

LIQUOR BAN: THE CURRENT DEBATE

Nirali Deepak Parekh

Pravin Gandhi Law College, Mumbai

The Supreme Court in its judgment dated 15th December 2016 in *State of Tamil Nadu Rep. By Its Secretary Home, Prohibition and Excise Dept & Ors vs. K. Balu* instructed the Centre and the State Government to impose a ban on the sale of liquor along the national and state highways. The subject which was taken into consideration in the above matter was the existence of liquor vends on the national and the state highways in the country¹. The major perspective behind this case was the frightening statistical data on the instances of road accidents which drew the judiciary's attention to take cognizance of the issue. They had put human lives in a state of extreme peril by compelling them to suffer pain and exhaustion. It had led to loss of several citizens and the granting of compensatory awards did not seem to be a suitable replacement as it is incapable of nullifying the mental agony and the traumatization which an individual has to bear. While pronouncing the judgment last year it was observed that, the law utilizes its ability to pacify the ramifications of the road accidents by providing some reliefs to the victims but on examining the increasing traffic fatalities there was a need for the introduction of some strict rules in order to regulate the driver's demeanor. The road accidents give rise to many repercussions be it in terms of causing personal distress and mental instability to the individual and his family or it is making the society handicapped and depriving it to attain its productive capital.

There is a division of legislative jurisdiction over the highways between the Parliament and the State Legislatures made by the Union and the State List of the Seventh Schedule added to the Constitution in consonance with Articles 245 and 246. Entry 23 of the Union list is "Highways declared by or under law made by Parliament to be national highways". Entry 13 of the State list is "Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles." The Union Ministry of Road Transport and Highways had published an article titled 'Road Accidents in India-2015.' This article mainly gave the data relating to the deaths and injuries caused due to road accidents on the national and state highways. It also gave information about the number of deaths resulted due to carelessness in driving and over – speeding as well as because of the consumption of drugs/ alcohol. The National Road Safety Council (NRSC) is the apex body established for the purpose of ensuring road safety under Section 215 of the Motor Vehicles Act, 1988. In a meeting which was held on 15th January 2004 the NRSC had given acceptance towards the non – granting of licenses to the liquor shops situated along the national highways. A circular was issued by the Ministry of Road

¹ <http://www.livelaw.in/read-supreme-court-directions-high-way-liquor-ban-read-judgment/>

Transport and Highways (MoRTH) to all the state governments suggesting them to remove all the liquor shops situated along the national highways and also to not issue new licenses. On 26th October 2007 an advisory was issued and since then the MoRTH kept advising all the state governments on the removal of liquor shops as stated above. The Ministry in an advisory to the Chief Secretaries of all the States and Union territories on December 1 2011 had realized that India had witnessed highest number of road accidents resulting in death globally, and a data of 2009 stipulated that within a duration of every four minutes there was a road accident which took place. It was also specified that drunken driving was the major cause leading to road accidents. The advisory concentrated on the provisions of Section 185 of the Motor Vehicles Act 1988 and applied for the following implementation:

“(i) Execution of section 185 of Motor Vehicles Act 1988 if possible mainly for the cases being pursued in various courts for award of penalty of imprisonment followed by appropriate publicity which would go hand in hand towards the deterrence for drunken driving.

(ii) Removal of Liquor shops along National highways.

(iii) Cessation of the issuance of fresh licenses to Liquor vendors for opening shops along National highways.

(iv) In cases where the licenses have been given in the past to open liquor shops along National highways, the same may be reviewed and remedial action be taken under communication to this Ministry.”

Section 185 states as follows:

“185. Driving by a drunken person or by a person under the influence of drugs.

Whoever, while driving, or attempting to drive, a motor vehicle,--

a. has, in his blood, alcohol in any quantity, howsoever small the quantity may be, or

b. is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees , or with both.

Explanation: For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette shall be deemed to render a person incapable of exercising proper control over a motor vehicle.”

There were different advisories of the Ministry of Road Transport and Highways stating the number of deaths due to road accidents occurring under the consumption of alcohol and suggestions were made for the removal of liquor vends situated along national highways and for the imposition of a ban on the issuance of fresh licenses. The above material placed evidently stated that the national and the state highways undoubtedly witnessed an increasingly high number of road accidents leading to deaths and various injuries, the main cause being driving under the influence of alcohol. The judgment also mentioned that the advisories issued by the Union Government would be applicable to the national as well as state highways. It remarked that human life is extremely precious and when such accidents take place it affects the common man in his personal life. The judges observed that the improving infrastructure and expansion of highways and expressways placed India at the peak of its development and it provided numerous opportunities for escalation of trade and industry along with free movement of goods and capital supported by Article 301 of the Constitution of India which guaranteed the freedom of trade and commerce to all the citizens residing within the jurisdiction of the country. The highways display different kinds of sign boards showing warnings to the drivers pertaining to dangers which include combination of speed and alcohol. The accessibility to liquor along the highways provides an occasion to engage in its consumption. Due to the access made available to the drivers of vehicles to the liquor shops, it actually allows them to indulge in its consumption, taking a toll on their safety as well as that of others. The judges also noted that the Union Governments policy of imposing a ban on liquor vends along national highways would not result in totally curbing down the menace of drunk driving as there was a high possibility that a driver of a certain vehicle might consume alcohol before commencing the journey or during the journey in some area or place other than a national or state highway.

The presence of liquor shops, along with hoardings and directions showing the availability of alcohol distract the drivers and grab their attention to consume it, thus attempting towards endangering the lives of the citizens. The court said that it was not trying to implement its own policy but in relation to the above, taking an initiative to enforce Article 21 of the Constitution which is the right to life. The court also made an observation that Article 19(1) (g) of the Constitution did not grant any freedom to the citizens to conduct trade in liquor because liquor has been viewed as *res extra commercium*² in State of Punjab v. Devans Modern Breweries Ltd.³ as well as in State of Kerala v. Kandath Distilleries⁴ and also mentioned a few other cases.

Entry 51. of the State List is - Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India-

² A Latin phrase which means things beyond commerce.
law.emory.edu/eilr/_documents/volumes/28/1/articles/datar-swaminathan.pdf

³ (2004) 11 SCC 26

⁴ (2013) 6 SCC 573

- (a) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in subparagraph (b) of this entry.

According to the court the main issue which was to be addressed was whether liquor licenses should be granted on the national and state highways posing a threat to the lives of the citizens. The court noted that excise duty was one of the vital sources of revenue to the state but forbidding the grant of licenses along the national and the state highways would actually support in governing the grant of these licenses in a manner assuring that the consumption of liquor does not risk the lives and safety of the citizens in the country utilizing the national and the state highways. Article 47 of the Constitution incorporated within the Directive Principles of the State Policy is :

“Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

The Union Government had drafted a document few years ago which was titled “Model Policy/taxation/act/rules for alcoholic beverages and alcohol.” It made various provisions concerning liquor vends. Para 92 (2) of the policy stated as under:

“(2) No licence for sale of liquor shall be granted to a retail vend selected within a distance of 100 meters from any religious or educational institution or hospital or outside the inhabited site of village/town/city or any Office of the State/Central Government or Local Authorities or within a distance of 220 meters from the middle of the State/National Highways.

Explanation – For the purpose of this rule:

(a) “National Highway” or “State Highway” shall not include such parts of the National Highway or State Highway as are situated within the limits of Municipal Corporation, City or Town Municipal Council or such other authority having a population of twenty thousand or more.”

The Model Policy directed a minimum distance to be maintained from the state/ national highways for setting up liquor shops. But an exemption was given to those parts which were situated within the jurisdiction of the local authorities comprising a population of 20, 000 or more. The authorities by an order of the court dated 8th September 2015 later realized the fact that the model policy had been formulated a decade ago and since then various judgments of the High Courts had been passed. Hence the court urged the union territories and the states along with the Union government to have a brief look at the policy

concerning the sale of liquor on the national and the state highways. The Ministry of Road Transport and Highways told the court that the model policy on alcoholic beverages and alcohol did not fall within its ambit and therefore it might not have the authority to reconsider the model policy. The Ministry while putting forth its contention stressed on the statement that liquor shops should not be situated along national highways which was backed by the statistical data of the road accidents taking place. The Ministry also contended that there were no sufficient grounds or reasons to provide an exclusion to the stretches of the national and the state highways falling within the roof of a municipal or a local authority from the scope of the suggested disallowance. As according to them it would actually give an opportunity to the drivers of the motor vehicles to refill their stock of alcohol thus acting in violation with the main goal of the policy which was to tackle and bring about a remedy for drunk driving. It would be erratic and also contravene Article 14 of the Constitution.

The counsel who appeared on behalf of the State of Punjab argued before the court that the Punjab Excise Amendment Act 2016 was established based on the model policy and the same came into effect from 28th March 2016. Section 26- A of the Punjab Excise Act 1941 states as follows:

"26-A. (1) The location of the liquor vends shall be regulated by the Government: Provided that this section shall be applicable only to liquor vends situated in areas adjoining the National Highways and State Highways for consumption, off the premises. (2) No licence for sale of liquor shall be granted to a liquor vend situated within the road reservation of National Highways and State Highways and beyond road reservation neither the liquor vends nor their entry points shall be visible or directly accessible from the National Highways and State Highways. Explanation- (i) "Visibility" means existence of any signboard, direction mark, display of stock of liquor, display of rates or any direct/indirect invitation to the commuter travelling on such Highway; and (ii) "Directly Accessible" means such liquor vend shall not be directly approachable from the National Highway and State Highway. (3) The restrictions referred to in sub-section (2) shall not apply to the liquor vends situated in the areas adjoining to National Highway and State Highway, passing through the limits of Municipal Corporation/Municipal Council/ Municipal Committee/ Notified Area Committee/ Nagar Council/ Cantonment Board or any other Authority having a population of twenty thousand or more."

The court observed that the law suits were filed under Article 136 of the Constitution from the high court judgments of states including Punjab, Haryana and Madras. A PIL was filed in the Madras High Court pleading the removal of liquor shops on the national and the state highways in conflict with the advisory of the Union Government dated 1 December 2011. The High Court noted that in the state of Tamil Nadu liquor shops were being run by the Tamil Nadu State Marketing Transport Corporation (TASMAC). The affidavit which was filed mentioned that 504 liquor shops were being run along the national highway and also stated that 75 shops were already shifted and a new location was finalized for 335 shops. A period of six months was asked to be given for shifting the shops. The

High Court in its order dated 25th February 2013 granted time until 31st March 2013 for the process of relocation. The order of the High Court was questioned by the state of Tamil Nadu and TASMAL. Later notice was issued instructing closure of liquor vends along state highways. The state government had filed an affidavit on 22nd August 2013 before the court stating 504 TASMAL liquor shops along the national highways had been shifted and an additional affidavit was filed explaining the positioning regarding the state highways.

As regards the state of Punjab, a special leave petition was filed by the state government opposing the judgment and order of the High Court dated 18th March 2014. An NGO named Arrive Safe Society of Chandigarh had filed a PIL before the Punjab and the Haryana High Court regarding the removal of liquor shops situated along the highways. The High Court directed the State of Haryana to assure that no liquor vends were located along the national as well as state highways and also ordered them to confirm that there was no visibility or availability of the same from those highways or even the service lanes attached to the highways. The High Court in relation to the states of Punjab and Haryana held that the prohibition was applicable to both the state and national highways.

The court in its judgment dated 15th December 2015 also stated that no difference could be derived between the national and the state highways regarding the location of the liquor shops. It said that it is an undisputed fact that protection and safety of the citizens is of utmost concern in the matter. It also concluded that drunk driving was seen as one of the vital causes giving rise to road accidents and deaths and therefore the prohibition mandatorily would apply to both the national as well as the state highways.

The court also said that it was aware of the impediments faced by the licence holders and the states in which the licenses had been renewed whose expiration period was far. It knew that if they were ordered to be terminated it would lead to unnecessary hassle and complications relating to refund of the licence fee. Therefore, the court in its order directed the continuation of the licenses for that existing period but gave a deadline of 1st April 2017. It also had forbidden the states and the union territories from granting licenses for the sale liquor along the national and the state highways. The prohibition extended and took under its cover stretches of such highways which fell within the scope of a municipal corporation, city, town or local authority. It instructed removal of the hoardings exhibiting the availability of liquor on national and state highways. The judgment also mentioned that no liquor shops were allowed to be made visible or accessible from a national or state highway which were located within a distance of 500 mts of the outer edge of a national or a state highway or of a service lane along the highway. One of the Judges also remarked 'Visibility is one of the most powerful influences on an individual and it instills an urge in him making it hard to resist the craving to consume alcohol.' It directed the state and the union territories to comply with the mentioned requisites. It also ordered the Chief Secretaries and Directors General of Police to draft a proper plan for the implementation having a discussion with the state revenue and home departments. The above directions were issued under Article 142 of the Constitution.

The above judgment given by the Supreme Court earned a lot of criticism from the masses and therefore it was modified on March 31 and the following reliefs were granted:⁵

1. In areas comprising a population of 20000 people or less the condition of maintaining a distance of 500 meters from the outer edge of the highway or service lane, for the location of the liquor shop, was reduced to 220 mts. This was permitted due to the argument stating that the entire local area might come within the scope of the restricted distance.
2. The existing licenses were sanctioned continuation till 30th September 2017.
3. The states of Meghalaya and Sikkim due to their topography and location were awarded exemption from the applicability of the 500 mts distance demand.

A bench headed by the Chief Justice also clarified that the judgment imposing a ban on liquor vends along the national and the state highways was also applicable to bars, pubs and restaurants. The apex court also specified that the licenses which were granted before December 15 in the year 2016 would hold validity till September 30 in the state of Telangana and while in the state of Andhra Pradesh it would be acceptable till June 30.⁶ The 500 mts rule was also modified for the states of Himachal Pradesh and Local Areas situated along the highways having a population up to 20, 000 and they were permitted to operate liquor vends within a distance of 220 mts from the highways.

The Kerala High Court had instructed the Excise Department to inspect the applications relating to the renewal of bar licence submitted by the bar owners located along the Cherthala-Thiruvananthapuram and Kannur Kuttipuram roads. The petitioners contended that they were legally holding renewed FL-11 licenses within the scope of the provisions established under the Kerala Abkari Act for the year 2017-18.⁷ The petitioners had filed a petition stating that the authorities pursuant to the guidelines of the Supreme Court given in the case of State of Tamil Nadu .vs. K. Balu had disallowed them from running shops/ bars to sell liquor. The petitioners claimed that the directions of the court were not applicable to them on the ground that their shops/ bars were not located along the national/ state highways and as well as they did not provide any accessibility or visibility to the citizens. The petitioners argued that the instructions of the Supreme Court given in the above matter did not apply to them as there were certain notifications issued clarifying that the road was no longer a National Highway. So according to them they had filed the writ petitions in the court seeking directions against the respondents to allow them to run their business. The court later taking into account the denotification of highways which

⁵ <http://www.livelaw.in/centre-may-seek-presidential-reference-scs-highway-liquor-ban/>. Article by Apoorva Mandhani

⁶ <http://www.livelaw.in/highway-liquor-ban-kerala-beer-parlours-move-sc/>. Article by Livelaw News Network

⁷ <http://www.livelaw.in/highway-liquor-ban-kerala-hc-directs-excise-department-consider-permission-bars-along-denotified-highway-read-judgment/>. Article by Apoorva Mandhani

had taken place before the judgment was passed in State of Tamil Nadu. vs. K .Balu ordered the Deputy Commissioner of Excise vested with the jurisdiction upon the area in which the petitioner's shops/ bars were positioned, to take into consideration the petitioners claim to continue to sell liquor on the basis of the renewed licenses that they held in relation to the boundaries which had been put forward in the above matter.

One of the Judges of the Kerala High Court completely disapproved of the approach adopted by the Excise Department in connection to the matter of ban on the sale of liquor. He noted that the directions given by him had been misinterpreted by the Deputy Excise Commissioners to conclude that it was supported by an intention to operate such bar/ liquor shops.⁸ The Judge said that he had instructed the Deputy Excise Commissioners to examine and take notice of all the relevant and crucial factors and permit the conduct of the operations but in accordance to the law and reject it if they were doubtful on the ground of any authentic notification issued under the National highways Authorities Act stating that the roads continue to be National/ State Highways.

The Punjab assembly on June 23 passed the Punjab Excise Amendment Bill 2017 permitting the sale of liquor in hotels clubs and restaurants situated within 500 mts of the state and national highways. The Punjab Excise Amendment Bill introduced two clauses namely 18(a) and 19(a) disclosing the difference between the 'sale' and 'supply' of 'liquor.' Clause 19(a) states the definition of the sale of liquor as "transfer of consideration by a liquor vend for consumption by a purchaser at a place other than its premises" whereas clause 19 (a) defines the supply of liquor as "provision of liquor for consideration at clubs, restaurants, hotels and other places on the basis of licenses issued on the condition that it shall be consumed within their premises."

Therefore, from the above mentioned provisions we can deduce that the bill gives allowance to the catering institutions to serve liquor to the citizens till the time the consumption takes place within the limits of the premises. It also says that licensed hotels, clubs and restaurants would be legally authorized to continue the supply of liquor even if they are situated on the state/ national highways despite of any judgment or order which might have been passed previously in the same aspect.

Punjab Health and Parliamentary Affairs Minister added that the imposition of the ban had the capability of paving way for unemployment in the country as well as jeopardizing the states future excise revenues.

The Punjab and the Haryana High Court on June 28th issued a notice opposing a petition and showing dissent towards the Punjab Excise Amendment Bill. The petition was filed by the President of the Arrive Safe Society of Chandigarh contending that the amendment to the Punjab Excise Amendment Act 1914 was sought to circumvent the Supreme Court

⁸ <http://www.livelaw.in/dont-misconstrue-court-order-highway-liquor-ban-kerala-hc-cautions-excise-dept-read-order/>

order on Highway Liquor Ban.⁹The petition challenged the Bill claiming that it appeared to be a colorable exercise of power and an effort taken to misconstrue the ratio decidendi of the given judgment.

The Supreme Court has allotted exemption to the state of Arunachal Pradesh and the Andaman and Nicobar Islands from 500 mt distance rule on the account of its topography. The bench granted three weeks' time to the state of Uttarakhand to prove that they were also worthy of obtaining an exemption from the same.

The bench also stated that it would dismiss the petition filed by the NGO Arrive Safe Society of Chandigarh against the latest order of the Punjab and Haryana High Court sanctioning the Chandigarh administration to proceed with the de- notification of the highways within the framework of the city, thus indirectly approving the re-functioning and operation of the hotels and bars within the boundaries of the city.¹⁰ The bench communicated that the move of the Chandigarh administration of declassifying some roads from 'state highways' to 'major district roads' was viewed as an attempt made to prevent the applicability of the Supreme Court order on liquor ban and also to ridicule the apex court's opinion expressed in the concerned matter. It also said that substantial reasons were not put forth for the de- notification of the highways and the notification was 'irrational' and 'unjustifiable'.

Conclusion

Analyzing the present scenario exposing the occurrences of road accidents leading to grievous injuries and deaths mouting up day by day due to driving under the influence of alcohol, we can simply infer that there is an urgent need to pull up our socks to prevent any further loss of human lives as well as to the nation's economy. It is one of the most serious crimes which not only is socially unacceptable but also sets a bad example to the society. Drunk driving is a punishable offence under Section 185 of the Motor Vehicle's Act, imposing imprisonment and penalties on the offender, but this does not appear to be a complete solution looking at the current picture. The laws should be made stricter, for example there should be stringent traffic rules for governing the conduct of the drivers and also other new laws should be introduced to combat the upheaval. The duty of maintaining discipline on the roads is vested with the authorities appointed but it is pivotal for the citizens to show cooperation as well as bear in mind that it is their responsibility also to keep a check on their movements. Citizens have the right to drive but are not granted with the power to exercise that right unlawfully. Drunk driving is a grave offence in the eyes of law and any justification offered after an innocent's death, falls on the deaf ears of his family and other relations. When an individual consumes alcohol and drives, he is not only risking his own life and safety but also putting the lives of others at stake including those seated in the vehicle if any, and several others which might include pedestrians or those who have

⁹ <http://www.livelaw.in/highway-liquor-ban-punjab-haryana-hc-issues-notice-plea-challenging-punjab-excise-amendment/>. Article by Apoorva Mandhani

¹⁰ <http://www.livelaw.in/highway-liquor-ban-arunachal-andaman-get-exemption-sc-500-mtr-rule/>

small local outlets set up in the narrow lanes. The aftermath of such incidents is difficult to accept and deal with though there might be an assurance of penalties to be imposed and strict action to be taken against the negligent driver like sentencing him to imprisonment for a few years , but there is hardly any explanation which could be admitted as infliction of fines or imprisonment practically does not appear as a best substitution for the bodily injuries along with the trauma suffered by an innocent including may be his absolute loss of life . Experiencing lack of control due to alcohol consumption coupled with the thought of excitement and desire to act adventurous accompanied with overconfidence particularly instilled in the younger lot proves to be hazardous for them as well as the society. The Supreme Court order on liquor ban along the highways may not in toto resolve the issue of accidents, crashes and deaths taking place but would surely give a helping hand in at least mitigating the ratio.

We as responsible citizens should initiate as well as encourage organizations and other various programmes with the motto of creating awareness across the country concerning the issue of drunk driving to avert any further annihilation of life, health and property.