applicable only if the Nicotine offered for sale is actually manufactured under license.

11. The use of term HOOKA in this case is not the same as used in reference to the traditional tobacco Hooka as neither the material used in the water-pipe is

tobacco nor does water-pipe delivery device have the same construction as traditional Hooka. The device is merely a drug-delivery instrument (delivering Nicotine for inhalation) which is erroneously referred as Hooka.

12. All the establishments promoting Hooka's also claim and propagate that the Nicotine laced material as containing zero percent (0%) tar. This is a deliberate deceptive statement because tar is a component of the smoke (which people are made to inhale) and not the actual, physical product/concoction material/article. Such deliberate misstatements are cheating as it reduces the risk perception and cause people to consume a dangerous and harmful product by actually concealing the harmful effects.

13. That the substance offered for consumption by inhalation (by burning the material) through a traditional Hooka (Water-Pipe) type delivery device also produces highly toxic poisonous gaseous matters which if inhaled can cause disease, disability and death. Some of the known poisonous compounds produced in the final end product, offered for human consumption and available in the environment contains high level of Carbon Monoxide, Nitrogen Dioxide, Sulphur Dioxide, arsenic, benzene, chromium, nickel, vinyl chloride, cadmium, formaldehyde, Nicotine, 2-nitropropane, Hydrogen cyanide, Ammonia, Dimethylamine, 2.5-dimethylamine, Ethylamine, Methylamine, Methylpyrazines, methylpyridines, Pyridine, Pyrrolidine, Trimethylamine, Hydrazine, Acetaldehyde acetone and many more similar chemicals. It also contains unknown flavouring chemicals and compounds.

14. That the atmosphere is also made noxious by the release of poisonous and harmful gases and carbon-monoxide by the burning of Charcoal used in the water-pipes within in the restaurant/hotels/establishment.

15. That no restaurant/hotel/outlet which contains such harmful components in the air and environment so as to be inhaled by all visiting people and endanger their health and life can be allowed and/or issued license under the Prevention of

Food Adulteration Act and Rules. If any license was issued that is required to be cancelled to maintain salubrious, sanitary and health conditions in the establishment for protection of health and the life of the public.

16. That incidents regarding life threatening situations for general public/people consuming water-pipe/Hooka is regularly reported and one such report was published in "Times of India" newspaper dated 13th July 2007 as mentioned above.

17. That Nicotine is known to have adverse effects on brain dopamine systems similar to those of drugs such as heroin and cocaine.

18. That Nicotine as an additive is not a food product meant for routine human consumption and is not to be sold without prescription. Nicotine is known to be addictive. Most people are forced to intake Nicotine laced products regularly because they get addicted to nicotine.

19. That use of Nicotine is also likely to cause numerous side effects which has been scientifically established and mentioned in Pharmacopoeia and other medical documents. Further, even in cases where it is medically prescribed for de-addiction, Nicotine can be consumed only in prescribed doses and not higher than it. If consumed in higher doses, it can also result in disability or death of a person.

20. That Nicotine is also known to be contra-indicatory and affect people greatly with medical consequences due to drug interference, who are on other form of medications. Some of the known drug interaction is known to take place if a person is also using any of the following drugs: imipramine (Tofranil); oxazepam (Serax); propranolol (Inderal), labetalol (Normodyne, Trandate), or prazosin (Minipress); theophylline (Theo-Dur, Theochron, Theolair); pentazocine (Talwin), insulin.

21. That it is also known that Nicotine, when consumed as medicine or as an additive and if used along with any tobacco product can also cause life threatening situation.

22. That after taking note of free sale and supply of Nicotine laced products in Chandigarh, the petitioner on July 21, 2007 complained to the Director of Health, Food Inspectors (Under the prevention of Food Adulteration Act, Drug Inspectors (Under the Drug and Cosmetic Act 1940), Health-cum-Home Secretary of Chandigarh and Chandigarh Police about the supply of dangerous and lethal drugs like Nicotine in the restaurants, hotels and other outlets in Chandigarh with a request to take action under Drug and Cosmetic Act, Prevention of Food Adulteration Act, Indian Penal Code and Cigarettes and Other Tobacco Products Act 2003. Copy of the complaint is Annexed as **ANNEXURE P-10**

23. That despite the complaint by the petitioner, no action was taken and till date no case has been registered and there has been no investigation by the concerned authorities/respondents.

24. The Food Inspector refused to take action and did not even take sample by presuming that the material is not consumed orally (though in many case it is) so does not come under the definition of Food and hence it can not be tested for either the adulterants and/or for the unknown flavouring and therefore it is outside their preview.

25. That the police, who could have taken action under the Indian Penal code for against the defaulters for providing poisonous substance endangering human life also did not register complaint or any action/investigation despite the fact that this constitutes a serious cognizable offence endangering human life.

26. That after much persuasion, the sample of the material under the law was seized and taken by the Drug Inspector and the Police as mentioned above in para No. 22. The characteristics of the seized sample was wrongly mentioned as semi-solid tobacco product, whereas the seized sample is actually a viscous liquid and

is not a tobacco product as defined under Schedule 1 of the Cigarette and other Tobacco Products Act, 2003. Moreover, the seized sample has not even been tested till date.

27. That in a strange turn of events, the Government Analyst (Punjab) appointed under the Drugs and Cosmetic Act 1940 too returned the sample untested with the comment that the substance sent can not be considered to be drug. Reply by the Director Health Services and the Government Analyst is annexed as **ANNEXURE P-11 to P-13**.

28. That under the Drugs and Cosmetic Act, 1940, the Government Analyst has no power to return the sample once seized by the Drug Inspector and sent after following the law. Such action only benefits the establishments providing the drug Nicotine for inhalation and consumption.

29. That despite the outlets themselves declaring and mentioning that the product offered contains Nicotine and despite the product label having specific mention of it containing Nicotine in extracted form, the authorities omitted to enforce the legal provisions to prevent the violation.

30. That it is the responsibility of the Ministry of Health and Directorate General of Commercial Intelligence and Statistics (hereinafter called DGCIS) to report, control the import and trade of Nicotine.

31. That the importers of Nicotine are able to import Nicotine laced material by labelling it as "Food Product" and/or as tobacco product. DGCIS assigns a specific HSN number for all traded items and has failed in its duty to report and check such Nicotine imports.

32. That DGCIS is required to regulate and provide the exact head of all such Nicotine laced product along with the HSN and amount of Nicotine imported. It is also known that there is a possibility of Nicotine being used by terrorists and FBI

even issued a warning to this effect in 2003. One such newspaper report is annexed at **ANNEXURE P-6**.

33. That the Drugs Technical Advisory Board has also failed to provide proper technical specification and guidelines with-regard to Nicotine and failed to provide instructions and guidelines to government analysts to test all mislabelled and/or misbranded substances containing any kind of drug.

34. That the Union Government as well as State Government are adequately empowered to check and regulate the sale of drugs / poisons and the Nicotine as drug/poison is liable to be regulated for the purpose of stocking, selling and using for any purpose whatsoever. Some of the provisions which can be invoked by respondents are as under:-

“Section 10-A of Drugs and Cosmetic Act, 1940 :- Power of Central Government to prohibit import of drugs and cosmetics in public interest. -Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have the therapeutic value claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, prohibit the import of such drug or cosmetic.”

“Section 18 of Drugs and Cosmetic Act, 1940 :- Prohibition of manufacture and sale of certain drugs and cosmetics. - From such date **1**as may be fixed by the State Government by notification in the official Gazette in this behalf, no person shall himself or by any other person on his behalf-

(a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale], or distribute- -

[(i) Any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

(ii) Any Cosmetic, which is not of a standard quality or is misbranded or spurious;]

(iii) Any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the Subs. Sec. 9, *ibid*, for certain words [true formula or list of active ingredients contained in it together with the quantities thereof]

(iv) Any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims **5**[to prevent cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;

[(v) Any cosmetics containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) Any drug or cosmetic in contravention of any of the provisions of this chapter or any rule made thereunder;]

(b) [sell or stock or exhibit or offer for sale] or distribute any drug [or cosmetic] which has been imported or manufactured in

contravention of any of the provisions of this Act or any rule made thereunder;

- (c) [manufacture for sale or for distribution, or sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering of sale] or distribution of any drug or class of drugs not being of standard quality.

11[* * * *]

- 1. Ist April, 1947, for sub-sections (i), (ii) and (iv) and (v) of Cl. (a) and and Cls. (b) and (c), Ist April, 1949, for sub-clause (iii) of Cl. (a) in so far as it takes effect in Delhi, Ajmer and Coorg, see Notification No. 18-12146-D (II), dated 11th February, 1947, Gazette of India, 1947. Pt. I, p. 189, as amended by Notification No. F.1-2148-D (II), dated 29th September, 1948; Ist April, 1953, for the States of Himachal Pradesh, Bilaspur, Kutch, Bhopal, Tripura, Vindhya Pradesh and Manipur, vide**

Notification No. S.R.O. 664, dated the 30th March, 1953, Gazette of India, 1953, Pt. II, Sec. 3, p. 451.

- 2. Subs. by Act 68 of 1982, Sec. 14 (w.e.f 1st February, 1983),**
- 3. Subs. by Sec. 14, ibid, for Cls. (i), (ii) and (ii-a) (w.e.f. 1st February, 1983).**
- 4. Subs. By Act 11 of 1955, Sec. 9, for sub-clause (iii).**
- 5. Subs. by Sec. 9, it, for “to cure or mitigate”.**
- 6. Subs. by Act 21 of 1962, Sec. 14, for sub-clause (v) (w.e.f. 27th July, 1964).**
- 7. Subs. by Act 68 of 1982, Sec. 14 (w.e.f. 1st February, 1983).**
- 8. Ins. by Act 21 of 1962, Sec. 14 (w.e.f. 27th July, 1964).**
- 9. Subs. by Act 11 of 1955, Sec. 9, for “State Government”.**
- 10. Subs. by Act 68 of 1982, Sec. 14, for “manufacture for sale, sale” (w.e.f. 1st February, 1983).**
- 11. Explanation omitted by Sec. 14, ibid. (w.e.f. 1st February, 1983).**

[18-A. Disclosure of the name of the manufacturer etc.- Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetics.]

- 1. Ins. By Act 13 of 1964, Sec. 14 (w.e.f. 15th September, 1964).**

18-B. Maintenance of records and furnishing of information. - Every person holding a licence under Cl. (c) of Sec. 18 shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any

function under this Act such information as' is required by such officer or authority for carrying out the purposes of this Act.”

“Section 3 of Poison Act, 1919:- Power to prohibit Importation Into India of any poison except under licence. -The Central Government may, by notification in the Official Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation into India across any customs frontier defined by the Central Government of any specified poison, and may by rule, regulate the grant of licences.

Section 4 of Poison Act, 1919:- Power to regulate possession of any poison in certain areas. -

- (1) The State Government may by rule regulate the possession of any specified poison in any local area in which the use of such poison for the purpose of committing murder or mischief by poisoning cattle appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable.
- (2) In making any rule under subsection (1), the State Government may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of the poison in respect of which the breach has been committed, and of the vessels, packages or covering in which the same is found.

“Section 8 of Poison Act, 1919 :- Rules. -

- (1) **In addition to any other power to make rules herein before conferred the State Government may make rules generally to carry out the purposes and objects of this Act except Section 3.**

- (2) Every power to make rules conferred by this Act shall be subject to the condition of the rules being made after previous publication.
- (3) All rules made by the Central Government or by the State Government under this Act shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act.
- [(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- (5) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature].”

The respondents have not bothered to invoke the statutory provisions and discharged their lawful obligations and commitment towards public service by framing necessary rules and regulations by invoking abovementioned statutory provisions. Inaction on the part of respondents is in violation of Article 21 of the Constitution of India. The petitioner craves indulgence of this Hon'ble Court for appropriate directions so as to protect innocent citizens from the hazards of this so called food item comprising high quantity of Nicotine. True copy of the label showing contents of Nicotine in such product being provided for consumption is annexed herewith as **Annexure P-14**.

LAW POINTS

35. That the law points involved in this Writ petition are as follows: -
- i. Whether it is a duty of the state to protect the life of the people from harmful drugs and substances like Nicotine and the toxic smoke generated from it.
 - ii. Whether endangering the life of a person by exposing him/her to harmful gases constitutes a criminal offence.
 - iii. Whether making people consume poisonous substance and exposing them to chemicals and smoke endangering the life is also a punishable offence under Sections 284, 269, 270, 328, 336 and 337 of the Indian Penal Code.
 - iv. Whether the Health Department has erred in law in issuing a license to operate (and renew it) to such establishment wherein Nicotine and other such substances are offered for human consumption.
 - v. Whether the license of such establishments are liable to be cancelled after it has been reported widely that deleterious gases are emitted in the restaurant/hotel which are inhaled by everyone and that the product offered for human consumption is a drug.

- vi. Whether any restaurant/hotel/outlet which releases harmful chemical components in the air and environment so as to be dangerous for all who inhale such air can be allowed to operate.
- vii. Whether there were sufficient reasons, and was it correct, for the Food Inspector operating under the Director of Health to presume that a product imported as a Food product and available in Restaurant for human consumption is not a food product and hence can not be tested.
- viii. Whether inaction on the part of respondents in not initiating criminal proceedings under appropriate provisions of Indian Penal Code is violative of the law of the land and the FIR is liable to be registered in the facts and circumstances reported patently revealing omission of cognizable offence.
- ix. Whether it was lawful for the Government Analyst appointed under the Drugs and Cosmetic Act 1940 to return the sample seized by the drug inspector, without testing it for the existence of drug in the sample.
- x. Whether respondent number 1, 4 and 5 also failed in their duty to regulate report and issue necessary guidelines for import, manufacture, supply and trade of Nicotine.

36. That the petitioner has not filed any such Writ petition in this Hon'ble Court or Supreme Court of India.

37. That the matter is of vital general importance affecting the entire population and requires intervention of this Hon'ble Court to direct the respondents to prevent the supply and consumption of poisonous chemicals and drugs and to ensure toxin-free environment in all establishments.

38. That it is a fit case in which this Hon'ble Court may be pleased to intervene and issue the necessary directions to the respondents to follow the law in its true spirit and prevent the unregulated supply of dangerous chemical drugs like Nicotine.

39. That there is no other alternative remedy available to the petitioner except approaching this Hon'ble Court under Article 226/227 of the Constitution of India.

PRAYER

It is, therefore, respectfully prayed, that in view of the facts mentioned above this Hon'ble Court may be pleased to award following relief:-

- (i) a writ in the nature of mandamus, Certiorari or any other appropriate writ thereby **directing the respondents in general and respondent No 2 and 3, to register the First Information Report and initiate criminal proceedings** against all establishments providing addictive and poisonous substance and drug like Nicotine for inhalation and/or oral consumption as is reflected from news item **Annexure P-2 to P-9**.
- (ii) A writ in the nature of Mandamus be issued, directing the Respondent No. 1, 2 and 4, **to seize the stock available anywhere in Chandigarh or elsewhere and get the sample of material tested** at the Central Drug Laboratory, Food Testing Laboratory and in such other places where the complete constitution, flavouring agents and adulterants with regard to the consumption of the product as a drug or food can be ascertained.
- (iii) A writ in the nature of Mandamus be issued, directing the respondent no. 1, 2 and 3 to proceed against all the establishments/hotels/restaurants where the people are served and exposed to dangerous gases and chemicals having potential of causing serious damage to the health of

human beings and to cancel licences of such establishments/hotels/restaurants as per the law.

- (iv) A writ in the nature of Mandamus be issued, directing the respondent no. 5 to prevent import and trade of unregulated and unlicensed Nicotine and with regard to import and supply of Nicotine products till date with respondents no. 1,2, 3 and 4.
- (v) A writ in the nature of Mandamus directing the respondent No.1 and 2 to frame the rules in respect of the poisonous substance namely 'Nicotine' (used as insecticide as reflected in **Annexure P-1**) and notify the said substance as poison in terms of **Section 3 and 4 of Poisons Act, 1919** by invoking the provision of **Section 8** of said Act.
- (v) A writ in the nature of mandamus directing the respondent No. 1 and 2 to prohibit import, manufacturing and sale of Nicotine by invoking the powers provided under **Section 10A and 18, respectively of Drugs and Cosmetic Act, 1940**.
- (vi) Any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the facts circumstances of the case.
- (vii) Filing of certified and fair typed copies and complete translations of annexures may kindly be dispensed with, and permission to file Photostat and scanned reproductions/copies be granted.

INTERIM PRAYER

As an interim measure, in the interest of justice, the Respondent no 1, 2 and 3 be asked to immediately register a case for investigation of the matter and seize all the Nicotine laced products and send them for testing with the Foods and Drugs laboratory the laboratory report be submitted to the court on the next hearing. In the mean time, till this Hon'ble Court examines the issues involved in the writ petition, Respondent No. 1,2 and 3 should ensure that the restaurants/hotels/establishment making Nicotine available to youngsters and other people be restrained from doing so.

Chandigarh

Date:- 15.09.2007

Petitioner

Through Counsel:-

(A. P. S. Shergill) (Kavita Mahajan) (P. C. Rana)

Advocates for the Petitioner

VERIFICATION:-

Verified that the contents of paragraphs 1 to 34 and 36 to 39 are true and correct to my knowledge and contents of para no. 35 are believed to be true and correct on the basis of received legal advice. No part of it is false and nothing material has been concealed therein.

Chandigarh

Dated:- 15.09.2007

Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH.

C.W.P. (PIL) No _____ of 2007

Burning Brain SocietyPetitioner

Versus

Union of India and othersRespondent

Affidavit of Hemant Goswami, S/o Sh B. M. Goswami aged about
36 years, Chairperson of Burning Brain Society, #3 Glass office,
Shivalikview Business Arcade, Sector 17-E, Chandigarh 160017.

I, the above named deponent, do hereby solemnly affirm and declare as
under :-

1. That the deponent is filing the accompanying civil writ petition in this
Hon'ble High Court. The contents of the civil writ petition may be read as a part
and parcel of this Affidavit. The civil writ petition has been drafted under the
instructions of the deponent. The deponent declares that the contents of this
affidavit are true and correct to his knowledge and he is fully conversant with the
facts of the present case.

Chandigarh

Dated:- 15.09.2007

Deponent

VERIFICATION:-

Verified that the contents of my above stated affidavit comprising of one
para are true and correct to my knowledge. No part of it is false and nothing has
been concealed there from.

Chandigarh

Dated:- 15.09.2007

Deponent

ANNEXURE P-1

Details about Nicotine as Chemical Hazard from the United States of America's Centre for Disease Control Manual

(Available online at <http://www.cdc.gov/niosh/npg/npgd0446.html>)

  National Institute for Occupational Safety and Health	
Search NIOSH NIOSH Home NIOSH Topics Site Index Databases and Information Resources NIOSH Products Contact Us	
NIOSH Publication No. 2005-149: September 2005	
<h2 style="text-align: center;">NIOSH Pocket Guide to Chemical Hazards</h2>	
NPG Home Introduction Synonyms & Trade Names Chemical Names CAS Numbers RTECS Numbers Appendices Search	
Nicotine	CAS 64-11-5
$C_5H_4NC_4H_7NCH_3$	RTECS QS5260000
Synonyms & Trade Names 3-(1-Methyl-2-pyrrolidyl)pyridine	DOT ID & Guide 1654 151
Exposure Limits	NIOSH REL: TWA 0.5 mg/m ³ [skin] OSHA PEL: TWA 0.5 mg/m ³ [skin]
IDLH 5 mg/m ³ See: 54115	Conversion
Physical Description	
Pale-yellow to dark-brown liquid with a fish-like odor when warm. [insecticide]	
MW: 162.2	BP: 482°F (Decomposes)
VP: 0.08 mmHg	IP: 8.01 eV
FLP: 203°F	UEL: 4.0%
FRZ: -110°F	
Sol: Miscible	
Sp.Gr: 1.01	
LEL: 0.7%	
Class IIIB Combustible Liquid: Fl.P. at or above 200°F.	
Incompatibilities & Reactivities	
Strong oxidizers, strong acids	
Measurement Methods	
NIOSH 2544 , 2551 See: NMAM or OSHA Methods	
Personal Protection & Sanitation (See protection)	First Aid (See procedures)
Skin: Prevent skin contact	Eye: Irrigate immediately
Eyes: Prevent eye contact	Skin: Water flush immediately
Wash skin: When contaminated	Breathing: Respiratory support
Remove: When wet or contaminated	Swallow: Medical attention immediately
Change: No recommendation	
Provide: Eyewash, Quick drench	
Respirator Recommendations NIOSH/OSHA	
Up to 5 mg/m ³ :	
(APF = 10) Any supplied-air respirator	
(APF = 50) Any self-contained breathing apparatus with a full facepiece	
Emergency or planned entry into unknown concentrations or IDLH conditions:	
(APF = 10,000) Any self-contained breathing apparatus that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode	
(APF = 10,000) Any supplied-air respirator that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode in combination with an auxiliary self-contained positive-pressure breathing apparatus	
Escape:	
(APF = 50) Any air-purifying, full-facepiece respirator (gas mask) with a chin-style, front- or back-mounted organic vapor canister/Any appropriate escape-type, self-contained breathing apparatus	
Important additional information about respirator selection	
Exposure Routes inhalation, skin absorption, ingestion, skin and/or eye contact	
Symptoms Nausea, salivation, abdominal pain, vomiting, diarrhea; headache, dizziness, hearing, visual disturbance; confusion, lassitude (weakness, exhaustion), incoordination; cardiac arrhythmias; convulsions, dyspnea (breathing difficulty); in animals: teratogenic effects	
Target Organs central nervous system, cardiovascular system, lungs, gastrointestinal tract, reproductive system	

(RELEVANT EXTRACT)

Nicotine

C5H4NC4H7NCH3

Synonyms & Trade Names: 3-(1-Methyl-2-pyrrolidyl)pyridine

Physical Description : Pale-yellow to dark-brown liquid with a fish-like odor when warm. **[insecticide]**

Exposure Routes: inhalation, skin absorption, ingestion, skin and/or eye contact

Symptoms: Nausea, salivation, abdominal pain, vomiting, diarrhea; headache, dizziness, hearing, visual disturbance; confusion, lassitude (weakness, exhaustion), incoordination; cardiac arrhythmias; convulsions, dyspnea (breathing difficulty); in animals: teratogenic effects

Target Organs: Central nervous system, cardiovascular system, lungs, gastrointestinal tract, reproductive system

True Relevant Extract Copy

Advocate

Smoke-free city when 'hukkas' abound?

By Shiruti Setia Chabra
TIMES NEWS NETWORK

Chandigarh: While Chandigarh Administration seems all set to welcome a smoke-free city on July 15, the latest trend among youngsters to puff away at 'hukkas' surely threatens to prove a dampener.

The 'hukkas' available in a variety of flavours are served at eating joints in Sector 9, Sector 26 and on Zirakpur-Patiāla Road. Apart from producing a great deal of smoke, discomfiting non-hukka doers, the white-ash remains that settle on people's faces is also being objected to.

Although youngsters maintain the 'hukka' does not have tobacco but non-smokers have their doubts. Director public relations UT, Vivek Attri said teams of police along with some medical representatives would check the 'hukkas' to arrive at the truth. The ones without tobacco content could be permitted, he added. DJs serve 'hukka' during parties and youngsters are lured to these dos for the chance they get to puff away.



SMOKESCREEN: Youngsters take to hukka as UT hopes for a smoke-free city

But admn's efforts still on..
Chandigarh: UT has decided to explore the possibility of taking a decision with regard to compliance with tobacco control legislation hotels/restaurant at the time of annual license and to check the disposal of boards and adherence to tobacco control legislation by hotels/restaurants. The decision was taken in a meeting held under the chairmanship of home secretary Krishna Nandan regarding 'First Smoke Free city on Wednesday.

Now the DPI (colleges) and DPI (schools) would ensure that colleges and schools, who have yet displayed the warning board under the education rules of 2001 should display such boards at prominent places. Chandigarh police would write to the traders/organisations and the auto/taxi unions to comply with the law. TNN

News Report from Times of India (Times of Chandigarh), Page 2 dated July 12,
2007

(RELEVANT EXTRACT)

Smoke-free city when 'hukkas' abound?

By Shruti Setia Chabra TIMES NEWS NETWORK

Chandigarh: While Chandigarh Administration seems all set to welcome a smoke-free city on July 15, the latest trend among youngsters to puff away at 'hukkas' surely threatens to prove a damper.

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True Relevant Extract Copy

Advocate

News Report from Times of India (Times of Chandigarh), Page 2 dated July 13, 2007

Smoke and get caught

TIMES NEWS NETWORK

Chandigarh: The cigarette butts and ash would soon be a thing of the past. To prevent smoking at public places, the UT administration has chalked out a plan to strictly implement the provisions of the Cigarette and Tobacco Production Act, 2003, in the city.



**Chandigarh
Smoke-free
3 days to go**

Devising novel ways to check stamp out the nuisance, the administration has given special powers to the police officials to take immediate action against the people found smoking at public places like parks, railway station, bus stand and buses.

Now on, it would be the responsibility of smokers to throw their cigarette butts in proper dustbins as otherwise they can also be fined.

The truth about hukka

Responding to TOC's story, a reader Vikramjit Singh has written his personal experience. Vikramjit passed by a hookah cafe few months back and saw a youngster standing outside gasping for breath. Singh performed a choke removal procedure on him. At once, he stabilised and they got into a conversation. When Singh ventured into the hookah cafe, to his shock, he found 90% of those smoking the hookah be kids. Some were even in their school uniforms. Vikramjit then took it upon himself to educate kids on harmful effects of hookahs. He visits these cafes and speaks to children about harmful effects of inhaling the hookah.

According to Singh, most people mistakenly believe hookahs do not contain tobacco and when they smoke, they inhale herbal products, but they should realise that it is far more dangerous than cigarette smoking because the amount of nicotine in hookahs cannot be measured due to difference in packaging.

All the public offices and institutions have been advised to boards banning smoking. Under Section 4, rule 3 of the CTP Act, smoking is not allowed inside public places like cinema halls, restaurants etc.

The administration has given order to the principals of educational departments that they must display a board prohibiting smoking in the radius of 100 meters from their schools and colleges. The cigarette sellers should keep a board of same size outside their shops, containing message that it is illegal to sell tobacco and tobacco products to the minors below 18 years. And smoking cigarette is injurious to health.

ANNEXTURE P-3

News Report from Times of India (Times of Chandigarh), Page 2 dated July 13,
2007

(RELEVANT EXTRACT)

The truth about hukka

Responding to TOC's story, a reader Vikramjit Singh has written his personal experience. Vikramjit passed by a hookah cafe few months back and **saw a youngster standing outside gasping for breath. Singh performed a choke removal procedure on him.** At once, he stabilised and they got into a conversation. When Singh ventured into the hookah cafe, to his shock, he found **90% of those smoking the hookah be kids. Some were even in their school uniforms.** Vikramjit then took it upon himself to educate kids on harmful effects of hookahs. He visits these cafes and speaks to children about harmful effects of inhaling the hookah.

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True Relevant Extract Copy

Advocate

News Report from Dainik Bhaskar (Chandigarh Bhaskar), Page 2 dated July 30, 2007

'हुक्का बार' रेस्टोरेंट्स में ग्राहकों को सरेआम करवाया जा रहा है निकोटिन का सेवन

बिल काटकर रेस्तरां में बिक रहा नशा!



दुमर अभिमन्यु, चंडीगढ़
एक तरफ चंडीगढ़ को टैल्को फ्री शहर घोषित कर प्रशासन देशव्यापी शाखाएँ ले रहा है। वहीं, यहाँ के कुछ रेस्तरां प्रशासन के इस प्रयास को खोलेआम चुनौती दे रहे हैं। 'हुक्का बार' नाम से मशहूर इन रेस्टोरेंट्स में ग्राहकों को सरेआम निकोटिन का सेवन करवाया जा रहा है। इस पर रोक लगाने वाली एजेंसियों को इस बारे में सब पता है, फिर भी अफसरों ने चुपकी साध रखी है।

तथा है निकोटिन

सामान्य तौर पर निकोटिन बीड़ी और सिगरेट में पाई जाती है। इन दोनों प्रोडक्ट के अलावा निकोटिन युक्त कोई भी प्रोडक्ट नहीं बेचा जा सकता। अमेरिकन हेल्थ ऑर्गेनाइजेशन ने स्पष्ट किया है कि फेडरल ड्रग एडमिनिस्ट्रेशन (एफडीए) की ओर से निकोटिन को जहर की श्रेणी में रखा गया है। 40 से 60 मिलीग्राम या इससे अधिक सेवन से व्यक्ति की तत्काल मौत हो सकती है। इस मात्रा में सेवन करने वाले लोगों के ट्रिपाम पर द्रुप असर पड़ता है। यह एंटीबिोटिक नशी की कैटेगरी में है।

निकोटिन का मंडिकल इस्तेमाल

तंबाकू के डि-एडिक्शन के लिए .02 मिलीग्राम निकोटिन युक्त

निर्ध धुएं के चालान कोट

हुक्का बार में निकोटिन के इस्तेमाल को लेकर कन्स्यूअर की स्थिति है। शिक्षागत मिलने पर फूड और ड्रग इंस्पेक्टरों की टीम ने हुक्का बारस का निरीक्षण किया और सिर्फ धुएं के बालन काटे गए। धुआं बाहर निकालने के लिए रेस्तरां में ग्रासर इंतजाम नहीं था। इसके लिए टोबैको एक्ट के तहत चालान काटने का कोई रुत नहीं बनाया गया है। सर्व किए जाने वाले प्रोडक्ट पर निकोटिन होने की वारिंजि दर्ज है। ऐसे में हुक्का बार संभालकों को स्मॉकिंग पर पकड़ी लगाने या स्मॉकिंग के लिए रेस्तरां के पीछे जगह बनाने की हिदायत दी गई है। 18 साल से कम उम्र के बच्चे हुक्का सेवन न करें, इसके लिए वहां वारिंजि बोर्ड लगाने को कहा था। टीम ने इस प्रोडक्ट का सेवल इस्तेमाल नहीं किया कि इसकी इंटेंसि के लिए मेरी नॉलेज में कोई लेब ही नहीं है। पुलिस इस पर कार्रवाई क्या नहीं करती। यह उसके बपरे में भी तो आता है।

हुक्का बार संभालकों को स्मॉकिंग पर

पकड़ी लगाने या स्मॉकिंग के लिए रेस्तरां के पीछे जगह बनाने की हिदायत दी गई है। 18 साल से कम उम्र के बच्चे हुक्का सेवन न करें, इसके लिए वहां वारिंजि बोर्ड लगाने को कहा था। टीम ने इस प्रोडक्ट का सेवल इस्तेमाल नहीं किया कि इसकी इंटेंसि के लिए मेरी नॉलेज में कोई लेब ही नहीं है। पुलिस इस पर कार्रवाई क्या नहीं करती। यह उसके बपरे में भी तो आता है।

डॉ. एच.एस. बैस, जैरबास, चंडीगढ़

कार्रवाई करें, वरना कोर्ट जाऊंगा

हुक्का बारस में निकोटिन का सेवन रोकने के लिए मैंने पुलिस, प्रशासन और डीएचएस को यांग पत्र दिया है। अभी तक इस पर किसी ने कार्रवाई नहीं की है। निकोटिन जहर है। सब कुछ पता होने के बाद जजुद अफसरों ने चुपकी साध रखी है, मुझे नहीं पता। कार्रवाई के लिए कुछ दिन और इंतजार करूंगा। इसके बाद हाईकोर्ट का दरवाजा खटखटाऊंगा।

-**हेमंत गोस्वामी**, चेयरमैन, बर्निंग ब्रेन सोसायटी, चंडीगढ़

पूरी तैयारी करना चाहता हूँ

मेरे पास हुक्का बार से संबंधित शिक्षागत मिली है। इस पर कार्रवाई के लिए मैं लीगल ऑपीनियन ले रहा हूँ। कोई भी कार्रवाई करने से पहले मैं पूरी तैयारी करना चाहता हूँ।

-**दिनेश शर्मा**, एसएसपी

(TRANSLATION OF RELEVANT EXTRACT)

Hookah Bar restaurant providing Nicotine to Customers

People made to consume drugs after issuing bills

True Translation of Relevant Extract

सैंपल लेने की कोशिश ही नहीं की

पुलिस और प्रशासन को नहीं पता हुक्का बार्स में इस्तेमाल पदार्थ क्या है

कुमार अभिमन्यु, चंडीगढ़

चंडीगढ़ पुलिस और प्रशासन को यह पता ही नहीं है कि हुक्का बार्स में इस्तेमाल होने वाला तरल पदार्थ आखिर है क्या? यह फूड प्रोडक्ट है या निकोटिन, या कुछ और?

कंप्यूजन से बाहर निकलने के लिए न तो प्रशासन कोशिश कर रहा है और न ही पुलिस। किसी ने अभी तक इस प्रोडक्ट का सैंपल लेने की कोशिश भी नहीं की। पुलिस इसके लिए प्रशासन का मुंह ताक रही है

और प्रशासन इस इंतजार में है कि पुलिस इस दिशा में कुछ करेगी।

क्या यह पलेवर्ड टोबैको है!

23 जुलाई को आरटीआई एक्ट के तहत दिए जवाब में चंडीगढ़ के डीएचएस एम.एस. बैस ने कहा कि हुक्का बार्स में इस्तेमाल किया जाने वाला पदार्थ पलेवर्ड टोबैको है और उसके डिब्बे पर वाक्यांश वार्निंग लिखी है।

हुक्का बार्स को न तो कोई लाइसेंस दिया गया है और न ही इसके लिए कानून में कोई प्रावधान है।

निकोटिन है: गोस्वामी

डीएचएस से आरटीआई एक्ट के तहत इस बारे में सूचनाएं मांगने वाले बर्निंग ब्रेन सोसायटी के चैयरमैन हेमंत गोस्वामी का कहना है कि हुक्का बार्स में इस्तेमाल होने वाला तरल पदार्थ टोबैको नहीं, निकोटिन है। इसके डिब्बे पर साफ शब्दों में निकोटिन की मात्रा का जिक्र है। निकोटिन युक्त कोई भी प्रोडक्ट बाजार में बेचना गैर कानूनी है।

डिब्बे पर अरबी भाषा में वार्निंग दर्ज है, जबकि भारत में बिकने वाले प्रोडक्ट्स पर नियमानुसार हिंदी, अंग्रेजी या देश के किसी अन्य भाषाओं में चेतावनी दर्ज होनी चाहिए। यदि सिर्फ वार्निंग की बात करें तो इसे द सिगरेट एक्ट 1975 के सेक्शन 2 (एम) का उल्लंघन माना जाएगा। हेमंत का कहना है कि यदि डीएचएस इस तरल पदार्थ को टोबैको मानते हैं तो गैर कानूनी तरीके से इसका सेवन करवाने को लेकर आरोपियों के खिलाफ कार्रवाई क्यों नहीं करते? और तो और डीएचएस इस प्रोडक्ट का सैंपल लेकर लैब में इसकी टेस्ट कराने की हिम्मत भी नहीं जुटा पा रहे हैं।

ऐसा भी होता है

कोकॉन और हेरोइन की तरह निकोटिन का एक बार सेवन करने वाला व्यक्ति धीरे-धीरे इसका आदि होता जाता है और बाद में या तो उसकी मौत हो जाती है या फिर वह घातक बीमारियों की चपेट में आकर दूसरों पर निर्भर हो जाता है।

नोटिस के अनुसार हुक्का बार के प्रोडक्ट में निकोटिन



चंडीगढ़ के एक रेस्तरां (हुक्का बार) के मेन गेट पर लिखा है कि हुक्का में जो कटेंट परोसा जाता है, उसमें 0.05 फीसदी निकोटिन की मात्रा है।

इससे अंदाजा लगाया जा सकता है कि एक किलो पैक में 5 ग्राम (5000 मिलीग्राम) निकोटिन की मात्रा होती है। फर्माकोपिया में दर्ज तथ्यों के अनुसार 40 मिलीग्राम निकोटिन के सेवन से किसी भी व्यक्ति की मौत हो सकती है। ऐसे में 5 ग्राम निकोटिन से करीब 125 लोगों को मौत की नींद सुलाया जा सकता है।

हुक्का बार संचालक इसे खतरनाक नहीं मानते क्योंकि उनके अनुसार इस पदार्थ में टार (जलने के बाद धुएँ के साथ निकलने वाला ऐसा पदार्थ जो फेफड़ों में जम जाता है और उसकी फंक्शनिंग प्रभावित करता है) 0 फीसदी है, जैसा कि बार के सामने लगे नोटिस में दर्ज है।



■ हुक्का बार : पुलिस और प्रशासन ताक रहे हैं एक-दूसरे का मुंह।

ANNEXTURE P-5

News Report from Dainik Bhaskar (Chandigarh Bhaskar), Page 2 dated July 31,
2007

(TRANSLATION OF RELEVANT EXTRACT)

Even sample not taken

**Police and Administration does not even know what is the material used in
Hooka Bars**

..... Just like cocaine and heroine, people who use nicotine get addicted to it and
then can get diseases and can eventually die.....

True Translation of Relevant Extract

Advocate

दश.दुनिया

छठी मंजिल से गिरा
उठ कर चल दिया

मर्टलबीव (अमेरिका), हॉटल की छठी मंजिल से गिरा
मंजिल से गिरने बेहिंग सूट को लपकने के लिए अग्र

अमेरिकी खुफिया एजेंसी एफबीआई ने जारी की ग्लोबल वार्निंग निकोटिन नया हथियार!

एके-47, एके-56 और आरडीएक्स जैसे घातक हथियारों के बाद तंबाकू, सिगरेट और बीड़ी में पाया जाने वाला निकोटिन आतंकियों का नया हथियार बन सकता है, जिसकी मदद से ये पूरी दुनिया में तंबाकू फैला सकते हैं। अमेरिकी खुफिया एजेंसी फेडरल ब्यूरो ऑफ इन्वेस्टिगेशन (एफबीआई) ने निकोटिन को घातक हथियार बताते हुए ग्लोबल वार्निंग जारी कर कहा है कि यह अलकायदा का आतंक फैलाने का नया हथियार हो सकता है...



Graphics: Ajay Sharma

अलकायदा की योजना का खुलासा

2004 में इंग्लैंड में कमेल बॉर्गस नामक अलकायदा का आतंकी पकड़ा गया था। इसने पूछताछ में बताया था कि कार के दरवाजे पर निकोटिन लगाकर लोगों को मारने की अलकायदा ने योजना बनाई थी। स्क्रीन के जरिए भी निकोटिन शरीर में प्रवेश कर मौत के घाट उतार सकता है, पोस्टमार्टम में खुलासा होने की संभावना भी न के बराबर होती है।

इस्तेमाल पर ऐसे लगी थी रोक : अमेरिकी सरकार के सरकारी संस्था नेशनल इंस्टीट्यूट ऑफ ड्रग अब्यूज (एनआईडीए) ने वर्ष 2002 में निकोटिन को खतरनाक ड्रग की सलाह दी थी। जबकि सुएस फूड एंड ड्रग एडमिनिस्ट्रेशन (फेडरल ड्रग एडमिनिस्ट्रेशन) ने भी निकोटिन की बाजार में विक्री को गैरकानूनी करार दिया था। यह कदम तब उठाया गया जब ड्रग की डि-एडिक्शन के नाम पर पानी में मिलाकर वहां निकोटिन का सर्रासम सेवन कराने का सिलसिला शुरू कर दिया गया।

कुमार अभिमन्यु, चंडीगढ़

अमेरिकी खुफिया एजेंसी एफबीआई ने सितंबर 2003 में जारी रिपोर्ट में दुनियाभर के देशों को चेतावनी दी थी कि आतंकी संगठन अलकायदा अपने इस हथियार का इस्तेमाल आतंक फैलाने में कर सकता है। अलकायदा का पाकिस्तान और कश्मीर के कुछ आतंकी संगठनों के साथ बेहतर तालमेल है और पाकिस्तानी और कश्मीरी आतंकियों के संबंध पंजाब और दिल्ली में सक्रिय आतंकी संगठनों के साथ है। इस नजरिए से भारतीय खुफिया और सुरक्षा एजेंसियों के विशेष अलर्ट रहने की जरूरत है।

मास कीलिंग के लिए इस्तेमाल होने की आशंका: सितंबर 2003 में सार्वजनिक हुई रिपोर्ट में निकोटिन को खतरनाक जहर की सलाह देते हुए फेडरल ब्यूरो ऑफ इन्वेस्टिगेशन ने इससे टेरेरिस्ट आतंक को आशंका जाहिर की थी। पूरे विश्व को आतंकवादी संगठनों पर नजर रखने को आगाह करते हुए एफबीआई ने कहा था, आतंकी संगठन निकोटिन को नरसंहार के लिए इस्तेमाल कर सकते हैं। निकोटिन इतना खतरनाक जहर होता है कि इसकी दो बूंदें (40-60 मिलीग्राम) किसी को

मारने को काफी है। जैसे यह कलारलेस टेस्टलेस होता है, पर हवा के संपर्क में आने पर इसका रंग पीला या ब्राउन हो जाता है। इसे गर्म करने पर मछली की तरह स्मेल आती है।

टेरेरिस्ट मैनुअल में निकोटिन: 2003 में अफगानिस्तान में एफबीआई को कुछ ऐसे टेरेरिस्ट मैनुअल हाथ लगे, जिसमें निकोटिन को आतंकियों का बड़ा हथियार बताया गया है। इस जानकारी के आधार पर एफबीआई ने आतंकियों की गतिविधियों पर नजर रखनी शुरू कर दी। हालांकि किसी आतंकी संगठन द्वारा निकोटिन का मास कीलिंग के लिए इस्तेमाल करने की कोई स्पेसिफिक सूचना नहीं मिली, पर एफबीआई ने प्रिक्वेंशन के तौर पर ग्लोबल वार्निंग जारी कर दी।

एशियन एजेंसियों को गंभीर होने की जरूरत: देश की एक बड़ी खुफिया एजेंसी के अफसर ने बताया कि एशियन एजेंसीज को भी इस जाबत वार्निंग जारी कर निकोटिन के खतरे से आगाह करना चाहिए। क्योंकि बिदेशों से एशिया में बेधड़क निकोटिन और इससे बने पदार्थों का आयात हो रहा है। भारत में तो निकोटिन और आसानी से उपलब्ध है।

कैसे बनाया जाता है निकोटिन

1 बराबर-बराबर मात्रा में तंबाकू और प्योर अल्कोहल मिलाकर इसे जार में गर्म किया जाता है। इसका रंग कोकाकोला की तरह होने पर जार से तंबाकू को निकाल दिया जाता है। फिर दूसरे जार में इस मिक्सचर को उबाला जाता है। सिरप की तरह इस मिक्सचर के बनने के बाद इसे गर्म करने का सिलसिला रोका जाता है। इस सिरपनुमा तरल पदार्थ को ही निकोटिन कहा जाता है।

2 तंबाकू के डि-एडिक्शन के लिए बाजार में बिकने वाली चेंबिंग गम (इसमें 0.2 मिलीग्राम निकोटिन होता है) से भी शुद्ध निकोटिन निकाला जा सकता है। चेंबिंग गम के पूरे पैकेट उसके बराबर पानी में डूबा कर इसे रात भर रखा जाता है। दूसरे दिन चेंबिंग गम को पानी से निकाल कर सिर्फ पानी को कुछ घंटे तेज धूप में रखा जाता है।

गांधी की

नई दिल्ली, क्रिस्टी टा



पर मौजूद गांधीजी की चीजों की मांग विदेश के चित्र व बिक रहा पर गांधीजी पोस्टकार्ड की छाप लेंटर वॉच गांधीजी

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News Report from Dainik Bhaskar, Page 9 dated August 7, 2007

(TRANSLATION OF RELEVANT EXTRACT)

American Secret Services issue Global warning

Nicotine is the new weapon

(From Para one)..... America Secret Services FBI issued a report globally in September 2003 stating that terrorist organisation 'Al Quaida' can use Nicotine for terrorist purposes.....

(From Para three)..... **Nicotine in Training Manual:** FBI found some training manuals in Afghanistan in 2003 which revealed that the terrorists can use Nicotine as the next possible weapon.....

True Translation of Relevant Extract

Advocate

News Report from The Hindustan Times (HT Chandigarh Life) dated August 20,

2007

Hookah bars hook youth to nicotine

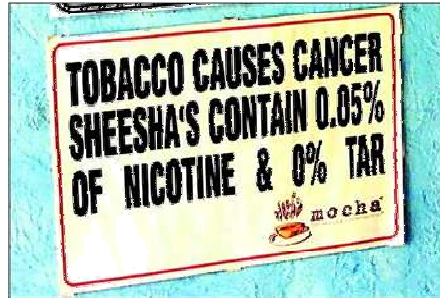
Use of nicotine is not permitted except for de-addiction purposes

Manu Moudgil
Chandigarh, August 19

THE UT ADMINISTRATION claims it has been going tough against drug addiction by nabbing peddlers, keeping a check at entry points and spending enough on the correctional behaviour of the addicts. But it has turned a blind eye to the growing number of hookah/water-pipe smoking bars in various leading restaurants of the city, which are addicting youngsters to nicotine.

Enteries in the city charge Rs 125 to Rs 200 for one puff of the nicotine stuff. However, the Health Department says the rules are not clear about the use of nicotine.

"Nicotine is an addictive and poisonous drug having an effect similar to cocaine and heroine. The drug, once extracted, has to be manufactured, imported and sold only under a drug licence. The only exemption is as mentioned in Schedule K of the Drugs and Cosmetic Rules, 1955, which provides that nicotine can be only used up to 2 mg in chewing gum, which is meant for de-



A poster outside a cafeteria extolling the "safety" of a hookah puff, which costs anywhere between Rs 125 to Rs 200.

addiction of tobacco addicts, provided the import and manufacturing is licensed. Any other use of the extracted nicotine would be illegal," said de-addiction expert Dr Rajesh Kashyap.

The enteries are openly selling nicotine-laced material by labelling them as herbal or flavoured, meant for direct consumption and inhalation. Health experts say the nicotine puffs delivered through 'hookah' are not only harmful, but also highly addictive.

The boards outside these outlets claim that such material contains 0.05 per cent (which is around 5-10 mg) of nicotine and 0 per cent tar.

Dr J.S. Thakur of the PGI's Community Medicine Department said nicotine was known to cause addiction. "Since Chandigarh has been declared a smoke-free city, the authorities should check such subiguily by cancelling licences of such establishments," he said.

Burning Brain Society

'Rules not clear'

DIRECTOR (HEALTH) Dr M.S. Bains said the rules were not clear on the use of nicotine. "Since the material is not taken orally, the stuff used in hookahs is not a food and we can't take action under the Prevention of Food Adulteration Act. Moreover, there is no exhalation of smoke, which binds us from evoking the Cigarette and Other Tobacco Products Act," he said.

chairperson Hemant Goswami, had filed a plea under the RTI Act seeking action against these eateries. In its reply, the administration said it had no information about nicotine in the Drugs and Cosmetic Act or any such legislation which classifies it as a drug. "This is despite the fact that the second schedule of the Drugs and Cosmetic Act clearly states that standards to be complied for any drug should be referred from any foreign pharmacopoeia if the same is not available in Indian pharmacopoeia," Goswami said.

msm@hmanu@gmail.com

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2007

(RELEVANT EXTRACT)

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True Relevant Extract Copy

Advocate

निकोटिन : बगैर टेस्ट के ही लौटा दिया सैपल

कुमार अभिमन्यु, चंडीगढ़
सेक्टर-26 स्थित मोका रेस्टोरेंट (हुक्का बार) से इस एंड कॉस्मेटिक एक्ट-1940 के तहत लिए गए लिक्विड के सैपल की पंजाब ड्रग एनालिस्ट ने टेस्टिंग से इंकार करते हुए डायरेक्टर हेल्थ सर्विसेज (यूटी, चंडीगढ़) एमएस बैंस को सैपल लौटा दिया है।



■ 0.05 फीसदी निकोटिन है मौजूद।
जवाब को इल्लॉजिकल मानते हुए बैंस ने उनसे जवाब मांगा है कि सैपल की टेस्टिंग से इंकार करने की असल वजह क्या है? ...**थोप पेज 2 पर**

कोर्ट में जा सकता है मामला

बर्निंग ब्रेन सोसायटी के चेयरमैन हेमंत गोस्वामी ने 21 जुलाई को होम सेक्टर की को पत्र लिख हुक्का बार्स में निकोटिन का सेवन कराने का खुलासा किया था और इसे बंद कराने की मांग की थी।
इस मामले में एनालिस्ट और डीएचएस दोनों के एक्शन को गोस्वामी ने संदेह के घेरे में लिया है। एडवोकेट एपीएस शेरमिल ने भी इनके एक्शन को सवालों में खड़ा किया है। इन्होंने मामले को कोर्ट में ले जाने की बात कही है।

66 एनालिस्ट का सैपल लौटाना आश्चर्य की बात है। ड्रग इंस्पेक्टर ने कानून के दायरे में सैपल लिया था। एनालिस्ट को सैपल टेस्ट किए बगैर लौटाने का अधिकार नहीं है। उसने ऐसा क्यों किया, यह जानने के लिए मैंने पत्र लिखा है।
जवाब आने के बाद सीनियर अफसरों के मस्तिष्क से आगे की कार्रवाई करेंगे।
—**डॉ. एमएस बैंस**,
डीएचएस, चंडीगढ़

पेज 1 के शेष

कनेक्टिविटी: वन-वे हाईवे...

इसके अलावा विभाग इस मार्ग पर अपने एरिया में साइन बोर्ड भी लगाएगा ताकि लोगों को पता चल सके कि आगे रास्ता तंग है या खुला या फिर तीखा मोड़ वाला है।
लोग कर रहे हैं परेशान: जीरूपुर में बढ़ते ट्रैफिक के संबंध में नेशनल हाईवे अथॉरिटी ऑफ इंडिया (नहाई) के अफसर ने हाईकोर्ट को बताया कि जीरूपुर में रास्ते को चौड़ा करते समय लोग परेशान कर रहे हैं। इसके अलावा वारिश की वजह से पानी इकट्ठा हो जाता है इस वजह से भी यह ट्रैफिक जाम की समस्या बनी रहती है।
हरिश् पुरी ने की थी याचिका दायर: काबिलेजिक है कि पंजाब, हरियाणा और चंडीगढ़ में राष्ट्रीय राजमार्गों पर बढ़ते ट्रैफिक के कारण होने वाली दुर्घटनाओं पर काबू पाने और ट्रैफिक व्यवस्था को दुरुस्त करने को लेकर कुछ समय पूर्व हरिश् पुरी ने एक जनहित याचिका दायर की थी। इस याचिका पर सुनवाई के बाद हाईकोर्ट ने दोनों राज्यों की सरकारों और हाईवे अथॉरिटीज को जवाब तलब किया हुआ था।

चैंपियंस ट्रॉफी...

इस बारे में जब चंडीगढ़ स्पोर्ट्स डिपार्टमेंट के जॉइंट डायरेक्टर जेपीएस सिद्धू से बात हुई तो उनका कहना था कि वीरवार को चैंपियंस ट्राफी चंडीगढ़ में होने की बात आईएचएफ के अधिकारियों से हुई है, हालांकि अभी तक इसकी ऑफिशियल सूचना नहीं आई है। उन्होंने बताया कि चंडीगढ़ स्पोर्ट्स डिपार्टमेंट इस तरह के टूर्नामेंट आयोजित करने के लिए सदैव तैयार रहता है। विभाग को तो बस इंफ्रस्ट्रक्चर मुहैया कराना है, बाकी सारी तैयारियां आईएचएफ को करनी हैं।
निकोटिन: बगैर...
एनालिस्ट के एक्शन पर सवाल: गवर्नमेंट एनालिस्ट, पंजाब ने सैपल लौटाने वाले पत्र में लिखा है कि 31 अगस्त को बैंस से इस बारे में हुई बातचीत के आधार पर वे ऐसा कदम उठा रहे हैं। हालांकि पत्र में विस्तार से यह जिक्र नहीं है कि बैंस से क्या-क्या बातें हुई थीं और उन्होंने क्या जवाब दिया था। इससे पहले 30 अगस्त को गवर्नमेंट एनालिस्ट, पंजाब ने पत्र लिख बैंस को बताया था कि सैपल को टेस्टिंग होने पर कोर्ट-कचहरी का चक्कर लग सकता है। इतना ही नहीं इस सैपल टेस्टिंग को

किसी ने कोर्ट में चुनौती दे दी तो सारा मामला एक ही झटके में खारिज हो सकता है। एनालिस्ट के इस एक्शन ने यह सवाल खड़ा किया है कि निकोटिन को टेस्टिंग हो भी सकती है या नहीं? पंजाब ड्रग एनालिस्ट के पास इसकी टेस्टिंग की व्यवस्था है भी या नहीं? बहरहाल हेल्थ डिपार्टमेंट इन सवालों के जवाब तलाशने में जुटा है।
ड्रग इंस्पेक्टर ने लिया था सैपल : 13 अगस्त को ड्रग इंस्पेक्टर ने उक्त हुक्का बार से निकोटिन युक्त लिक्विड का सैपल लिया था। लिक्विड के डिब्बे पर स्पष्ट शब्दों में निकोटिन की मात्रा (0.05 फीसदी) दर्ज है। बाद में टेस्टिंग के लिए इसे एनालिस्ट के पास भेजा गया।
ऑपरेशन सेल ने भी लिया था सैपल: ड्रग इंस्पेक्टर से पहले चंडीगढ़ पुलिस के ऑपरेशन सेल ने मोका हुक्का बार से निकोटिन युक्त लिक्विड का सैपल लिया था। जांच के लिए सैपल को सीएफएसएल, चंडीगढ़ भेजा गया है। सेल के इंचार्ज इंस्पेक्टर विजय कुमार ने बताया कि सीएफएसएल ने अगले हफ्ते रिपोर्ट देने को कहा है। इस रिपोर्ट के आधार पर पुलिस उक्त हुक्का बार के खिलाफ कार्रवाई करेगी।

ANNEXURE P-8

News Report from Dainik Bhaskar (Chandigarh Bhaskar), Page 1 dated
September 7, 2007

(TRANSLATION OF RELEVANT EXTRACT)

Nicotine: Sample Returned Without Testing

**Liquid sample taken from the restaurant MOOKA in Sector 26 has been
returned to DHS Dr. M. S. Bains without testing by the Government Analyst**

.....

True Translation of Relevant Extract

Advocate

News Report from The Hindustan Times (HT Chandigarh Life), Page 2 dated

September 10, 2007

Hookah bars: Drug analyst returns sample without testing

**HT Live Correspondent
Chandigarh, September 9**

THE UT Health Department has been caught in a fix after the Punjab drug analyst refused to test the sample taken from a hookah bar in the city stating that the sample could not be tested under the Drugs and Cosmetic Act.

The drug inspector had taken sample of the material after claims that it contained nicotine, which were addictive. There is no independent laboratory of the UT Health Department

where the test could be conducted.

Last month, UT Police had seized a sample of the material under Section 102 of the CrPC and sent it for testing to the Central Forensic Science Laboratory the report of which was awaited.

Director (Health Services) Dr M.S. Bains said there was confusion about the rules and they would soon find a way out. "We had given licence for food to the joints, we had also taken advice of legal advisor who told us that since the mate-

rial used in hookah is not being consumed, the Prevention of Food Adulteration Act did not imply," he said.

"Since there is smoke, we have asked the joints to segregate the smoking areas under the Cigarette and Other Tobacco Products Act. We are also challenging them for not complying with the rules," he said.

The Director (Health) said there was no proper information as to where the samples could be sent. "We hope to find a way out soon," Dr Bains added.

ANNEXURE P-9

News Report from The Hindustan Times (HT Chandigarh Life), Page 2 dated September 10, 2007

(RELEVANT EXTRACT)

Hookah bars: Drug analyst returns sample without testing

HT Live Correspondent Chandigarh, September 9

THE UT Health Department has been caught in a fix after the Punjab drug analyst refused to test the sample taken from a hookah bar in the city stating that the sample could not be tested under the Drugs and Cosmetic Act.

The drug inspector had taken sample of the material after claims that It contained nicotine, which were addictive. There is no independent laboratory of the UT Health Department where the test could be conducted.

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"Since there is smoke, we have asked the joints to segregate the smoking areas under the Cigarette and Other Tobacco Products Act. We are also challaning them for not complying with the rules," he said.

The Director (Health) said there was no proper information as to where the samples could be sent. "We hope to find a way out soon," Dr Bains added.

True Relevant Extract Copy

Advocate

BBS/complaint/chandigarhpolice/028

July 21, 2007

Senior Superintendent of Police,
Chandigarh Police,
Police Headquarter, Sector 9,
Chandigarh

REPORT/COMPLAINT REGARDING ACTIONS AFFECTING AND
ENDANGERING HUMAN LIVES AND CAUSING INJURY

Sir,

The undersigned would like to report cases of malignantly engaging in acts by certain persons, which have the potential to endanger human life and spread diseases dangerous to life. The reported case also relates to incidence where adulterated, poisonous and noxious articles and drugs not suitable for consumption as articles fit for human consumption, are offered for sale and intake and thereby greatly endangering human life and posing potential to cause injury, hurt, disease, disability and death. I have to further submit as mentioned hereunder;

1. That various establishments calling themselves (or commonly known and referred as) "Hooka Bars" and constituted in the form and style of restaurants, bars have come up in the City of Chandigarh.
2. Three such identified establishments are known by the names, such as, Wild n West in Sector 35; Mocha in Sector 26, Mr. Beans in Sector 8, Chandigarh. There are some others too which needs to be identified.

3. That all these establishments offer for sale a noxious, addictive, adulterated and poisonous concoction, (which is otherwise unfit for human consumption, and not even classified as a food product) for inhalation and as an orally consumed article of human consumption to people visiting these places.
4. That the substance offered for consumption by inhalation (by burning the material) through a traditional Hooka (Water-Pipe) type delivery device/object is highly toxic, poisonous and produces gaseous matters for inhalation which if consumed long enough can cause disease, disability and death.
5. Some of the known poisonous compounds produced in the final end product, offered for human consumption contains high level of Carbon Monoxide, Nitrogen Dioxide, Sulphur Dioxide, arsenic, benzene, chromium, nickel, vinyl chloride, cadmium, formaldehyde, Nicotine, 2-nitropropane, Hydrogen cyanide, Ammonia, Dimethylamine, 2.5-dimethylamine, Ethylamine, Methylamine, Methylpyrazines, methylpyridines, Pyridine, Pyrrolidine, Trimethylamine, Hydrazine, Acetal-dehyde acetone and a few thousand more similar chemicals. It also contains unknown chemical flavouring chemicals and compounds.
6. That none of the products offered for human consumption and inhalation through Hooka/Water-Pipe has been approved by any lawful agency/authority as fit for human consumption.
7. The Hooka (Waterpipe) is also a known risk factor which spreads life threatening infectious diseases. Since hookah smoking and the mouthpieces are shared, and the same Hooka is used by multiple person the risk increases many times. The heat and moisture also create an opportunity for bacteria and viruses to be easily spread and cause life threatening disease and conditions.
8. The material used in HOOKA also contains the drug called "Nicotine" as a separate additive. Nicotine is a poisonous alkaloid, also known by chemical name of $C_{10}H_{14}NO_2$. In its extracted form, it is a clear oily liquid with a characteristic pungent odour; extracted from the dried leaves of *Nicotiana tabacum* and *Nicotiana rustica*. One single drop of Nicotine in the blood stream is

sufficient to kill a person. Nicotine has been shown to have effects on brain dopamine systems similar to those of drugs such as heroin and cocaine.

9. Nicotine as an additive is not a food product meant for routine human consumption and is not to be sold without prescription. Nicotine is known to be addictive. Most people are forced to intake Nicotine laced products regularly because they get addicted to nicotine. Addiction is characterized by compulsive drug-seeking and use, even in the face of negative health consequences. Addiction to a substance is also characterised by behavioural and other responses that always include a compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effects, and sometimes to avoid the discomfort of its absences.

10. Use of Nicotine is also likely to cause numerous side effects which has been scientifically established and mentioned in Pharmacopoeia and other medical documents. Further, even in cases where it is medically prescribed, Nicotine can be consumed only in prescribed doses and not higher than it. If consumed in higher doses, it can also result in disability or death of a person.

11. Nicotine is also known to be contra-indicatory and affect people greatly with medical consequences due to drug interference, who are on other form of medications. Some of the known drug interaction is known to take place if a person is also using any of the following drugs: imipramine (Tofranil); oxazepam (Serax); propranolol (Inderal), labetalol (Normodyne, Trandate), or prazosin (Minipress); theophylline (Theo-Dur, Theochron, Theolair); pentazocine (Talwin), insulin. (Drug interaction has also been reported at online database on Drugs at <http://www.drugs.com/mtm/nicotine-oral-patches-nasal.html>).

12. It is also known that Nicotine, when consumed as medicine or as an additive and if used along with any tobacco product can also cause life threatening situation.

13. National Institute of Drug Abuse (NIDA), a Government of USA body, describes Nicotine as “One of the most heavily used addictive drug.” In 2002, US Food and Drug Administrator (Federal Drug Administration – FDA) had also

declared Nicotine laced water as illegal and held that such product cannot be marketed without new drug approval by the FDA agency and that people must be protected from unapproved drug products.

14. Hooka's/Water-pipe offered in the eating and drinking joints and establishments (referred to as "Hooka Bars," and as mentioned above) are used as Nicotine delivery devices.

15. All the establishments promoting Hooka's also falsely cheat the people by projecting, claiming and marking the material as containing zero percent (0%) tar. This is a deliberate deceptive statement because tar is a component of the smoke (which people are made to inhale) and not the actual, physical product/concoction material/article. Such deliberate misstatements are cheating as it reduces the risk perception and cause people to consume a dangerous and harmful product by actually concealing the harmful effects.

16. That the Hooka also many times contains high concentration of tobacco, drugs, noxious substance and other intoxicants about which the consumers are not informed. The ingredient of the actual physical substance used in Hooka and which is also orally consumed by some, is not revealed to the people as required by law. The substance used in HOOKA is also used as a food-product by some. The actual composition of the poisonous and other chemicals, additives, flavouring additives, tars, metals and other gaseous substance contained in the smoke supplied to people for inhalation is also concealed. This concealment by the person running, franchising, supplying, selling and distributing such products causes, injury, life threatening situation dangerous to human life.

The undersigned requests you to seize all the material used in any and all identified establishments providing substance for consumption and inhalation through HOOKA Water-pipes or otherwise; and ensure that such outlets are closed immediately. Since the above reported incidents also constitutes cognizable offences under the Indian Penal Code, The Drug and Cosmetic Act, The Narcotic Drugs and Psychotropic Substances Act, Dangerous Drug Act 1930,

Cigarette and Other Tobacco Products Act, Prevention of Food Adulteration Act and many other legislation; therefore you are requested to take immediate cognizance and initiate legal proceedings against all such persons found to be violating the laws.

Hemant Goswami

Chairperson, Burning Brain Society

#3, Glass Office, Business Arcade,

Sector 17-E, Chandigarh – 160017

Telephone: 0172-5165555

E-Mail: preventcorruption@hemant.org; hemantgoswami@gmail.com

True Copy

Advocate

ANNEXURE P-11

No. GAPb/2007/1438.

Date-30.8.2007

From

Govt Analyst,
Punjab, Chandigarh.

To

Director Health Services,
Chandigarh UT.

Subject: - Testing of product AL FAKHER semi solid (Tobacco) containing 0.05% Nicotine Sample No. CH (B)/86/07 Dt.13.08 .07 vide Memo No. DI (B) 543/07

Respected Sir,

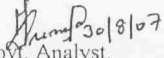
Your kind attention is invited to the fact that a number of samples of patent & proprietary items under the names Chewing Tobacco, Gutkha, Khemi, Uda Panchi, Morchap etc. and other tobacco containing product sold in the market are being received by the Public Analyst Punjab/UT Chandigarh for the last two decades or so, which involve the testing of Nicotine and which has been tested and reported in a number of samples as per their office record.

The very fact that the above said product does not come within the Drugs as per the Drugs & Cosmetic Act, 1940 and rules there under, was brought to the notice of all present in the meeting held on 30.7.07 under your chairman ship.

Under such circumstances, there is every likely hood of legal complications in the court of Law later on if the sample is tested by me as Govt Analyst UT, leading to quashing of case in the court of Law.

It is therefore my humble submission, that above said sample be transferred to the Public Analyst, Punjab/ UT for testing.

Copy to: -
Drug Inspector CHD (UT)
For necessary information & action.


Govt. Analyst,
Pb. Chandigarh.
Narinder Singh,
Govt. Analyst,
Punjab & Chandigarh

Annexure P-11

Date: 30.08.2007

RELEVANT EXTRACT

The very fact that the above said product does not come under the Drugs as per the Drugs & Cosmetic Act, 1940 and rules there under, was brought to the notice of all present in the meeting held on 30.7.07 under your chairmanship.

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It is therefore my humble submission, that above said sample be transferred to the Public Analyst, Punjab/ UT for testing.

True Relevant Extract Copy

Advocate

ANNEXURE P-12

No. GAPb 2007 1446

Date-3.9.2007

From

Govt. Analyst, Punjab,
Chandigarh (U.T.)

To

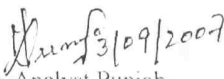
Drugs Inspector,
Chandigarh (U.T.)

Subject:- Testing of product AL FAKHER semi solid (Tobacco) containing
0.05% Nicotine, Sample No. CH (B) 86/07 Dt. 13.08.07 Vide
Memo No. DI (B) 543/07

This is in continuation of this office's letter No. GAPb 2007 1438
dt. 30.08.2007

As discussed with Director Health Services Chandigarh (UT) in
your presence on 31.08.2007 regarding the testing of above said product which
does not come within the Drugs as per the Drugs & Cosmetic Act 1940 and
rules there under, the above said sample is hereby being returned in original
with all the seal specimen impression intact along with the Form No18

Kindly acknowledge the receipt of the above said sample along with
the Form no. 18


Govt. Analyst, Punjab,
Chandigarh

Copy to:-
Director Health Services
Chandigarh (UT)
For information & necessary
Action.

ANNEXURE P-12

No. GAPb/2007/1446

Date-3.9.2007

From: Govt. Analyst, Punjab, Chandigarh (UT.)

To: Drugs Inspector, Chandigarh (U.T.)

Subject:- Testing of product AL FAKHER semi solid (Tobacco) containing 0.05% Nicotine. Sample No. CH (B)/86/07 Dt. 13.08.07 Vide Memo No. D1 (B) 543/07

This is in continuation of this office's letter No, GAPb/2007/1438 dated 30.08.2007.

As discussed with Director Health Services Chandigarh (UT) in your presence on 31 .08.2007 regarding the testing of above said product which does not come within the Drugs as per the Drugs & Cosmetic Act 1940 and rules there under, the above said sample is hereby being returned in original with all the seal specimen impression intact along with Form No 18.

Kindly acknowledge the receipt of the above said sample along with the Form no. 18.

(Signed) Govt. Analyst, Punjab, Chandigarh

Copy To:-

Director Health Services

Chandigarh (UT)

For information & necessary Action.

True Copy

Advocate

ANNEXURE P-13

From

The Director Health & Family Welfare,
Chandigarh Administration,
Chandigarh.

To



Sh. Hament Goswami,
Chairperson, Burning Brain Society,
3, Glass Office, Business Arcade,
Sector 17-E, Chandigarh.

Memo No. *DIS-2007/743*
Dated, Chandigarh the *06/9/07*

Subject: Urgent action against Hooka Bars.

Reference your letter No.BBS/complaint/HS/031, dated 21st July, 2007 address to Home Secretary, Chandigarh Secretariat, Sector 9, Chandigarh on the subject noted above.

In this regard it is intimated that Drugs Inspector of this department on 13.8.2007 has drawn a sample of AL FAKHER semi solid (Tobacco) from the premises of Vijayant Choudhary, Proprietor Mocha Safforon Tree Beverage, SCO No.12, Sector 26-C, Chandigarh and the same was sent to the Govt. Analyst, Punjab, U.T. Chandigarh who has intimated that the said sample does not comes under the Drugs & Cosmetic Act, 1940 and can not be tested by the drugs laboratory. However, this office has inquired from them under which rule of this Act it cannot be tested.


Director Health & Family Welfare,
Chandigarh Administration,
Chandigarh 

ANNEXURE P-13

From

The Director Health & Family Welfare, Chandigarh Administration, Chandigarh.

To

Hament Goswami, Chairperson, Burning Brain Society, # 3, Glass Office,
Business Arcade, Sector 17-E, Chandigarh.

Memo No. DIS-2007/743

Dated, Chandigarh the 06/9/7

Subject: Urgent action against Hooka Bars.

Reference your letter No.BBS/complaint/HS/031, dated 21st July, 2007 address to Home Secretary, Chandigarh Secretariat, Sector 9, Chandigarh on the subject noted above.

In this regard it is intimated that Drugs Inspector of this department on 13.8.2007 has drawn a sample of AL FAKHER semi solid (Tobacco) from the premises of Vijayant Choudhary, Proprietor Mocha Safforon Tree Beverage, SCO No.12; Sector 26-C, Chandigarh and the same was sent to the Govt Analyst, Punjab, U.T. Chandigarh who has intimated that the said sample does not comes under the Drugs & Cosmetic Act, 1940 and can not be tested by the drugs laboratory. However, this office has inquired from them under which rule of this Act it cannot be tested.

(Signed)

Director Health & Family Welfare,
Chandigarh Administration, Chandigarh

True Copy

Advocate



وأعراض الرئة
وأعراض القلب
والشرايين
قطران 0% نيكوتين 0.05%
Nicotine 0.05% Tar 0%
Health warning :
Smoking is the main cause
of lung cancer, lung
diseases and of heart and

RELEVANT EXTRACT

Nicotine 0.05% Tar 0%

(Relevant Extract)

THE DRUGS AND COSMETICS ACT, 1940
(Act No. 23 of 1940)

[10th April, 1940]

**An Act to regulate the import, manufacture, distribution and
Sale of drugs 2[and cosmetics]**

1. The Act came into force in Pondicherry on 1st October 1963, vide Regulation 7 of 1963, Sec. 3 and Sch. 1. For Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 34
2. Ins. by Act 21 of 1962, Sec. 2 (w.e.f. 27th July, 1964).

CHAPTER I
Introductory

1. Short title, extent and commencement. –

- (1) This Act may be called the Drugs 1[and Cosmetics] Act, 1940.
- (2) It extends to the whole of India 2[** *].
- (3) It shall come into force at once; but Chapter III shall take effect only from such date 3 as the Central Government may, by notification in the Official Gazette, appoint in 4 this behalf and Chapter IV shall take effect in a particular State only from such date as the State Government may, by like notification, appoint in this behalf:

4[Provided that in relation to the State of Jammu and Kashmir, Chapter III shall take effect only from such date 5 after the commencement of the Drugs and Cosmetics (Amendment) Act, 1972 as the Central Government may, by notification in the Official Gazette, appoint in this behalf].

1. Subs. by the A.O. 1950, for certain words.
2. The words “except the State of Jammu and Kashmir” omitted by the Drugs and Cosmetics (Amendment) Act, 1972 (19 of 1972), Sec. 2.
3. The Act came into force on 1st April 1947; see Notification F 28 (10) (3) 45-H (1), dated the 2nd September 1946, Gazette of India, 1946, Pt. 1, p. 1349. Chapter IV came into force in the States of Delhi, Ajmer and Coorg on the 1st April 1947, see ibid. Chapters III and IV came into force in the States of Himachal Pradesh, Bilaspur, Kutch. Bhopal, Tripura, Vindhya Pradesh, and Manipur on the 1st April 1953, vide Notification No. S.R.O. 663, dated the 30th March 1953, vide Gazette of India, Pt. II, Sec. 3, p. 451. Chapter IV enforced in Dadra and Nagar Haveli, w.e.f. 1st August, 1968 (vide Notifn. No. A.D.M./Law 117 (74), dated 20th July 1968 and the Act extended there by Reg. 6 of 1963, Sec. 2 and Sch. I. The Act enforced in Goa, Daman and Diu by Reg. 11 of 1963, Sec. 3 and Schedule and in Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, Sec. 3 and Schedule and also applied in partially excluded areas of Orissa vide Orissa Govt. Notn. No. 3358-L.S.G., dated 25th August 1941.
4. Added by the Drugs and Cosmetics (Amendment) Act, 1972 (19 of 1972), Sec. 2.

5. **24th August 1974, vide Notn. No. S.O. 2185 dated 9th August 1974.**

2. **Application of other laws not barred.** -The provisions of this Act shall be in addition to and not in derogation of the Dangerous Drugs Act, 1930 (2 of 1930), 1 and any other law for the time being in force.

1. **The said Act repealed by Narcotic Drugs and Psychotropic Substances Act, 1985, vide Sec. 82.**

3. **Definition.** -In this Act, unless there is anything repugnant in the subject or context-

1[(a) 2[Ayurvedic, Siddha or Unani] drug “includes all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of 3[disease or disorder in human beings or animals and manufactured] exclusively in accordance with the formulae described in the authoritative books of 4[Ayurvedic, Siddha and Unani] Tibb Systems of medicine] specified in the First Schedule;]]

5[(aa) “The Board” means-

- (i) In relation to 6[Ayurvedic, Siddha or Unani] drug, the 7[Ayurvedic, Siddha and Unani Drugs Technical Advisory Board] constituted under Sec. 33-C; and
- (ii) In relation to any other drugs or cosmetic, the Drugs Technical Advisory Board constituted under Sec; 5]

8[9[(aaa) “Cosmetic” means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic, 10[* *];

11(b) “drug” includes-

- 12[(i) All medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals; including preparations applied on human body for the purpose of repelling insects like mosquitoes;]
- (ii) Such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of 13[vermin] or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;]
- 14[(iii) All substances intended for use as components of a drug including empty gelatin capsules; and
- (iv) Such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings. or animals, as may be specified from time to time by the Central Government by

notification in the Official Gazette, after consultation with the Board];

15(C) “Government Analyst” means-

- (i) In relation to **16**[Ayurvedic, Siddha, or Unani] drug, a Government Analyst appointed by the Central Government or a State Government under Sec. 33-F; and
- (ii) In relation to any other drug or cosmetic, a Government Analyst Appointed by the Central Government or a State Government under Sec.20;]

17[* * * * *]

18[(e) “Inspector” means-

- (i) In relation to **12**[Ayurvedic, Siddha, or Unani] drug, an Inspector appointed by the Central Government or a State Government under Sec. 33-G; and
- (ii) In relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government under Sec. 21;]

19[(f)] “Manufacture” in relation to any drug **20**[or cosmetic] includes any process or part of a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug **20**[or cosmetic] with a view to its **21**[sale or distribution) but does not include the compounding or dispensing **22**[of any drug, or the packing of any drug or cosmetic,] in the ordinary course of retail business; and “to manufacture” shall be construed accordingly;]

23[(g) “To import” with its grammatical variations and cognate expressions means “to bring into **24** [India]”;

25(h) “Patent or proprietary medicine”, means,-

- (i) In relation to Ayurvedic, Siddha or Unani Tibb systems of medicine all formulations containing only such ingredients mentioned in the formulae described in the authoritative books of Ayurvedic, Siddha or Unani Tibb Systems of medicine specified in the First Schedule, but does not include a medicine which is administered by parenteral route and also a formulation included in the authoritative books as specified in Cl. (a);
- (ii) In relation to any other systems of medicines, a drug which is a remedy or prescription presented in a form ready for internal or external administration of human beings or animals and which is not included in the edition of the Indian Pharmacopoeia for the time being or any other Pharmacopoeia authorised in this behalf by the Central Government after consultation with the Drugs Technical Advisory Board constituted under Sec. 5;]

26[(i) “Prescribed” means prescribed by rules made under this Act.)

27[* * * * *]

1. Ins. by Act 13 of 1964, Sec. 2 (w.e.f. 15th September, 1964).
2. Subs. by Act 68 of 1982, Sec. 2 (w.e.f. 1st February, 1983).
3. Subs. by *ibid.* Sec. 3 (w.e.f. 1st February, 1983).
4. Subs. by *ibid.*
5. Original Cl. (a) was re-lettered as Cl. (aa) and subs. by Act 13 of 1964, Sec. 2 (w.e.f. 15th September, 1964).
6. Subs. by Act 68 of 1982, Sec. 2 (w.e.f. 1st February, 1983).
7. Subs. by Sec. 3, *ibid.*
8. Ins. as Cl. (aa) by Act 21 of 1962, Sec. 4 (w.e.f. 27th July, 1964).
9. Re-lettered by Act 13 of 1964, Sec. 2 (w.e.f. 15th September, 1964).
10. Omitted by Act 68 of 1982, Sec. 3 (w.e.f. 1st February, 1983).
11. Subs. by Act 11 of 1955, Sec.2 for Cl. (b).
12. Subs. by Act 68 of 1982, Sec. 3 (w.e.f. 1st February, 1983).
13. Subs. by Act 13 of 1964, Sec. 2for 'vermins' (w.e.f. 15th September, 1964).
14. Ins. by Act 68 of 1982, Sec. 3 (w.e.f. 1st February, 1983).
15. Subs. by Act 13 of 1964, Sec. 2,for Cl. (c) (w.e.f. 15th September, 1964).
16. Subs. by Act 68 of 1982, Sec. 2 (w.e.f. 1st February, 1983).
17. Clause (d) omitted by the Drugs and Cosmetics (Amendment) Act, 1972 (19 of 1972), Sec. 3.
18. Subs. by Act 13 of 1964, Sec. 2,for Cl. (e) (w.e.f. 15th September, 1964).
19. Re-lettered as Cl. (f) by Act 35 of 1960, Sec. 2 (w.e.f. 16th March, 1964).
20. Ins. by Act 21 of 1962, Sec. 4 (w.e.f. 27th July, 1964).
21. Subs. by Act 68 of 1982, Sec. 3 (w.e.f. 1st February, 1983).
22. Subs. by Act 21 of 1962, Sec. 4,for 'or packing of any drug'.
23. Clauses (c), (d) and (e) re-lettered as Cls. (g), (h) and (i), respectively by Act 35 of 1960, Sec. 2 (w.e.f. 16th March, 1961).
24. Subs. by Act 3 of 1951, Sec. 3 and Schedule for 'the States'.
25. Subs. by Act 68 of 1982, Sec. 3 (w.e.f. 1st February, 1983).
26. Subs. by Act 11 of 1955, Sec. 2for Cl. (e).
27. Ins. by A.0. 1950 and omitted by Act 3 of 1951, Sec. 3 and Schedule.

1[3-A. Construction of references to any law not inforce or any functionary not in existence in the State of Jammu and Kashmir: -Any reference in this Act to any law which is not in force, or any functionary not in existence, in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that State.]

1. Ins. by the Drugs and Cosmetics (Amendment) Act, 1972 (19 of 1972), Sec. 4.

4. Presumption as to poisonous substances. -Any substance specified as poisonous by rule made under Chapter 11 or Chapter IV 1[or Chapter IV-A], shall be deemed to be a poisonous substance for the purposes of Chapter III or Chapter IV 1[or Chapter IV-A] as the case may be.

1. Ins. by Act 13 of 1964, Sec. 3 (w.e.f. 15th September, 1964).

True Relevant Extract Copy

Advocate

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH.

C.W.P. (PIL) No _____ of 2007

Burning Brain Society

....Petitioner

Versus

Union of India and others

....Respondent

Affidavit of Hemant Goswami, S/o Sh B. M. Goswami aged about
36 years, Chairperson of Burning Brain Society, #3 Glass office,
Shivalikview Business Arcade, Sector 17-E, Chandigarh 160017.

I, the above named deponent, do hereby solemnly affirm and declare as
under :-

1. That the deponent has gone through the contents of the accompanying
captioned writ petition and have properly & completely understood the true
import & meaning thereof.
2. That the petition has been drafted as per my instructions and its contents
are correct and as per my directions. The contents of paragraphs 1 to 33 are true
and correct to my knowledge and contents of para no. 34 to 38 are believed to be
true and correct on the basis of received legal advice. These may kindly be read
as part of this affidavit.

Chandigarh

Date:- 15.09.2007

DEPONENT

VERIFICATION:-

It is verified that the contents of para no. 1 to 2 of my above affidavit are
true and correct to my knowledge, no part of it is false, and nothing material has
been concealed therein.

Chandigarh

Date:- 15.09.2007

DEPONENT