

ALCOHOL CONSUMPTION AND DOMESTIC VIOLENCE: CONTRASTING PARADIGMS OF FUNDAMENTAL RIGHTS?

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Abstract—Alcoholic beverages have caught the attention and curiosity of humankind since time immemorial. Depending on their utility or uselessness, they have been praised and condemned by different sections of the society. Irrespective and keeping aside the value judgment, their sale continues to be an important source of governmental revenue. While there are some benefits especially considering the medicinal properties of alcohol, a glaring negative is that over enthusiastic consumption often contributes in an important way to commission of crime. This phenomenon may be noticed in cases of domestic violence. Considering the correlation between consumption of alcohol and the resultant violence, a complete prohibition on the sale and consumption of intoxicating alcoholic beverages might be perceived as the way out. However, such policy decisions unnecessarily hamper with non-violent drinkers' pleasure and enjoyment thus becoming a cause of their frustration. Prima facie, there seems to be a conflict between protection of women's right to enjoy a dignified life free from alcohol consumption-induced violence and the liberty of decent alcohol consumers. This conflict gets highlighted for legal redressal in the era of recognition and emergence of jurisprudence on the Indian citizen's right to privacy. The growth of feminist thought pushes for the undercurrent that seeks to minimize domestic violence at all costs. In this sense, liquor prohibition policy looks friendly.

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On the other hand, in these times of rapid urbanization, the young population no longer shies away from having a couple of drinks to socialize or relieve work-related stress. Asking them to refrain from their indulgence might seem unfair. What, then, is the correct approach? Should sale of liquor be dependent upon one's socio-economic status? If yes, would that be a reasonable classification based on a person's income, educational background, marital status, and other such criterion? Or should there be a limit to how much liquor a person can buy and consume in a given time period? If yes, then do we have the means to ensure that such a policy is meaningfully implemented? The constitutional courts of the country and other organs of the government will, sooner or later, face such questions. It is important that they are answered in the true spirit of our constitution.

Keywords: Alcohol Consumption, Domestic Violence, Right to Privacy, Fundamental Rights, Liquor Prohibition

I. INTRODUCTION

Alcohol consumption in India has significantly grown over the past few years. It has brought along various public health problems that not only affect drinkers directly but also have an indirect impact upon those around them. One of such problems is alcohol consumption becoming a major cause of domestic violence. While the right to life and personal liberty guaranteed by Article 21 of the Constitution of India includes right of women to be treated in a decent and dignified manner¹ thus preventing abuse², the law on whether the right to consume liquor is covered under the right to privacy is still unsettled.³ This research explores the inter-relationship between alcohol consumption and domestic violence from the perspective of fundamental rights.

II. ALCOHOL CONSUMPTION IN INDIA

Different persons consume alcohol for different purposes including for its medicinal properties, intoxication, unwinding, socialising, etc. The drinking

¹ DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 126 (23rd ed. Lexis Nexis 2018).

² Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

³ Peter Jagdish Nazareth v. State of Gujarat, SCA No. 799 of 2019 Order dated 23-8-2021 (Gujarat High Court).

habits, or a complete lack thereof, can be determined by a number of factors including a person's age, gender, religion, socio-economic status, etc. Consumption of alcohol can reduce levels of stress, alleviate feelings of frustration, etc. On the other hand, it can also lead to deterioration of health.⁴

Alcohol is consumed in almost all parts of India. The popularity and prevalence is such that there is significant consumption even in areas where there is a policy of complete prohibition.⁵ By next year, the annual consumption of alcoholic beverages in India is estimated to cross six billion litres.⁶

Some important insights have been brought to light by the findings of the National Survey on Extent and Pattern of Substance Use in India, commissioned by the Ministry of Social Justice and Empowerment, Government of India that have been published in the form of a report. In the age group of 10-75, about 16 crore persons consume alcohol.⁷ The gender disparity in drinking patterns is reflected in the finding that there are seventeen alcohol-consuming men for every alcohol-consuming woman.⁸

It was found that more than five per cent of the population is consuming alcohol in a harmful or dependent use.⁹ The appalling state of affairs is reflected through another finding which shows that one in every five male consumers requires treatment on an urgent basis. The report also indicated that more than 40% of alcohol consumers were indulging in 'Heavy Episodic drinking' that is taking more than 4 drinks on a single occasion.¹⁰ Furthermore, the engagement of alcohol users in violence is reflected through the finding that more than 1/4th of such users engaged in physical fights.

⁴ S.M. AFZAL QADRI, AHMAD SIDDIQUE'S CRIMINOLOGY PENOLOGY AND VICTIMOLOGY 171 (7th ed. Eastern Book Company 2019).

⁵ Ramanath Jha, *Bihar Prohibition: An Unmitigated Disaster*, Observer Research Foundation (Nov. 15, 2022), <https://www.orfonline.org/expert-speak/bihar-prohibition-an-unmitigated-disaster> (last visited on March 30, 2023).

⁶ Banco do Nordeste, *Alcoholic Beverage Consumption in India in 2020, with Estimates until 2024 (in Billion Liters)*, STATISTA (June, 2020), <https://www.statista.com/statistics/727026/consumption-of-alcoholic-beverages-india/#:~:text=Alcohol%20consumption%20in%20India%20amounted,growing%20urban%20population%20among%20others> (last visited on March 30, 2023).

⁷ Atul Ambekar et al., *Magnitude of Substance Abuse in India 2019*, Ministry of Social Justice and Empowerment, Government of India and National Drug Dependence Treatment Centre (NDDTC), All India Institute of Medical Sciences (AIIMS), New Delhi, http://socialjustice.nic.in/writereaddata/UploadFile/Magnitude_Substance_Use_India_REPORT.pdf (last visited on March 30, 2023).

⁸ *Supra* note 7.

⁹ *Id.*

¹⁰ *Id.*

III. ALCOHOL CONSUMPTION AS A CAUSE OF DOMESTIC VIOLENCE

Alcohol consumption has been determined as a major cause of what is commonly known as domestic violence.¹¹ In the global context, India is one of the several countries where strong links between drinking and domestic violence have been found.¹²

The latest National Family Health Survey's findings provide an overview of the correlation between husband's alcohol consumption and spousal emotional, physical, or sexual violence faced by women.¹³ The percentage of ever-married women who have been at the receiving end of physical or sexual violence perpetrated by the spouse has a positive correlation with the husband's alcohol consumption level. It can be inferred that the chances of suffering from such violence increase by almost fifty per cent if the husband is a person who drinks often as compared to one who does not drink.¹⁴

The impact of such violence is not only limited to the direct victims. Children who are witnesses to domestic violence at their homes are likely to be perpetrators of violence in future.¹⁵ Also, there are greater chances of such children developing patterns of drinking that are harmful.¹⁶

Certain mitigating strategies have been identified to tackle the difficult situation posed by this interrelationship. These include reduction in alcohol availability, tweaking prices, offering treatment to addicts, regulating the minimum legal drinking age, etc.¹⁷

Policy interventions in the legal domain are necessary so as to ensure that alcohol consumption does not lead to harmful behaviour.¹⁸ The criminal justice system ought to make advancements so that incidents of domestic violence fuelled by alcohol consumption are properly identified and recorded.

¹¹ *Intimate Partner Violence and Alcohol*, Movendi International, https://movendi.ngo/wp-content/uploads/2019/05/fs_intimate.pdf (last visited on March 30, 2023).

¹² Anere Parekh, Anirudh Tagat, Hansika Kapoor & Abhijit Nadkarni, *The Effects of Husbands' Alcohol Consumption and Women's Empowerment on Intimate Partner Violence in India*, 37 (13-14) JOUR. OF INT. VIOL. NP11066, NP11078 (2021) (last visited on March 30, 2023).

¹³ NATIONAL FAMILY HEALTH SURVEY (NFHS-5), 2019-21 INDIA REPORT VOLUME I, The DHS Program, <https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf> (last visited on March 30, 2023).

¹⁴ *Id.*

¹⁵ *Supra* note 11.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ J. Da Silva Maia, J. Félix China & J.P. Teixeira, *Domestic Violence in Indian Women: Status of Husband's Alcohol Consumption as a Determinant Factor*, 32(3) EURO. JOUR. OF PUB. HEALTH (2022).

IV. QUESTIONS OF FUNDAMENTAL RIGHTS AND THE REQUIREMENT OF A BALANCED APPROACH

One question of fundamental rights, over which much debate has taken place and is still ongoing, is whether the citizens have a fundamental right to consume alcohol. The debate has been reinvigorated by the decision of the Supreme Court in *K.S. Puttaswamy v. Union of India*¹⁹ wherein it was held that the right to privacy is a fundamental right under Part III of the Constitution.

Prior to this landmark decision, the Supreme Court often encountered questions that challenged the extent of this right. A landmark decision in this context, and perhaps the earliest, was in the case of the *State of Bombay v. F.N. Balsara*²⁰. Certain provisions of the Bombay Prohibition Act, 1949 – an enactment to implement the policy of alcohol prohibition – were under challenge. The Act, as it then existed, imposed a blanket ban on the manufacture, import, export, sale, purchase and consumption of liquor. At the same time, it authorized the Government to permit liquor consumption by armed forces, for health reasons, by foreigners and for sacramental purposes. This was one aspect of the Act which was challenged. It was to be decided whether this was a reasonable classification that ensured respect for the right to equality under Article 14 of the Constitution of India. Positive of the proper and careful regulation of drinking habits in the armed forces, The Supreme Court held that the classification was indeed a reasonable one and was thus valid. Under the Act, there was even a ban on the possession, sale and purchase of medicinal and toilet preparations that contained alcohol. The Supreme Court decision rendered such a blanket ban invalid since it was held not to be a reasonable restriction on the fundamental right to “acquire, hold and dispose of property” as was then guaranteed under Article 19(1)(f) of the Constitution. However, the mandate of Article 47 of the Constitution – a Directive Principle of State Policy that aims at imposing alcohol prohibition – was validated and it was held that alcohol’s consumption, as an intoxicant, can be prohibited.

In *Khoday Distilleries Ltd. v. State of Karnataka*²¹, it was held that citizens are not entitled to carry on trade or business in immoral and criminal activities and in articles or goods which are obnoxious and injurious to the health, safety and welfare of the general public. It was further held that notwithstanding the directive under Article 47 of the Constitution, the State can carry on trade or business in potable liquor. Further, it was held that the State carries on such a business to restrict and regulate the production, supply and consumption of liquor. This can be seen as a reasonable restriction which is in the public interest.

¹⁹ (2017) 10 SCC 1.

²⁰ 1951 SCC 860: AIR 1951 SC 318.

²¹ (1995) 1 SCC 574.

In *State of Punjab v. Devans Modern Breweries Ltd.*²², the majority of a 5-judges Bench decided that there cannot be a fundamental right to trade in liquor. It is the State's privilege which can be parted with for revenue consideration. However, two judges dissented and delivered separate minority opinions. One of them, B.N. Agrawal, J., held that once regulations are put in place to restrict the right to carry on liquor business and such regulations fall in the ambit of reasonable restrictions and public interest under Article 19(6) of the Constitution, it can be interpreted as conceding a fundamental right to do such a business under Article 19. This will imply rights under Article 301 (Freedom of trade, commerce and intercourse) and Article 14 (Equality before law).

Another dissenting judge, S.B. Sinha, J., held that globalisation and other reforms had a significant impact on the Constitution and constitutionalism. A liberal view was being encouraged and metropolitans were open to the pub culture. Therefore, a fresh view of the matter based on ground reality would entail recognition of the right to carry on trade in liquor as a fundamental right under Article 19(1)(g). The law-making process should be a reflection of changes in society. Social conditions have drastically changed from the time when Constitution-makers drafted the Constitution. For the purpose of appreciating legal development, legal history is a good guide.

In *Kerala Bar Hotels Assn. v. State of Kerala*²³, it was noted that there was a major social problem because of excessive and widespread liquor consumption in Kerala. It has been stated that the consumption of beer and wine may be a gateway to the consumption of hard liquor. The Court pointed out history and lamented that prohibition has not been a success. Recently, the Kerala High Court stated that consumption of liquor in a private place without causing a nuisance will not amount to an offence.²⁴

In April 2016, the Bihar Government imposed a policy of total prohibition. This policy was challenged before the Patna High Court. On the question of whether an individual has a fundamental right – in the form of a right to privacy – to consume whatever they wish, the Division Bench was divided in its opinion.²⁵ While one judge rejected the State's argument of an eventual prohibition on the ground that all other states where the policy of prohibition is not in place will then be considered as standing in violation of the Constitution, the other judge opined that a right to consume alcohol can be reasonably restricted or completely prohibited. The Supreme Court stayed this decision by the Patna High Court and has kept the matter pending.²⁶

²² (2004) 11 SCC 26.

²³ (2015) 16 SCC 421.

²⁴ *Salim Kumar v. State of Kerala*, 2021 SCC OnLine Ker 4136.

²⁵ *Confederation of Indian Alcoholic Beverage Companies v. State of Bihar*, 2016 SCC OnLine Pat 4806.

²⁶ *State of Bihar v. Confederation of Indian Alcoholic Beverage Companies*, Special Leave to Appeal (C) Nos. 29749-29763/2016 Order dated 20-04-2022 (Supreme Court).

Coming back to the right to privacy argument, it is significant to note that a three-fold test was laid down in *Puttaswamy* judgment. For a law to be on the constitutionally correct side of the right to privacy, it should pass the tests of legality, need and proportionality. A former Supreme Court judge has argued that drinking can be construed as an individual's right to privacy.²⁷

Holding the petitions challenging provisions of the statute that enforces prohibition in the state of Gujarat as maintainable, it was observed by the Gujarat High Court that there is a novelty in examining the prohibition on intoxicating alcoholic beverages while seeing it in the context of the right to privacy and locating the same in food preferences that are personal in nature.²⁸

It is submitted that this examination would require a balancing act that must, by all means, prevent abuse in any form and protect the dignity of women's life. It remains to be seen how the court interprets different fundamental rights that may seem contradicting and paradoxical.

V. HUMAN RIGHTS – THOSE OF WOMEN AND OF DRINKERS

Article 21 of the Constitution of India, as interpreted by the Supreme Court through numerous landmark judgments, promises everyone a dignified life.²⁹ The Universal Declaration of Human Rights, 1948 (UDHR) guarantees liberty to everyone and the right to rest and leisure. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) contemplates the recognition of widest possible protection and assistance for a family. The International Covenant on Civil and Political Rights, 1976 (ICCPR) prohibits arbitrary or unlawful interference with one's privacy. States parties to ICCPR have to ensure equality of rights and responsibilities of parties to a marriage. The Protection of Women from Domestic Violence Act, 2005 defines "domestic violence" and grants various rights like right to seek shelter, right to seek custody, right to get compensation, right to medical aid, etc.

Libertarian thought and perspectives seem to coextend when rights of women and of those willing to consume alcohol are considered. Such rights have to be reasonably restricted for the protection of commonly accepted norms and values like public decency, morality, social order, etc. For instance, an under age person cannot be legally allowed to purchase and consume alcohol. Law, as a means of social control, ought to balance rights and duties in a way that promotes overall well-being.

²⁷ Markandey Katju, *Prohibition Has Never Worked and Never Will*, THE WIRE (Jan. 1, 2016), <https://thewire.in/law/prohibition-has-never-worked-and-never-will> (last visited on March 30, 2023).

²⁸ *Supra* note 3.

²⁹ JASTI CHELAMESWAR & DAMA S. NAIDU, M P JAIN INDIAN CONSTITUTIONAL LAW 1169 (8th ed. Lexis Nexis 2018).

In this light, it is important to have elaborate discussions on the respect and recognition for rights of both groups or classes. The fact that women in India need a society that empowers them and promotes their well-being is undisputed. Their progress is conditional to safety and security which are vital elements of a life with dignity. At the same time, a strong correlation between alcohol consumption and domestic violence, of which generally women are the victims, has been established under the heading “Alcohol Consumption as a Cause of Domestic Violence”. That may not necessarily lead to the generalization that all drinkers are evil and pose the risk of violence to society. In today’s India which is rapidly urbanizing, not only men but a growing number of women are experimenting with alcohol and actively engaging in its consumption.³⁰ A truly global world view in the twenty-first century calls for suitable adjustments.

In the context of this research, complete prohibition may be seen as an encroachment of an adult person’s right to consume alcohol. Policy decisions like promoting soft or mild alcoholic drinks such as beer and wine over hard drinks through tweaks in taxation and pricing may prove helpful in countering the ill effects of violent or extreme intoxication.

VI. CONCLUSION

The debate on defining the scope of right to consume alcohol has been reinvigorated after the recognition of right to privacy as a fundamental right. While the decisions of constitutional courts would clarify the standing of right to drink vis-à-vis other rights, this research emphasizes on optimally balancing it with the rights of women to a violence-free environment given that consumption of alcohol may lead to instances of domestic violence. Accordingly, the policymakers, who design and implement liquor policy, and other stakeholders should make provisions to ensure the protection of the physical, emotional, and sexual integrity of women.

The way forward ought to eliminate the promotion and glorification of the consumption of liquor. At the same time, social reality points towards the failure of prohibition policies owing to the supply of illicit alcohol, corruption, inefficiency of law enforcement agencies, etc.³¹ The need of the hour is an approach that respects and stabilizes different fundamental rights while addressing issues arising from excessive and problematic alcohol consumption. Gender sensitization, limited consumption of alcohol, and promotion of harmonious cohabitation without resorting to any form of violence seem to be good starting points.

³⁰ *Women’s Increased Alcohol Consumption Contributing to India’s Growing Love for Alcohol: Survey*, THE TIMES OF INDIA (Sept. 3, 2019, 06:25 PM), <https://timesofindia.indiatimes.com/india/womens-increased-alcohol-consumption-contributing-to-indias-growing-love-for-alcohol-survey/articleshow/70960088.cms> (last visited on March 30, 2023).

³¹ S.M. AFZAL, *supra* note 4, at 175.