
STATE EXCISE POLICIES AND ALCOHOL PROHIBITION IN INDIA: LEGAL CHALLENGES AND SOCIO-ECONOMIC IMPLICATIONS

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ABSTRACT

The place of alcohol regulation in India is a special role in the constitutional and socioeconomic system of the country. Alcohol consumption has not been banned in the country but individual states have the right to enact excise laws and prohibition policies in the constitutional plan. This has led to the different forms of regulation that include outright ban in other states like Gujarat and Bihar and also through regulated regulation and taxation in other states. This paper discusses the state excise policy and the policy of alcohol prohibition in India particularly focusing on the legal issues, constitutional aspects and socio-economic aspects that have been brought about by these policies. It examines the relationship between Article 47 of the Constitution, the issue of health, collection of revenue and the freedom of the individual. The paper also assesses how prohibition affected crime, illegal liquor business, the wellbeing of the women, labor, and the national budgets. The legally related reaction to the prohibition laws, as well as the changing policy framework is also critically discussed. The paper aims to evaluate the hypothesis of whether total prohibition is a useful legal tool or whether the controlled consumption is a more prudent solution to the Indian society by taking a doctrinal and analytical approach.

Introduction

Regulation of alcohol has been a subject of debate since time immemorial in India as it is directly related to morality, health of the society, revenue collection, and social good. Article 47 of the Indian Constitution guides the State to make efforts towards banning intoxicating drinks with the exception of medicinal use. Nevertheless, this constitutional requirement does not stop alcohol which is one of the biggest income-generating activities in the state governments in form of excise duties, licensing and taxation. Such a paradox has led to a legal and policy paradox of a continuous challenge between public good and economic addiction.

The constitutional system has given jurisdiction to the states to law only on intoxicating liquors under the State List of Entry 8 in the Seventh Schedule. As a result, the various states have taken different strategies in the regulation of alcohol. Gujarat uses total prohibition as well as Bihar has also brought the concept of total prohibition in 2016; however, a number of other states use controlled sale and regulation. These are policies that are usually informed by the political ideology, social reform movement, women advocacy groups and economic factors.

Prohibition laws with respect to alcohol have raised a lot of controversy with regards to their effectiveness and legality. Proponents believe that by banning alcohol, domestic violence, poverty and alcohol-related crimes will be reduced, but opponents believe that this will spur black markets, illegal liquor manufacturing, corruption and loss of government income. The constitutional validity of any prohibition measures has been tested severally in courts in India, and it has been made clear that trade in liquor is not a fundamental right and a privilege that is controlled by the state.

This paper critically examines state excise policies and alcohol prohibition laws in India through a lens of their constitutional foundation, law, judicial interpretation, and their socioeconomic effects. It also addresses the questions as to whether prohibition is working to achieve its social purposes or whether it has any unintended legal and economic effects.

Body of the Paper.

1. Constitution that regulates the use of alcohol in India.

India has a constitutional design, which gives a significant level of control to alcohol to the states in terms of regulation and prohibition. The Seventh Schedule, which is given in the State

List, entry 8 authorizes state legislatures to adopt laws pertaining to intoxicating liquors, such as production, possession, transport, purchase, and sale. This decentralised system has led to the different policies on alcohol in different states that are based on the regional socio-economic and political situations.

On one side, the prohibition laws in India have a moral and constitutional basis with the help of Article 47 of the Constitution. It guides the State on how to enhance public health and to ban intoxicating beverages that are detrimental to health. Directive Principles are not justiciable, but play an important role in legislative policies. Article 47 has been used by some government states in order to enforce strict prohibition laws and bans on the trade of alcohol.

The courts have always asserted the powers of states to control the trade in liquor. The Supreme Court, in the case of the State of Bombay v. F.N. Balsara, did not declare the Bombay

Prohibition law unconstitutional, but instead it stated that the state could subject people to limitations in the interest of the state. Likewise, in *Khoday Distilleries Ltd. v. State of Karnataka* the Court held that the trade in liquor cannot be considered as a fundamental right under Article 19(1)(g). The Court also believed that the State has the sole privilege in liquor trade and can ban it or control it altogether.

Alcohol regulation, although having a constitutional support, is a source of concern due to arbitrariness and over-restrictions. The various state policies generate discrepancies in enforcing them and are promoting inter-state smuggling. Additionally, the prohibition laws in certain cases are incompatible with personal autonomy and liberty (Article 21). Critics claim that over-criminalisation will impact the poorer sectors economically and is a cause of overcrowding in the prison industries.

The constitutional structure thus indicates a compromise between the state regulatory and the objectives of public health. States have the constitutional authority to ban alcohol, but the actual application of this law has been debatable because of administrative, economical and social complications.

2. Development of the Excise Policies and the Prohibition Laws in India.

History of alcohol regulation in India can be traced back to the colonial days when excise revenue was a good source of income to the British rule. Alcohol selling was regulated by the

colonial government with the main aim being fiscal and not social benefits. Laws on excise also implemented in this time brought about licensing policies and taxonomies that have been used to date in shaping current policies.

Post independence, the morality-focused and the Gandhian ideals of the nationalist movement informed prohibition policies. Mahatma Gandhi was greatly of the view that people should avoid any form of alcohol at all costs, as this is socially damaging and economically destructive to the poor families. Thus, the Article 47 introduced prohibition as a Directive Principle of State Policy.

After independence, various states tested prohibition in their states. The state of Gujarat emerged as the biggest state to implement full prohibition according to the Bombay Prohibition Act. Other states also came up with restrictions that prohibited to various extents and at different times, namely: Tamil Nadu, Andhra Pradesh, Haryana and Kerala. Nevertheless, such policies were later rescinded by many states because of their monetary losses and because of issues with enforcement.

One of the most recent prohibition laws in India is the Bihar Prohibition and Excise Act, 2016. The act was a total ban with some of the serious fines such as jail term and communal fines. Although the policy was quite popular among the women movement, it was criticized as mass arrests, overstraining the courts, and was also claimed to be used without restraint by the law enforcement agencies.

The contemporary excise policies are more concerned with balancing between regulation and revenue generating policies. To control consumption, state governments collect licensing fees, excise duties and age controls and advertising restrictions to balance fiscal stability. Excise revenue is a major source of funding to state budgets especially to support welfare programs and the development of infrastructure.

The history of alcohol legislation in India evidences of the conflict between the social reform purposes and the social facts. Even though there are instances when prohibition policies arise up every now and then based on political and moral views, majority of the states eventually weigh towards regulated systems on account of the practical and economic factors.

3. Law and court reaction to Prohibition Policies.

In India, there have been numerous instances of alcohol prohibition laws before the court on constitutional, and administrative grounds. Among the main juridical matters is the scope of power of the state to regulate trades and individual freedom. The courts have mostly been supportive of the prohibition laws and at the same time make sure that they do not at will abuse the constitutional guarantees.

This is the case of *State of Bombay v. F.N. Balsara* where the Supreme Court noted the validity of most of the provisions in Bombay Prohibition Act. The Court supported the law but invalidated some discrimination provisions that covered medicinal and toilet preparations that had alcohol. The case provided the principle that it was possible to make reasonable restrictions on the public interest.

The other landmark case was *Khoday Distilleries Ltd. v. State of Karnataka* which made it clear that there exists no right per se to trade in intoxicating liquor. The Court perceived liquor trade as something bad to its core and one that can be entirely controlled by the state. This decision enhanced the legal basis of state monopoly and policy of prohibition.

Proportionality and due process has been criticized in recent prohibition laws especially in the state of Bihar. Bihar Prohibition and Excise Act originally brought about collective responsibility of all adult family members in case of the presence of liquor in a home. Later courts found such provisions to breach such principles of natural justice and personal liberty.

Another problem that can be associated with law is related to enforcing mechanisms. Misuse and corruption have been accused as a result of harsh punishments, arbitrary arrests and powers of the police that are too much. The courts and prisons are overburdened, which makes implementation more complex. In other instances, the prohibition rules have led to rise in litigation involving a bail request and procedural anomalies.

The other issue is related to inter-state disparities. Prohibition states are also subject to smuggling, by their neighbours where it is legal. This poses problems in enforcing and criminal gangs who organise crime to trade in liquor.

Through judicial responses, there is a balanced reaction of caution. Mostly, courts tend to approve the control of state to regulate alcohol but demand fairness, proportionality and

compliance with the constitution in doing so. The law as discussed thus translates to the wider debate of the morality of the people and civil liberties.

4. Socio-Economic Effect of Prohibition of alcohol.

Prohibition policy on alcohol has a great impact on the economy and society. Supporters believe that by ban, good health and living is promoted, domestic violence is minimized and poverty among the vulnerable groups is relieved. Several states have witnessed active feminist movements where the women organisations have advocated prohibition on the grounds that alcohol abuse is a contributor to family breakages as well as a cause of poverty.

Reports in the post-prohibition period in Bihar reported some short-term decline of domestic violence as well as household spending on alcohol. The same social benefits were given in Gujarat where prohibition has traditionally been linked to the social ideals embodying Gandhian ideology. The proponents of the public health argue that restricting the availability of alcohol would decrease addiction, road fatalities and alcohol-related disease.

But, prohibition also causes severe socio-economic problems. The development of illicit liquor trade is one of the effects of this. The illegality of production and smuggling easily thrives in the prohibition states, with the result of unhealthy consumption of spurious liquor. Many hooch tragedies have been experienced in India whereby people died because of drinking toxic alcohol.

The other effects of prohibition are on employment and industries that deal with production of alcohol, hospitality and tourism. In the case of breweries, bars, restaurants, and transport, financial losses are experienced when prohibition policies are implemented. States reliant on excise have fiscal deficits that can impact on welfare spending and communal services.

Criminalisation of the economically weaker groups is another issue. Strict prohibition laws often lead to arrest of poor individuals who are involved in minor transportation and consumption and organised smuggling networks continue their activities involving corruption and political protection.

In India, excise revenue makes a significant part of state revenues. Individual states such as Karnataka, Maharashtra, and Tamil Nadu make thousands of crores out of taxations of alcohol. Full ban can easily result in the substantial loss of revenue and governments have to re-examine

their measures.

The social-economic effects of prohibition are thus hotly debated. Although prohibition might produce some social benefits, the economic costs and unintended effects of the prohibition tend to compromise effectiveness in the long-term solution.

5. Compare and contrast policies of state excise in India.

The states of India have different patterns of regulating the alcohol consumption based on political priorities, economic success and social orientation. Gujarat still upholds a complete ban and projects itself as a model, which follows the principles of Gandhianism. Alcohol consumption: It is forbidden unless there are special permits, used on either medical or tourism basis.

The main goal of Bihar to introduce total prohibition in 2016 was to preserve families and enhance social welfare. The policy was highly supported politically and more so by the rural women. Nevertheless, issues of enforcement, trade law violations and judicial censure have resulted in changes to loosen some of the provisions.

In 2014, Kerala implemented a progressive prohibition strategy where bars were shut down progressively, and alcohol supply was limited. The state, however, changed the policy later owing to the fear of losing the revenue of tourism and economic losses. The state-based retail scheme adopted in Tamil Nadu under the TASMAC ensures that the government controls the sale of alcohol as it monopolises the sale and control consumption and earns maximum revenue.

Delhi and Maharashtra are governed by liberal regulatory policies focused on licensing and taxation and controlled sale as opposed to prohibition. These states are immensely dependent on excise income and they are oriented on age limit, drinking areas and social order policies.

Relative to the prohibition states, there are more problems with enforcement and a black market, and the regulatory states are more fiscally stable. Nevertheless, there are challenges that are associated with alcoholism, disorder in the population and health problems in regulated systems.

The variety of policies of different states proves that there is no national strategy regarding

alcohol regulation. Policies are usually determined by the political ideology rather than by facts. States keep on changing their excise structures with respect to varying social factors and economic circumstances.

A comparative analysis has indicated that none of the models has been absolutely successful. Prohibition has the potential to solve some social issues but creates enforcement dilemmas; liberal regulation brings in more revenue and does not necessarily satisfactorily curb alcohol abuse. The right policy should thus comprise a leveled practice that incorporates societal health, regulation and knowledge.

6. Policy Reforms and Future directions.

The current controversy about alcohol prohibition in India requires a structured policy changes that are able to support the constitutional goals, individual health and economic factors. The total ban in itself has never been effective in the eradication of alcohol consumption, or the related social issues. Therefore, it has resulted in more policies promoting regulated restriction over making outright prohibitions.

The public health-based approaches are one of the areas of changes. This should be through awareness campaigns, addiction treatment centres, and rehabilitation programmes rather than depending on punitive criminal laws alone by governments. Health education about healthy and responsible drinking can be more effective in decreasing the alcohol abuse.

The other necessary reform is to enhance regulatory mechanisms. The illicit trade in liquor can be reduced and this can be done through transparent licensing system, quality control and technological surveillance of the supply chains. States should also liaise with the neighbouring jurisdictions in order to stem out inter-state smuggling and organised crime chains.

Efforts that are directed towards legal reforms are also required to guarantee proportionality in punishment. Disproportionate punishment and criminalization of the masses is detrimental to citizen trust and overload the judiciary. To avoid abusing vulnerable communities, legislation ought to differentiate between serious crimes of illegal trafficking and petty consumption crimes.

There should be an increase in women involvement in the policymaking process since the domestic violence and financial insecurity victims have been the leaders behind prohibition

movements in India. Alcohol regulation, which is associated with social welfare schemes, can lead to some more sustainable results as compared to blanket bans.

Another important consideration is economic diversification. States with extremely high levels of revenue relying on excise taxes need to come up with other sources of revenue and then proceed with the prohibition policies. The abrupt ban without financial preparations may have adverse implications on the governance and development programmes.

International experiences also indicate that regulated control with a combination of public health measures are more likely to yield positive results in the long term as compared to rigid prohibition. The moderate taxation, regulations on advertising and creation of awareness programmes have brought more moderating results to countries that have adopted these measures.

The alcohol policy in India should thus shift towards evidence-based policies and not necessarily moral and political ones in the future. A comprehensive system incorporating regulation, education, rehabilitation and social welfare can be more effective in dealing with the intricate issues related to alcohol use.

Conclusion

Alcohol policing in India is a manifestation of the intricate interaction between moral constitutionalism, the goal of prominence of social-economic morality, socio-economic realities, and the interests of states in terms of revenues. Article 47 of the constitution supports prohibition but the pragmatic administration of alcohol is mainly through the excise policies of the state which are influenced by political and economic factors. The varied states have implemented various methods of prohibition all the way to controlled sale and state controlled distribution management.

The paper will show that although prohibition policies can bring about some social good like curtailing any domestic violence and alcoholism, they have legal and economic implications that are huge. Strict prohibition laws are in most cases weakened by illegitimate liquor trade, organised smuggling, corruption, losing revenues and over the criminalisation of activities. The use and control of alcohol by states has always been supported by the judicial rulings, although the decisions focused on fairness and proportions in the US constitution.

The comparative study of the state policies shows that absolute banning as well as free commercialisation is not the answer to everything. A balanced framework is a critical component in effective alcohol governance, one that is a combination of regulation, public health awareness, rehabilitation programmes and socio-economic reforms. The problem of over-dependence on punitive legislation that does not focus on the aspect of addiction and poverty is not likely to bring long-term success.

Evidence-based and welfare-oriented governance is the way forward of alcohol policy in India. Constitutional ideals have to be balanced by policymakers with administrative realism and economic realities. The multifaceted nature of the issues related to alcohol use and prohibition need a comprehensive approach towards responsible regulation, community involvement and prevention of poor health of the people of modern India.

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