
BEYOND ENTRY 8: RETHINKING THE FEDERAL HISTORY OF ALCOHOLIC LIQUOR IN INDIA

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ABSTRACT

The constitutional classification of “intoxicating liquor” under the Entry 8 of the State List in the Seventh Schedule of the Indian Constitution has been a cornerstone of fiscal federalism for a very long time. However, the contemporary evolution of the liquor industry into a highly integrated, inter-state economic enterprise has made this fragmented regulatory framework increasingly obsolete. This paper examines the historical and judicial evolution of alcohol regulation in the country, arguing that the existing exclusive state jurisdiction fosters inter-state smuggling (especially into dry states like Bihar), regulatory hinderance, and inconsistent public health standards. By analyzing the federal models of countries like the United State and Australia, alongside the transformative potential of GST Council, the paper proposes a constitutional paradigm shift. It argues the inclusion of alcohol regulation in the Concurrent list (List III) while simultaneously advocating for maintaining states’ financial autonomy through a Non-Obstante Clause. This dual approach aims to balance the necessity of a unified national regulatory framework with the preservation of the states’ essential fiscal independence. The paper also suggests the formation of a National Liquor Regulation Council to harmonize standards, thereby advancing the principles of cooperative federalism in the modern interconnected Indian economy.

Keywords: Intoxicating Liquor, Seventh Schedule, Cooperative Federalism, Fiscal Independence, Public Health Standards.

1. INTRODUCTION

BACKGROUND

The alcohol prohibition in India is a complex subject which involves fundamental moral beliefs and social norms with the constitutional questions of division of powers between the Centre and the States. It is primarily driven by **Article 47** of the Directive Principles of State Policy, which command the states to endeavor to bring about prohibition of intoxicating liquor.

The entry 8 of List II (State List) is the foundational pillar of Indian federalism which grant states the exclusive legislative competence over alcoholic liquor. The term “*This is to say*” in Entry 8 is used by the constitutional drafters to indicate that the production, purchase, and sale of intoxicating liquor are under the exhaustive control of states. This means that states not only just regulate the sale, they control the raw materials, the distillation process, and the logistics within their borders. This entry also implicitly includes the power to regulate “*public health and sanitation*” (Entry 6) and “*public order*” (Entry 1), as alcoholic liquor is intrinsically linked to these state subjects.

The distinction between **Potable** and **Industrial liquor** has been a critical legal background for many years. In the *Synthetics & Chemicals Ltd. v. State of UP, 1990*, the Supreme Court held that Entry 8 applied only to potable alcohol (suitable for human consumption). The industrial alcohol (denatured spirit) was deemed as Union subject under Entry 52 of List I (Industries). However, in the *State of Uttar Pradesh v. Lalta Prasad Vaish (2024)*, a nine-judge bench overruled the 1990 decision. The court ruled 8:1 that “**intoxicating liquor**” is a broad term which includes industrial alcohol, as it can be misused for human consumption and impact public health. This ruling significantly expanded the regulatory and taxing authority of the States.

The current legal scenario of alcohol prohibition in India can be categorized into two primary models, with a special third category for Lakshadweep.

- **COMPLETE PROHIBITION**

In these states, the manufacture, sale, possession, and consumption of alcohol are entirely prohibited by law. For example, Bihar Prohibition and Excise Act, Bombay Prohibition Act, 1949 etc.

- **PARTIAL PROHIBITION**

These states enforce prohibition only in specific districts, for certain types of alcohol, or for specific groups of people. For example, Manipur, previously a dry state which transitioned to a partial ban since 1991. As of late 2026, prohibition has been lifted in some areas like district headquarters, tourist destinations etc. Other examples include pilgrimage sites like Haridwar, Tirupathi etc.

- **THE LAKSHADWEEP EXCEPTION**

The Lakshadweep follows a unique dual model where it is a dry state for residents but allows alcohol for visitors. This model aims to conserve the local culture while simultaneously promoting tourism. It has maintained this strict liquor policy since 1979. However, some relaxations- like allowing liquor to be served at government guesthouses- have been granted by the administration recently

2. PROBLEM STATEMENT

The current regulatory regime for alcoholic liquor in India has resulted in various forms of challenges that affect not only just public health objectives, but also economic stability. The fragmented approach has resulted in the following primary interconnected issues-

a) *Inter-state smuggling* is one of the most significant consequences of decentralized alcohol regulation system. The substantial price differences created by varied excise duties across states have established powerful economic incentives for illicit trade.

b) The *illegal supply of alcohol into dry states* like Bihar from neighboring states such as West Bengal is another significant concern related to inter-state smuggling.

c) This illicit trade not only just deprives state of their legitimate revenue, but also *introduces various unregulated and potentially dangerous products into the market*. This problem is further exacerbated by porous inter-state borders and lack of coordination among different states.

d) The extreme variation among tax rates among states creates significant market distortions that extend beyond mere price competition. States that rely heavily on

alcohol revenue, such as Uttar Pradesh and Tamil Nadu, *face political and economic pressure* that often conflict with public health imperatives.

e) The tension between revenue generation and public health responsibility is further exaggerated by *the lack of national coordination mechanism* that could simplify tax policies or ensure proper vigilance of inter- state borders.

f) This regulatory inconsistencies and absence of uniform health standards mean that effective public health standards in one state can be undermined by neighboring state with more permissive regulations, creating a sort of *regulatory arbitrage* that prioritizes commercial interests over public health outcomes.

g) The *diversion of limited state administrative capacity* towards managing the contradictions inherent in the current system reduces the effectiveness of other essential public services.

3. THESIS STATEMENT

The current constitutional placement of intoxicating liquor exclusively into the State List creates a fragmented regulatory approach that facilitates inter-state smuggling, incentivizes tax competition, and obstructs public health initiatives to fulfil the objectives of Article 47. ***By transitioning liquor to the Concurrent List***, India can establish a standardized national framework that can balance the demands of modern commerce with the needs of public welfare.

4. ARGUMENTS FOR MOVING INTOXICATING LIQUOR INTO CONCURRENT LIST

There are multiple benefits of moving alcoholic liquor for human consumption into concurrent list-

- 1) It would **facilitate inter-state commerce** by preventing revenue loss due to cross-border smuggling and minimizing the price competition among states.
- 2) It would promote **ease of doing business** as alcohol manufacturers currently have to navigate and comply with separate regulatory regimes for each of the country's 28

States along with 8 Union Territories.

- 3) It would help in **combating illicit liquor tragedies** (like Hooch Tragedies) which often results in mass-casualty events due to methanol based counterfeit alcohol.
- 4) It would help in the creation of **uniform health standards** that are currently impeded due to fragmented policies across states.
- 5) Shifting alcoholic liquor into Concurrent list would allow parliament to make **foundational baseline laws** while states could still enact supplementary rules suited to local conditions.
- 6) Bringing it into Concurrent list could also **rationalize tax structure**, reducing excessive tax disparities among states.

5. COUNTER ARGUMENTS AND REBUTTALS

Critics of this proposal might argue that states significantly rely on liquor excise for their financial autonomy. For many states, liquor excise is not merely an additional income but a **fundamental component** of social spending, infrastructure development and debt clearing. The COVID-19 pandemic showed that alcoholic liquor is a critical pillar of states' revenue. However, moving the legislative component to the concurrent list does not necessarily mean transferring taxing component to the center.

The Good and Services Tax (GST) provides a blueprint. While GST unified the national market, it did so through the GST council—a body where states hold a decisive vote alongside union. A similar **National Liquor Regulation Council** should be established. This body would set a minimum national standard for quality control, inter-state movement among other things while states could retain the right to determine their specific tax rates within a regulated framework.

Critics also might argue that this could lead to centralization of powers. There is a misconception that Concurrent List is just a place where subjects wait until the central government takes them over, but that's not true, in reality, it is a **constitutional partnership**. The Concurrent List is not designed to shift exclusive powers to the center; it is designed to enable simultaneous legislation. It allows center to create broad legislations while leaving local

implementation in the hands of the states.

Some states may be unwilling to support such a shift and could oppose it, however, by inserting a proviso to the Seventh Schedule- *“Notwithstanding the transfer of ‘Intoxicating Liquors’ to the Concurrent List, the power to levy excise duties on the manufacture and sale of such liquors shall remain exclusively vested in the State Legislatures. No law enacted by Parliament shall infringe upon state’s authority to fix, collect, or vary excise duties”*. This could directly counter the primary political excuse states use to oppose a national regulatory framework.

Critics also might argue that if center regulates the product, they can effectively kill the tax revenue by banning certain types of alcohol. To prevent this, a **‘Non-Obstanate’ clause** should be included. This would ensure that any central regulation cannot be used as a mechanism to prohibit the production or sale of alcohol, thereby protecting the tax base from indirect central bans.

6. COMPARATIVE ANALYSIS

By studying the steps taken by other legislatures, we can prove how shared governance is standard in functional federal systems.

In the US, the Three-Tier System is the mandatory framework in various states. While the 21st Amendment grants states massive authority, the Federal government still plays an essential role. Federal agencies like the *TTB (Alcohol and Tobacco Tax and Trade Bureau)* regulate production, interstate shipping, and mandatory labelling (like health warnings). This ensures that a consumer in California and a consumer in New Jersey gets the same basic product information. States hold the power to decide how the alcohol is sold. This is where Dry Counties or specific Sunday sales ban exist.

The US example shows that national labelling and safety standards are not political intrusion but consumer protection necessity. Thus, we can argue that moving alcohol to Concurrent List is about protecting Indian citizens as consumers and not about negatively affecting the power balance.

Similarly, in **Australia**, the Commonwealth government has limited direct power to legislate on liquor licensing, they do not force it through federal law. Instead, they use Cooperative federalism through bodies like the *National Alcohol Strategy* and negotiate via the *Council of*

Australian Governments (COAG). Every state then voluntarily adopts identical or similar legislations.

The Australian example shows that Cooperative federalism is a proven concept. It proves that States will have their say in the decision making if they are given a seat at the table.

7. CONCLUSION

The current constitutional framework that places “Intoxicating Liquor” into state list reflects an orthodox understanding of the subject matter as a localized commodity. In the current era, however, the industry has evolved into a highly integrated inter-state economic force. As argued, the pursuit of cooperative federalism does not necessitate the abandonment of state autonomy, instead, it demands a shift towards shared responsibilities.

The transition to a concurrent framework is not a step towards centralization, rather, it is one step forward towards coherence. By safeguarding state revenue through proposed Non-Obstante Clause while simultaneously nationalizing safety and trade standards, India can transform from a chaotic, unregulated and fragmented sector into a transparent and economically vibrant industry that truly serves the interests of the public and the state alike.

This reform would finally align our constitutional framework with the realities of a modern, interconnected market. Ultimately, this is not merely a legal prerogative, but a necessary step towards a more efficient, responsive and mature democracy.

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