PROHIBITION OF LIQUOR IN GUJARAT: DECRIMINALISATION OR REGULATION?

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ABSTRACT
The consumption of alcohol has been banned and criminalised in only a few states of the country, with Gujarat being one of the states which has established stringent measures for those violating the said penal law. While the prohibition law attempts to forbid any access to alcohol in the State, it fails to uphold the same, since in spite of the ban, Gujarat features as one of the States accounting for the maximum consumption of liquor in the country. With the rising incidents of offences relating to consumption of liquor in the State, several petitions have been filed before the Court, for an amendment to the law in order to effectively regulate the prohibition in the State. On the other hand, there has been a steady movement to decriminalise the consumption of alcohol in Gujarat, as the prohibition policy seems to be redundant to many. Thus, this paper attempts to study the legislations in force decriminalising the country, and analyses the judicial pronouncements with a view to understanding the implementation of the prohibition policy in Gujarat. The paper, thus presents a comprehensive perspective towards the alcohol ban, with the view to investigating the various facets of the criminal provision.

INTRODUCTION

Liquor prohibition and decriminalization has been a widely debated topic across the State of Gujarat, known for a strict prohibition law operating since 1949. Gujarat has been a state propagating Gandhian values of which abstinence from alcohol is a major part. However, as the world continues to become globalised and cultural differences are slowly permeating into the culture of Gujarat, the openness to the idea of consuming liquor has been increasing rapidly. The movement to decriminalize liquor consumption in Gujarat has been gaining momentum and a website called “wetgujarat2021.com” has consistently tried to bring about a change in the prohibition laws of the state.

Presently any form of buying, selling, consumption and transport of intoxicants is banned in Gujarat. However, permits are granted in extraordinary cases and legal consumption is allowed under severely regulated systems. But various news articles say otherwise wherein it is clearly mentioned that access to liquor in the state is very easy and different varieties of liquor can be obtained. It is also alleged that police officials are a part of the same rackets and the entire system of bootlegging involves corruption and illicit form of trafficking.

The legitimacy of the present prohibition policy is questionable and looked into with a microscopic glance in this paper in order to unravel various facets about it.

LEGISLATION - An Analysis
“Alcohol is with us from the cradle to the grave, in the baby’s rattle and the embalmer’s fluids”.

The term prohibition can mean an interdiction or an inhibition. A reference to Black’s Law Dictionary would perhaps explain prohibition as “the interdiction of making, possessing, selling or giving away, intoxicating liquors, either absolutely, or for beverage purposes, or for other than medicinal, scientific, and sacramental purposes”.2

The power to deal with production, transportation, buying and selling of intoxicating liquor is granted to the State Governments in the State List.3 The onus of making decisions about the organizational of manufacturing and sale of liquor along with levying excise duties lies on the States. Prohibition can be of three kinds: A complete prohibition on the consumption of intoxicating liquor, a partial ban on consuming certain classes or categories of liquor or having dry days in a week or a month were no liquor shall be bought or sold.4 Prohibition in the State of Gujarat owes its legality to the Bombay Prohibition Act of 1949 and more lately, the Gujarat Prohibition (Amendment) Act, 2017. The Prohibition Act can be regarded as a local law as defined by Section 41 of the Indian Penal Code5 “to be applicable only to a particular part of India”. Thus, these acts outlaw or prohibit the consumption of various intoxicants such as liquor6,7 intoxicating drugs such as hemp8, toddy or nira9, opium10 and charas11. It is a matter of grave concern to keep in mind that the acts expressly prohibited include the manufacture, transportation, buying, selling, import, export and consumption and use of these intoxicating substances as well as providing a place for the carrying out of such activities.12 Hence committing an act in contravention of this statute would be deemed to be illegal as it is “an offence and is prohibited by law”13 as explained by the Indian Penal Code (hereinafter “IPC”). Thus, an interpretation of these provisions would clearly explain the nature of the statute which is penal in nature and expressly forbids the commission of certain acts. It is a part of the criminal law and does not interfere or overlap with the jurisdiction of the IPC because of the saving clause which provides for the co-extensive existence of the IPC along with other special or local laws.14

Alcohol production and consumption increased in colonial India between 1907 and 1942 when the hypocrite British Government strictly levied taxes on the production of liquor and condemned its consumption but

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2 4 HENRY BLACK, BLACK’S LAW DICTIONARY (Minn West Publishing Co 1968).
did not actively prohibit it with legislations.\textsuperscript{15} However, the nationalists led by the ideals of social reconstruction of Mahatma Gandhi strongly started condemning the consumption of liquor and vehemently opposed it along with demanding for a complete ban on liquor. The call for prohibition on alcohol started as an act of defiance against the colonials and a form of non-cooperation, a flag of nationalistic politics. These efforts culminated into the first few legislations containing prohibition in 1937 with the inauguration of provincial autonomy wherein between 1937 and 1939 Provincial Governments of Madras, Bihar, Orissa, Central Provinces and North Western Frontier Provinces enacted complete or partial legislations banning liquor.

Similarly, the Bombay Prohibition Act of 1949 was applicable to the State of Bombay which includes the present day state of Gujarat and Maharashtra. The policy followed was multi-faceted and included a reduction in the number of shops authorized to sell liquor, increase in the excise duty on liquor and strict penalties for non-compliance.\textsuperscript{17} The provision led to a decrease in consumption to 2.9 drams per head but the crimes relating to liquor increased to 2,177.\textsuperscript{18} Article 47 of the Constitution discharges a duty on the State to “endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”.\textsuperscript{19} However, as a Directive Principle of State Policy, this article is not enforceable by law\textsuperscript{20} and rests on the discretionary powers of the State Governments. The Constituent Assembly while including this provision as a principle witnessed a heated debate about the validity of this provision. Shri BH Khardekar was completely against this provision and felt the prohibition would make the government fascist, and the people of the nation should be given the autonomy to choose whether to consume liquor or not. He insisted on using the excise revenue on primary education and developing the society.\textsuperscript{21} He insisted that India being a welfare state should give a lot of liberty to the citizens and such restrictions would act as a hindrance in the development of the country. But his arguments were dismissed by Shri Jaipal Singh who contended that the consumption of alcohol was against the ideals of religion and also not the only means of recreation, it was a sin which was alien to the Indian nationals before the advent of the British.\textsuperscript{22} He emphasized on the fact that certain reasonable restrictions can be placed upon individual liberty by the State to protect individual interests.\textsuperscript{23}

\textsuperscript{15} Nandini Bhattacharya, \textit{The Problem of Alcohol in Colonial India} (c 1907–1942), 33(2) STUD. HIST. 187,189 (2017).
\textsuperscript{17} Indra Munshi Saldanha, \textit{On Drinking and 'Drunkenness': History of Liquor in Colonial India}, 30(37) ECON. POLITICAL WKLY. 2328, 2330 (1995).
\textsuperscript{18} \textit{Ibid.}
\textsuperscript{19} INDIA CONST. art. 47.
\textsuperscript{20} INDIA CONST. art. 37.
\textsuperscript{22} Loki, \textit{Constituent Assembly debate on alcohol consumption}, THE TAKSHASHILA COMMUNITY BLOG, (May 9, 2014) http://logos.nationalinterest.in/2014/05/constituent-assembly-debate-on-alcohol-consumption/.
\textsuperscript{23} \textit{Ibid.}
Just a decade post the adoption of the Indian Constitution, in the 1960s most of the states started revoking their prohibition laws and placing a regulatory and controlled mechanism in place whose main reason can be held as the loss of excise revenue due to the prohibition. Gujarat continued to be one of the only states with liquor prohibition. Thus, it becomes very important to understand and analyze the legality of the criminalization of consumption of alcohol in Gujarat and decipher whether the prohibition is valid in the 21st century or needs to be done away with. When the state faced an alarming increase in the number of illegal transactions pertaining to liquor, it decided it was time to revise the law and instead came up with more stringent laws to curb the consumption and sale of liquor. The Home Minister of the Gujarat, Shri Pradipsinh Jadeja while supporting the decision of the Chief Minister reiterated the fact that alcohol has been banned in Gujarat since the inception of the state and the state of Gujarat follows the ideals of Gandhiji. Thus, for evaluating the effectiveness of the penal provisions for liquor prohibition in the State of Gujarat it is important to examine the pivotal features proposed and instituted by the Gujarat Prohibition (Amendment) Act of 2017.

The Amendment of 2017 came up with harsh penalties drastically metamorphosed the Chapter pertaining to Offences and Penalties into a wicked piece of legislation. The section 65 of the Act of 1949 was changed to a great extent and the maximum description of imprisonment for importing, exporting, possessing, transporting, selling and buying of intoxicants (including intoxicating substances such as drugs or liquor) was raised from a term of 3 years to a term of imprisonment which could extend to 10 years and the fine for the same can now extent to 5 lakh rupees. The minimum term of imprisonment described for a first, second, and third and subsequent offence(s) under this Act was changed to a term not less than 2 years, 3 years, and 5 years respectively and the minimum amount of fine payable would not be less than 1 lakh rupees, 2 lakh rupees, and 5 lakh rupees respectively. This was indeed a huge change in the statute book as the punishments prescribed in 1949 for a first, second, and third and subsequent offence(s) were imprisonment for a term not less than 6 months, 9 months and 1 year respectively and fine not less than 500 rupees, 1000 rupees and again 1000 rupees respectively. The change in the penal provision is obviously to justify the ends of deterrence and to deter the criminals for committing a crime again or to withhold a prospective criminal from committing a

24 Pratima Murthy, Culture and alcohol use in India, 10(1) WCPRR 27, 30 (2015).
crime under this Act in the fear of prosecution and harsh punishments. The shift from the relatively relaxed form of punishments to the current scenario can be regarded as a poorly thought out initiative as any piece of legislation, regardless of the beauty of its clauses and its extensive scope and coverage can be regarded as a failed or unsuccessful legislation if it is not able to be implemented in the same vigor and manner with which it has been enacted.

The penalty for opening a common drinking house or having the care or management of the same under the Act of 1949 was imprisonment for a term which may extend to 3 years along with a fine\textsuperscript{29} but with the Amendment in 2017 this was changed and the term of punishment was changed to a minimum term of 7 years which can extend to 10 years\textsuperscript{30} along with a fine which can extend to 1 lakh rupees. This provision has been instrumental in imposing criminal liability at several instances when citizens of the state broke the law and hosted parties or events where they illegally procured, possessed and consumed liquor.\textsuperscript{31,32}

The Amendment of 2017 substituted in the Section 85 of the Act of 1949 that any person who is found drunk in any place to which the public has access to and picks up a quarrel or fight with someone, uses foul or obscene language or misbehaves with women shall be liable for imprisonment which may extend to 3 years and not less than 1 year and fine.\textsuperscript{33}

Thus, the Prohibition Act in Gujarat has been upgraded to serve the requirements of changing time and the punishments have been increased manifold. However, strict punishments are required when the law is about an act or an omission which is gravely criminal in nature and poses a serious threat to the safety and security of the nation, and interests of the public. But, does the Prohibition Act really serve its purpose, or is the Prohibition Act required for the state? This is a question that needs to be answered keeping in mind the fact that liquor production and consumption is not banned in other states or union territories of the country except Gujarat, Bihar, Nagaland, Mizoram and Lakshadweep. The question on whether liquor prohibition is required to maintain the principles of Gandhiji or to prevent crime in the society or whether the prohibition is an outdated law is puzzling.

The Prohibition Act does provide for sale of liquor to people who have obtained licenses or permits under the Act. Licenses for trade and import\textsuperscript{34}, vendor’s license\textsuperscript{35} and hotel license\textsuperscript{36} to sell liquor in a regulated manner

\textsuperscript{31} Vaibhav Jha, People take 'booze bath' at Gujarat marriage party, six booked, \textit{The Indian Express}, (Mar. 1, 2020) <https://indianexpress.com/article/cities/ahmedabad/people-take-booze-bath-at-gujarat-marriage-party-6294303/>
\textsuperscript{34} Gujarat Prohibition Act 1949, §33, Acts of Gujarat State Legislature, 1949 (India).
are prescribed for. The various kinds of permits available for consumption of liquor are temporary resident’s permits\textsuperscript{37}, health permits\textsuperscript{38}, emergency permits\textsuperscript{39}, visitor’s permits\textsuperscript{40}, tourist’s permits\textsuperscript{41} and interim permits\textsuperscript{42}, etc. thus, although the Government provides a mechanism to apply for and get permits to consume liquor, the actual process is very time-consuming, laborious and lengthy. Also the people in Gujarat can obtain such permits only on special grounds which may not be the case for a prudent man who wants to consume liquor only for the sake of it without any reason. Hence, a person in Gujarat to obtain a liquor permit needs to undergo a cumbersome process as opposed to people in other parts of the country who would only need to visit a liquor shop and procure it.

The validity of the prohibition derives or should ideally derive sanction from the law of the land, which in the context of India, is the Constitution. The Constitution has granted certain fundamental rights to the citizens of the country such as the Right to Freedom and the Right to Life. The Right to Freedom\textsuperscript{43} would mean that an individual has the right to do anything which he/she wants without unreasonable interference of restrictions from the State and the violation of which can be valid grounds to take the State to the Judiciary. However, Article 19 also contains some reasonable restrictions on the right to freedom an example of which could be public order, decency or morality.\textsuperscript{44} In the case of Babul Parate\textsuperscript{45}, it was held that “the fundamental rights guaranteed under Article 19(1) are not absolute. They are subject to restrictions placed in the subsequent clauses of Article 19”. In Collector of Customs v. Sampathu Chetty\textsuperscript{46}, the learned Court held that “the test of reasonableness mentioned in postulated of the restrictions in clause (2) to (6) of Article 19 should be applied to each individual statute impugned, and no abstract standard or general applicable to all cases. The reasonableness of the restraint would have to be judged in the magnitude of the evil which it is the purpose of the restraint to curb or to eliminate”. Thus, laws prohibiting liquor cannot be regarded as an absolute impediment on the freedom of an individual and can be seen as a mere restriction prohibiting a certain activity, that too only within the limited geographical boundaries of Gujarat. But what needs to be understood is the magnitude of the crime which has been prohibited which in this context, is consumption of liquor, something which is prevalent in almost all parts of the world. Consumption of liquor is not a heinous crime such as murder or waging war against the government but is something which is done by people in different parts of the country without the fear of criminal sanction. The reason behind the enactment of the statute is

\textsuperscript{40} Gujarat Prohibition Act 1949, §46, Acts of Gujarat State Legislature, 1949 (India).
\textsuperscript{41} Gujarat Prohibition Act 1949, §46A Acts of Gujarat State Legislature, 1949 (India).
\textsuperscript{43} \textsc{India} Const. art. 19, cl. 1.
\textsuperscript{44} \textsc{India} Const. art. 19, cl. 2.
\textsuperscript{45} Babul Parate v. State of Maharashtra, AIR 1961 SC 884.
\textsuperscript{46} Collector of Customs v. Sampathu Chetty, AIR 1963 SC 316.
to prevent crime committed by liquor consumption in the society but this hasn’t really led to any decrease in crimes per se but has led to organized crimes in the form of bootlegging liquor. Article 21 of the Constitution provides for protection of the personal liberty of a person and its scope has been expanding over the passage of time. In the case of Maneka Gandhi v. Union of India, Justice Bhagwati beautifully construed the meaning of ‘personal liberty’ in Article 21 and said “[t]he expression ‘personal liberty’ in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man”. Article 21 has been regarded as a very progressive piece of legislation and this can also be seen in the judgments where the learned Court allowed and gave legality to sexual intercourse between any two consenting adults and live-in relationships along with consensual pre-marital sex between adults, thus defying age old customs and traditions for the sake of justice and reasonableness. The prohibition in the state of Gujarat may be considered regressive as it does not account for change in the cultural climate and is perhaps deep-rooted in the values of the nationalists in pre-independent India and ideologies which may have now become obsolete. Right to privacy was also recognised as a part of Article 21 by the Supreme Court in the case of Justice K.S. Puttaswamy. With the progressive and unorthodox nature of Article 21, it can be implied that legislations should move towards novel provisions that concern the citizens and do away with provisions which are rudimentary. An individual should enjoy the right to consume liquor within the privacy of his house or in his friend’s house due to the fact that he is a human being and deserves the right to choose and decide what is like a virtue or vice for him and indulge in an act even though it may be detrimental to his health.

JUDICIAL INTERPRETATION


The infamous case of drunk-driving and illegal consumption of alcohol in Gujarat, also known as the Vismay Shah Case, involved a series of hearings before the sessions court and the High Court, before the accused was punished. This case has been upheld as a strong deterrent for those who seek to violate the law.

In February, 2013, the accused hit a motorcycle, flinging its two riders into the air, and then crashed his car into a tree. He then abandoned his car and absconded from the crime scene, according to the eyewitnesses. The accused was discovered to be intoxicated, and as a result, he had infringed several laws, including the Indian

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48 INDIA CONST. art. 21.


50 Navtej Singh Johar & Ors. v. Union of India & Ors. AIR 2018 SC 4321.


penal code and the prohibition act, which forbids illegal drinking and driving. He was found guilty by a sessions court and asked to compensate the families of the killed. Vismay Shah, was declared guilty under various sections of the Indian Penal Code, namely, Sections 279, 427, 304 (2) and 134 (1), along with the Motor Vehicles Act and the Prohibition Act.

The Court in this case remarked, “The society has had a high menace of drunken driving. It results in accidents and loss of human lives. The late-night parties among the urban elite have now become a way of life followed by drunken driving.” Observing the same, the Court noted that Punishment meted out to a drunken driver works as a strong deterrent for other such persons in the society, getting away with a minor fine.

Drink-driving and speeding are the two leading causes of road accidents, according to the World Health Organization’s Global Status Report on Road Safety. According to the National Crime Records Bureau (NCRB), the overall number of deaths caused by road accidents in India each year has risen to over 1,35,000. The NCRB Report also stated that drink-and-drive is the most severe cause for road accidents. The Court expressed, that the country has a “dubious distinction of registering maximum number of deaths in road accidents, and it is necessary that the law-makers revisit the sentencing policy reflected in Section 304A IPC.”

As a result, the Court decided in this case that a person who commits a reckless, rash, or careless act that causes death and that he, as a reasonable man, knew was risky enough to lead to the death was likely to be caused, may be charged with homicide not equal to murder. Hence, he will face charges under Section 304 of the Indian Penal Code. The Court asserted that a person who commits an act like the one in this instance may be held liable not only for the conduct but also for the outcome.

HEMANTBHAI S. V. R. G PATEL, Special Civil Application No. 7226 of 2009.

On 7th July 2009, “a disaster of unprecedented proportion stuck and disturbed the city of Ahmedabad”, when a man-made tragedy took the lives of about 156 people. This incident, known as the Hooch Tragedy of Gujarat, led to a sudden wave of apprehension regarding the use and trade of illicit liquor, in the state. Consequently, several public interest litigations were filed in the High Court of Gujarat, questioning the responsibility of the State with respect to such incidents, involving spurious liquor when there are legal sanctions expressly prohibiting the same.

In the case of Hemantbhai S. v. R. G. Patel, the Court recognised the essentiality of a proper enforcement of the prohibition act by the State along with the need to introduce sweeping reforms to weed out the

60 Hemantbhai S. v. R. G Patel, Special Civil Application No. 7226 of 2009.
inefficiency in the administration of the same. In these Public Interest Litigations, the question with which the Court was seized was “about the responsibility of the State to find out why spurious liquor took the toll of lives, and what steps are required to be taken to stop the recurrence of such a heinous crime, at the root of which lies the naked lust and greed for money and nothing else.” The Court also considered the desideratum of making necessary suitable amendments in the Bombay Prohibition Act to make it more effective and stringent considering the rampant activity of manufacturing illicit country made liquor.

From the facts of the case, it appears that around 400 persons hailing from a poor stratum of the society consumed spurious liquor from a vendor at an alcohol-prone pocket of the city of Ahmedabad. The persons consuming the same did not have the knowledge that it contained methanol, which is as good as poison. As a result of the consumption of this illicit liquor, around 394 persons were admitted in various hospitals of Ahmedabad between the 7th and 9th of July, 2009. Around 156 persons lost their lives and approximately 249 persons were adversely affected, the victims primarily being labourers. Due to the failure of the State in discharging its duties in order to prevent such mishaps from happening, the State machinery thought it fit to amend the Bombay Prohibition Act. Realising the seriousness of the issue, it accordingly passed a bill, and enacted the Bombay Prohibition (Gujarat Amendment) Act 2009.62

With a view to prohibiting the misuse of such illicit and spurious liquor and in view of the recent situation, the State Legislature considered it necessary to amend the existing provisions of the Bombay Prohibition Act, 1949 and make solid provisions for offences relating to manufacturing, buying, etc., of such spurious liquor. Therefore sections 23A63 and 65A64 were inserted, which inter alia provide that any person who “manufactures ‘Lattha’ (hooch or illicit liquor) constructs any distillery or brewery, sells or buys, uses, keeps, transports or has in his possession such ‘Laththa’ shall be punished for a term which may extend to ten years but not less than seven years.” It is also specified that if a person dies as a result of consuming the mentioned ‘Laththa,’ the person who created, held, sold, etc. will be punished with death or life imprisonment, as well as a fine.

However, in spite of the fact that the Act is in force since the formation of the State, the provisions of this Act are not properly enforced. The Petitioners contended that such mishaps have been assuming a recurring frequency in the State. They vehemently contended that in spite of the prohibition being in force in Gujarat, liquor is often smuggled in from the neighbouring States and sold at inflated prices. The poor population of the society cannot afford to buy the branded alcohol and that is the reason

why they consume illicit spurious liquor available in plastic pouches.

Moreover, the counsel pleaded that the most affected section of society due to the non-implementation of prohibition of laws are women and children. Because of alcoholism, the women and children often become victims of abuse. It was stated, that there are several schemes by the State Government's Department of Women and Child but none of them include any programme that would take care of this menace of alcoholism. There should be a strategy to empower the woman or child to rush to a any such place where they reside to complain or bring to the notice that there is manufacture, and consumption of liquor in their surroundings, it would act as a deterrent.

After taking into account the pleadings of the Petitioners, the Court noted that the only question falling for its consideration in this PIL was the steps to be taken to prevent such hooch tragedies in the future, and to determine what could be done for the effective implementation of the Prohibition Policy in the State. The Court observed, that the said incident was not the first hooch tragedy of its kind in the State of Gujarat. In the last three decades or more, at least four significant hooch disasters have occurred in the state, prompting numerous Inquiry Commissions to investigate the causes and give recommendations so that the prohibition policy may be effectively applied to prevent such incidents. One such Inquiry Commission, led by Justice Dave, recommended to the then-Government that the prohibition policy be repealed or at least altered significantly. According to the report, “It would be meaningless to believe that the people of the next generation will not fall victim to this menace due to the implementation of the prohibition policy.” It unequivocally stated that the residents of the State have not only continued to consumer liquor but their number has also increased. Hence, if the prohibition policy were to be repealed, it would not only help minimize the instances of corruption, but also uplift the poor labour class by diverting the funds spent on the policy’s implementation, to the cause for their welfare.

The Court then considered the observation made by the Supreme Court in Maniyan & Ors. v. State of Kerala65 while deciding a criminal appeal of an accused, convicted in connection with such hooch tragedy as- “Alcohol has already proved itself to be one of the major enemies of the human beings. However, its grip is not loosened in spite of the realization of the evil effects of alcohol on the human life. Instead, the unholy grip is being tightened day by day.” The Apex Court had therefore opined, that when the standard and healthy form of alcohol is not feasible for the common man, the poor section of the society is forced to consume illicit liquor by the “bootleggers”. “The conscienceless bootleggers – thanks to their avarice for money, take full advantage of this human weakness and distil illicit liquor and then to increase the sale with the aim to gain astronomical profits make their product more potent at least in taste so as to attract the poor customers.” Such poor consumers fall prey to the bootleggers’ greed, and in the process, they may lose their lives or suffer irreversible afflictions such as total blindness.

The Court also noted another observation of the Supreme Court in Razakbhai Issakbhai Mansuri v. State of Gujarat66, where it was noted that so far as intoxicating liquors are concerned, their evil effects are well-established specially for the Indian society. As a result, the framers of our Constitution thought it appropriate to include in Article 4767 the obligation of the state to improve the standard of life and public health by attempting to prohibit intoxicating drinks and narcotics. In order that the policy of prohibition may succeed, it is not sufficient to merely ban the manufacture and consumption of alcohol. It is essential to ensure an effective scrutiny in order to defeat the illegal activities of the antisocial elements engaged in illegal distribution of illicit liquor in the market. Thus, citing these Judgements by the Supreme Court in similar cases, the Court in the mentioned case68 emphasized, that Mahatma Gandhi, the father of our nation, associated the consumption of alcohol to be a major hindrance and encouraged the complete prohibition of this social evil in India. The Court expressly stated that with this consideration, the Constitution includes a direction to the State to ensure a prohibition on intoxicating substances under article 47.69

The Judgement, drafted by the then Chief Justice, Justice Bhattacharya and Justice Pardiwala quotes the words of Mahatma Gandhi, as “If I was appointed as a dictator even for one hour for all India, the first thing I would do is to close down all the liquor shops without compensation.” It referred to the opinion of the Supreme Court,70 mentioning that although the Directive Principles of State Policy as contained in Part IV of the Constitution are not enforceable by the Courts, it is the duty of the State to give effect to these principles by making suitable laws, accordingly. It has been described as a matter of constitutional obligation of the State to do so in the public interest.

Kantilal and Co. vs State of Gujarat & Anr.71

Where the provisions of the Prohibition Act were contended to be ultra vires of the Constitution and challenged on the basis of lack of legislative competence of the State Legislature under Entry 8 in the Seventh Schedule in the State List to the Constitution, the High Court of Gujarat dismissed the petition.171

The petitioners had challenged the Sections 39A72, 6473, 64A74 and 70A75 of the Bombay Prohibition (Gujarat Amendment) Act76,

67 INDIA CONST. art. 47.
having its origin in the Bombay Prohibition Act, 1949.\textsuperscript{77}

The petitioners raised the following contentions-

(1) The challenged provisions are limitations on the freedom of trade, commerce, and intercourse granted by Article 301 of the Constitution, and therefore are not protected by Article 304.\textsuperscript{78}

(2) The challenged provisions impair the petitioners’ basic right under Article 19(1)(g)\textsuperscript{79} of the Constitution in an unjustified way.

In a similar case, namely, Chandulal Jethalal Jayaswal v. State of Gujarat & Anr.\textsuperscript{80}, such a contention, raised under Article 301, was examined by this Court. In order to find out whether a piece of legislation is in violation of Article 301, the first test which this Court has laid down is as follows: “What exactly is the direct result of the legislation in question? Does it hamper the freedom of trade, commerce or intercourse or is it merely regulatory?” It was observed, that the “restrictions, freedom from which is guaranteed by Article 301, should be such restrictions as directly and immediately restrict or impede the free flow or movement of trade.” “If a legislation operates directly against the freedom of trade, commerce and intercourse, then it is not violative of Article 301. If it operates incidentally in the same area, it is not violative of Article 301. In other words, Article 301 is not attracted to such a piece of legislation. This Court had further observed- “Abuse or misuse of denatured spirituous preparations, such as French Polish and Varnish, is neither trade nor commerce and a measure seeking to put down such abuse or misuse cannot be regarded as an impediment in the way of trade or commerce.”

In the opinion of the Court, the principle laid down by the Apex Court in that decision applied four-square to the facts of the instant case. Sections 64 and 64A of the act, seek to prevent the abuse or misuse of rotten gur. The abuse of this particular substance and its unlawful misuse through the channels of illicit distillation of liquor cannot said to fall under trade or commerce within the meaning of Article 301.

In Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer & Ors\textsuperscript{81}, a similar question arose under the Ajmer Excise Regulation, 1915\textsuperscript{82}. The vires of a few provisions of the same regulation were challenged under Article 19(1)(g) of the Indian Constitution. In that context, the Supreme Court had observed that a business attended posing a danger to the community at large may be entirely prohibited or may be permitted under such conditions so as to prevent the evils. Noting these observations, the Court in the present case held that so far as the impugned act is concerned, it does not directly restrict or prohibit the free flow of trade and commerce,

\textsuperscript{78} INDIA CONST. art. 304.
\textsuperscript{79} INDIA CONST. art. 19, cl. 1 (g).
\textsuperscript{81} Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer & Ors. 1954 AIR 220.
since its only object is to prevent the rotten gur from being misused for the purpose of illicit distillation of liquor. The Court observed that the said sections had been enacted with the objective of effectively and rigorously enforcing the prohibition policy in the State of Gujarat. The objective has also been envisaged by Article 47 of the Constitution, and thus the Indian States have been expressly directed to put the same into action; thus, rendering the impugned legislation as absolutely valid and lawful.

RECOMMENDATIONS

Upon an analysis of the legislation and judicial application of the legislation, we inferred that the present prohibition policy is not enforced effectively, and has inherent loopholes.

After an analysis of the same, the following recommendations can be formulated:

Although there is no fool-proof technique or mechanism that can be adopted to deal with the stringent liquor prohibition policy of Gujarat, these recommendations can serve as guiding factors while deciding the appropriate policy for the liquor laws of the state.

The nature of the Gujarat Prohibition Act should be altered from that of prohibitory to regulatory, thereby changing the character of the almost blanket ban with little scope for permission for consumption of liquor to a progressive and wider regulating mechanism for rationalizing the buying, selling and consumption of liquor. In no ways should the liquor industry be privatized or decriminalized, but it should be allowed to operate under the checks and balances of the state government.

Bootlegging or the illicit buying and selling of liquor by unauthorized individuals should remain a penal offence, but stores authorized by the government should be permitted to procure and sell liquor to licensed individuals. The number of permits granted can be increased and people with the minimum age of 30 years should be allowed to present an application for grant of permit to consume liquor in the state for any reason. Before granting the permits, the person’s criminal records, medical history and annual income should be considered. Accordingly, to obtain a permit, a specified sum shall have to be paid which can be determined with the help of these factors.

The consumption of alcohol should not be allowed in any public places in the State, or any places to which the general public may have access. Thus, the consumption should be restricted to private spaces, majorly the residences. In accordance with the above-mentioned point, the consumption of alcohol would not be permitted in any public events like parties, marriages and social gatherings, and should remain a penal offence.

The offences related to acts done after the consumption of alcohol under the Indian Penal Code and other such statutes, eg. Motor Vehicles Act shall remain in force. The offences of drunk-driving and other such related offences under the influence of liquor should be made punishable under the Indian Penal Code as well, enforcable in the whole of India. Suitable amendments may also be made in the criminal law to deal with crimes committed under the effect of voluntary intoxication induced by consumption of alcohol.
CONCLUSION

Gujarat has dealt with liquor prohibition with the help of an extensive liquor policy but has failed to provide for a proper means of implementation of the same and loopholes in the prohibition policy of Gujarat are conspicuous. Keeping in mind of the various interests of the society including women’s groups, NGOs, the citizens favouring and those against liquor prohibition as well as the scope for additional financial revenue for the government and the vices associated along with liquor, a middle ground has to be reached which can try at best, to satisfy the interests of all the stakeholders.

Thus, it is concluded that while the policy of prohibition shall not be completely lifted, the same should be only relaxed to an extent, in order to decriminalise the consumption of alcohol, but in a regulated manner. Hence, the prohibition act enforced in the State shall be amended and the nature of the same shall be changed to that of a regulatory one. Therefore, while the consumption of liquor should not endanger the public interest and safety at large, the same shall be protected as a matter of private interest, with regulations.

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