



Rationalizing Revenue Generation and Ways to Promote Health: An Equilibrium of Conflicting Interests

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Philosophy of State's Revenue Generation



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- State revenue generation, inter alia, through:
 - Taxes; &
 - Regulatory Fees - through License (as opposed to Compensatory fees under License)
- Taxes – Also an instrument of social change – Article 38
- Bastable's Canon of "**Expediency**": - Tax on the basis of economic, social and political needs
- Per **American Jurisprudence** (Vol. 30) – 642, 645 – based on *Gundling vs. Chicago 44L Ed 728*, *Philips vs. Mobile 52 L Ed 578*
 - In matters of liquor traffic - power of control by the State - an incident of the society's right to self protection
 - It rests upon the right of the State to care for the health, morale and welfare of the people.
 - Liquor traffic is not something which is licensed for the purpose of promoting it
 - License fee may be exacted in amounts intended to discourage participation in the business
 - Merely because license fee is large, it is not a tax since the object is to control, regulate and restrict and not to encourage the liquor traffic

Philosophy of State's Revenue Generation



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- **Revenue being the result of the system and not the motive for its adoption**
- The higher the license fee, the better the regulation - as the effect of a high fee is to keep out from the business those who are undesirable and to keep within reasonable limits the number of those who may engage in it
- Above quoted with approval in
 - Har Shankar vs. Dy. Excise and Taxation Commr. (1975) 1 SCC 737 Para 57] &
 - State of Bihar vs. Shree Baidyanath Ayurveda Bhawan (2005) 2 SCC 765 Para 24
- *George Walkem Shannon vs. Lower Mainland Dairy Products 1938 AC 708*
 - License fees charged to defray cost of administration of local regulation or to increase general funds of province or both – i.e., **regulation of trade and provision of revenue.**
 - Endorsed by Supreme Court in *State of Tripura vs. Sudhir Ranjan Nath (1997) 3 SCC 665*
- License fee could be either compensatory (for services) or regulatory in nature to monitor, regulate or control and the latter need not bear a quid pro quo. [*Secundrabad Hyderabad Hotels (1999) 2 SCC 274* and *Vam Organics (1997) 2 SCC 715*]

Philosophy of State's Revenue Generation



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- **Fee for license and fee for services are two different kinds of levy.** The former is not intended to be a fee for service – *Corporation of Calcutta vs. Liberty Cinema AIR 1965 SC 1107*
- Constitutionally – List II Entry 6, 8 and 51 are relevant for regulation and taxation on alcohol for human consumption.
- **Fundamentally, therefore, the State uses both fiscal and regulatory power to control production, use and consumption of alcohol**

Speakers Point of View : Neither Fiscal nor Regulatory attribute can be said to be more important than the other



Tracing the Indian History

Pre-Independence History of Prohibition in India



- British legal policies had **twin objectives**:
 - **Generating Revenue**
 - Checking **intemperance** among people to safeguard morality.
- **'Buddene cess'** - on palm trees which pertained to land revenue on toddy producing trees
- **Tree cess** - On all palms tapped for liquor in various parts of the country
- **Monopoly rights** were given to the farmers manufacturing liquor from Mahua flowers in majority rural areas
- **However, pitfalls in the liquor policies like loss of revenue since levy was on tapping of palms rather than production of liquor which gave way to large scale evasion at all levels of manufacture and sale, resultantly flooding of cheap illicit liquor in the market.**
- 3 major legislations were brought in to regulate sale and manufacture of liquor:
 - Abkari Act, 1878
 - Mhowra Act, 1892
 - Government of India Act, 1935

Timeline of laws and policy regulations



- **1879:** Mahua flowers classified as intoxicating substance under Bombay Abkari Act, 1878.
- **1892:** British banned collection and sale of mahua flowers in Bombay Presidency under Mhowra Act
- **1915:** Madhya Pradesh Excise Act and Bihar & Orissa Excise Act brings mahua under state control
- **1935:** Congress attempts total prohibition in provinces ruled by them—Madras, Bombay, United Provinces, Central Provinces, and Bihar



Policy and Regulations

Bombay Abkari Act, 1878	Mhowra Act, 1892	Madhya Pradesh Excise Act, 1915
<ul style="list-style-type: none">• Grant of license for manufacture of liquor.• Designed to discourage home-brewing and fermenting.• Mahua spirits to be produced only in central distilleries.• Excise duty was levied before clearance from distilleries.• No Toddy to be drawn without permission.• Old farming system was replaced everywhere which led to widespread discontent and protests against such harsh measures.	<ul style="list-style-type: none">• Was introduced in Bombay Legislative council in 1882 to check:<ul style="list-style-type: none">a) illicit manufacture that caused 'loss of Abkari Revenues'.b) 'lawlessness' in areas where Mahua trees were plentiful.• Ban collection and sale of Mahua flowers in Bombay Presidency.• Charles Pritchard: "<u>Liquor traffic is a legitimate source of liquor revenue</u>"	<p>Prohibition on import/export or transport of Mahua or any other base used for manufacture of liquor</p> <p>Grant of license to manufacturers, distilleries and warehouses of intoxicants.</p> <p>Prohibition on employment for manufacture of liquor of men and women below the age of 21</p> <p>Prohibition on sale of liquor to men and women below the age of 21</p> <p>Prohibition on advertisement</p> <p>Collection of excise duty on import, export, manufacture of liquor</p> <p>Penalty and confiscation on contravention of the provisions of the act.</p>



Policy and Regulations

Bihar and Orissa Excise Act, 1915	Government of India Act, 1935
<ul style="list-style-type: none">• Restrictions on import, export and transport.• Licenses for manufacture.• Prohibition on drawing of Tari in notified areas.• Establishment of distilleries and warehouse with permission from excise commissioners.• Levy of duty of excise.• Fixation of cost price of country liquor.	<p>Provincial Government (and not Federal Government) was given power to regulate sale and manufacture of liquor.</p> <p>Seventh Schedule, List II, Entry 40:</p> <p><i>Duties of Excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lowered rates on similar goods manufactured or produced elsewhere in India:</i></p> <ul style="list-style-type: none">(a) <i>Alcoholic liquor for human consumption</i>(b) (...)(c) (...) <p>Seventh Schedule, List II, Entry 31:</p> <p><i>Intoxicating liquor & Narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase & sale of intoxicating liquor.....</i></p>



Policy and Regulations

Government of India Resolution dated 07.09.1905

*The Government of India have **no desire to interfere with the habits of those who use alcohol in moderation** and is necessary in their opinion to make due provisions for the needs of those persons. Their settled policy, however, is to **minimize temptation** to those who do not drink and to **discourage excess** among those who do, and to a furtherance of this policy, **all considerations of revenue must be absolutely subordinate**. The most effective method of furthering this policy is to **make the tax upon liquor as high as it is possible** to raise it **without stimulating illicit consumption** to a degree which would increase instead of diminishing the total consumption and without driving people to substitute deleterious drugs for alcohol or a more or less harmful form of liquor.*



Reactions to Colonial Policy Measures

- **Temperance Movement 1906:**
 - In **opposition to the harsh taxes** imposed by British a **temperance movement** was started by the people in South Gujarat and Thane – The people promoted collective abstinence from liquor.
- **Anti-Liquor Campaign by M.K. Gandhi:**
 - Recommended legislations in favor of prohibition
 - Attempts made to demolish the argument of revenue generation
 - *“Revenue of liquor is a form of extremely degrading taxation”*
- **Prohibition Movement by Indian National Congress**
 - Congress attempts total prohibition in provinces ruled by them—Madras, Bombay, United Provinces, Central Provinces, and Bihar.

Constitutional Assembly Debates on Prohibition



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Prohibitionists	Anti-Prohibitionists
<ul style="list-style-type: none">• The arguments of M.N. Srinivas revolved around Gandhian teachings regarding evils of intoxication, Hindu scriptures and American example of prohibition• Liquor was an evil brought in the country by the British and must leave with them• Prohibition will help Harijan and labour population by diverting their hard-earned money towards better quality of life.• Revenue lost is Rs. 25 crores, the amount saved to the people is at least Rs. 100 crores which are wasted by the people in the country on intoxicants	<p>Prohibition was 'flimsy'.</p> <p>Not true that India must have prohibition because US has it and that the manifest failure in US must be a lesson for India.</p> <p>Success of prohibition in madras was a myth because a number of people continued indulging in drinks and languished in jails</p> <p>No cross-community approval for prohibition was taken</p> <p>Prohibition would interfere with religious rights of certain Adivasi communities in India</p>

Dr. B.R. Ambedkar accepted the following amendment to **Article 38 (now Article 47)** of the Draft Constitution:

That at the end of article 38, the following be substituted: -

“and shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes”

Constitutional Framework on Prohibition



Article 47 of the Constitution of India:

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 endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Schedule 7 – List II

6. Public health and sanitation; hospitals and dispensaries

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

51. 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:-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;



What the Reports say

Reports on Prohibition and Revenue Generation



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- **Tek Chand Committee Report Vol. 1, 1964**
 - Two kinds of losses:
 - (a) Significant and substantial decrease in excise revenue
 - (b) Manifold increase in expenditure on enforcement of prohibition.

 - Loss of revenue due to illicit liquor cannot be replaced by any other revenue

 - Incorrect to hypothesize that dry States after losing liquor revenue ought to be collecting revenue from alternative sources due to diversion of money for consumption on other commodities.

 - Empirical data does not show that 'dry states' after losing liquor revenue ought to be collecting revenue from alternative sources because:
 - a) If diversion of income from liquor is insignificant, there will be no increase in revenue
 - b) Income saved from drinking will be used for better food and clothing which do not generate revenue for the state
 - c) To generate more income from sales and luxury tax revenue, the rate of tax ought to be increased, further disincentivizing expenditure on such commodities.

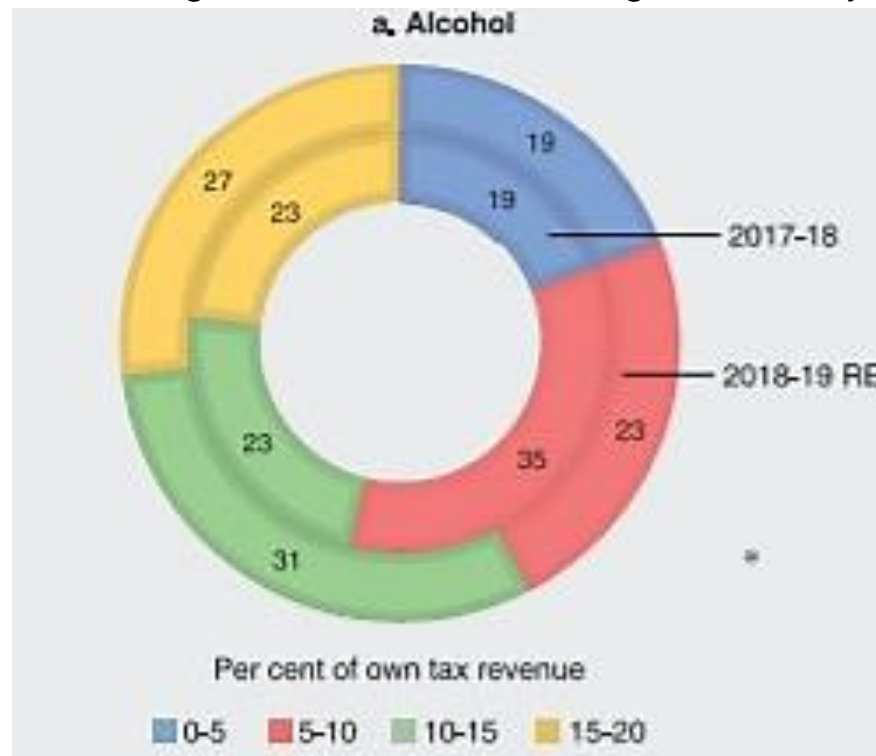
Reports on Prohibition and Revenue Generation



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- **Study of Budgets, 2019 (RBI)**

- As per this report excise duty on alcohol accounts for 10-15% of total tax revenue of the state. This may be second or third highest source of revenue generation by the State.



This does not take into account fees for stamping, weights and measures applicable to liquor and VAT on alcohol, accordingly, actual collections might be higher than those reported

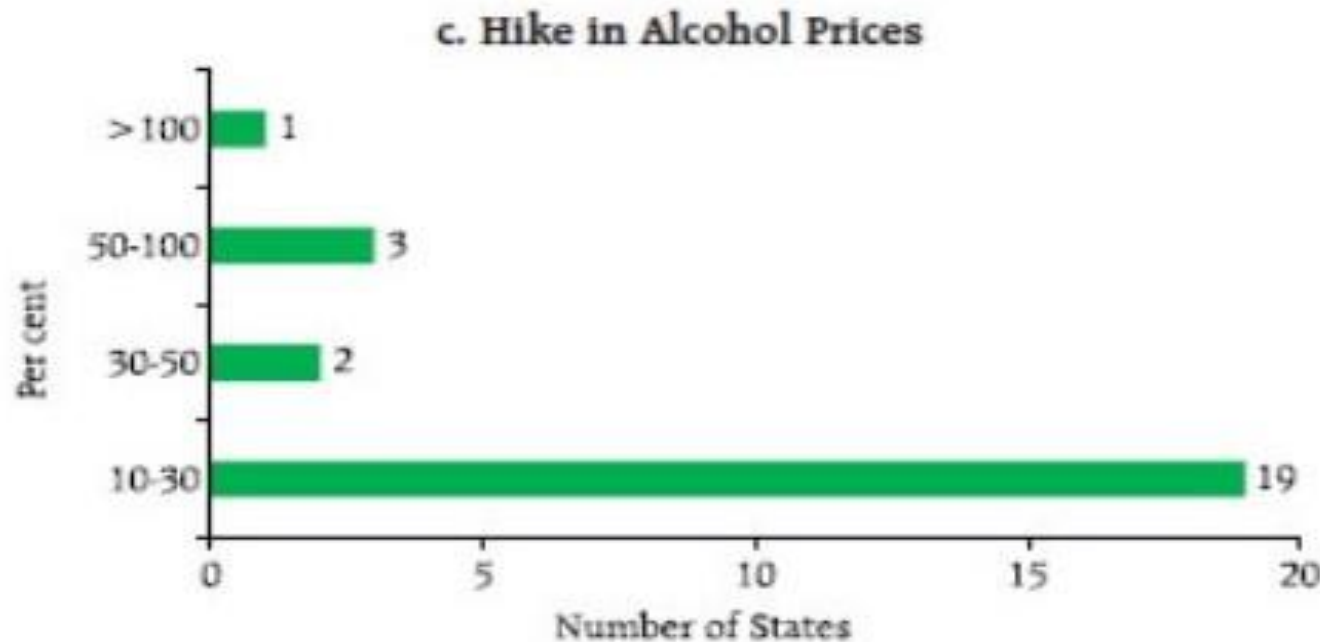
Reports on Prohibition and Revenue Generation



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- **Study of Budgets 2021 (RBI): Revenue during COVID-19 pandemic**

- As the states grew desperate due to exorbitant increase in expenditure in public health as well as substantial reduction of revenue owing to the prohibition imposed on sale of alcohol during the first phase of the pandemic. To garner additional revenues during unprecedented times, 22 State/UTs **increased duties on sale of liquor from 10-120%** (RBI Report, 2021). Resultantly, the excess revenue became a big relief in the continued battle of the States against the pandemic and for provision of additional supplied to the masses.





Judicial View

M. Thaha Mohamed vs. District Collector, Madurai District WP(MD) No. 19278/2020



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- **Facts**

- Writ Petition filed seeking to direct the State to remove the TASMAL Shop opposite to Madurai Bench of Madras High Court and near a Girls School.

- **Court Observations**

- 1: 2 syndrome (Revenue from Liquor : Expenditure on Health)
- 5300 TASMAL outlets easily earn about Rs. 30,000 crores per year
- Government loses mere than Rs. 2 in terms of health care expenses and loses productivity, for every rupee the Government gets from alcohol, according to the study made by NIMHANS in Karnataka.
- Rs. 90,000 crores has to be spent by the Government towards health care expenses per year
- Indian Southern States accounts for half of the country's liquor consumption.
- 10-15% of these States total revenue especially 15% of Tamil Nadu Revenue is from excise duty on liquor sales.

M. Thaha Mohamed vs. District Collector, Madurai District (Contd.)



• Court Observations (Contd.)

- The Court referred to Rig Vedas and other Great Epics to conclude that drinking has been continuing since the Vedic Period in India.
- WHO Global Status Report, 2018: 2.6 lacs deaths every year in India due to alcohol
- Further reports referred indicated the serious health complications related to alcohol abuse.
- Court 'appealed' to the State Government to bring in prohibition in a phased manner.

Annual Revenue of TASMAC		
Fiscal Year	Revenue in Crores (?)	% Change
2002-03	2,828.09	
2003-04	3,639	28.67%
2004-05	4,872	33.88%
2005-06	6,086.95	24.94%
2006-07	7,300	19.93%
2007-08	8,822	20.85%
2008-09	10,601.5	20.17%
2009-10	12,491	17.82%
2010-11	14,965.42	19.80%
2011-12	18,081.16	20.82%
2012-13	21,680.67	19.91%
2013-14	23,401	7.93%
2014-15	26,188	11.91%
2015-16	25,845.58	-6.76%
2016-17	26,995.25	6.97%
2017-18	26,797.96	-0.73%
2018-19	31,157.83	8.39%

Khoday Distilleries Ltd. vs. State of Karnataka (1995) 1 SCC 574



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- **Facts**

- Multiple Writ Petitions and SLPs were filed before the Court challenging the constitutional validity of various legislations enacted by State of Karnataka regulating trade in liquor.

- **Court Observations**

- Court was brought upon to answer the question whether appellants have a fundamental right to carry on business in liquor. Answering in the negative, the Court also observed the following:
- The **State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption.** When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. **The State cannot on that account be said to be carrying on an illegitimate business.**

Khoday Distilleries Ltd. vs. State of Karnataka (1995) 1 SCC 574 (Contd.)



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- **Court Observations (Contd.)**

- The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. **The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions.** Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

P.N. Kaushal vs. Union of India (1978) 3 SCC 558



- **Facts**

- Writ Petitions challenging the amendment in Punjab Excise Act and related Rules seeking to declare two 'dry days' in every 'wet week' for licensed liquor shops and other institutions in the private sector.

- **Court Observations**

- Progressive implementation of the policy of prohibition, by virtue of Articles 38 and 47 is fundamental to the country's governance.
- The court further observed that the *imperial masters were concerned about the revenues they could make from the liquor trade they were not indifferent to the social control of this business which, if left unbridled, was fraught with danger to health, morals, public order and the flow of life without stress or distress. **Indeed, even collection of revenue was intertwined with orderly milieu;***
- **Justice Krishna Iyer**, while concluding observed that **as between temperance and prohibition it is a policy decision for the Administration.**

Shree Krishna Pandey vs. State of Jharkhand WP (PIL) No. 3030/2013



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- **Facts**

- PIL filed for direction upon the respondents to implement the provisions of Article 47 read with Article 21 of the Constitution of India for bringing prohibition in the State of Jharkhand.

- **Court Observations**

- The Court observed that Madras, Bombay and Gujarat implemented prohibition between 1948 and 1950. Further prohibition was implemented in Assam, Madhya Pradesh, Orissa, Karnataka and Kerala and by 1954, one-fourth of Indian population was under prohibition.
- Demands for prohibition gave way on account of the revenue earning. The potential loss in State revenue due to loss of excise revenue from the sale of alcohol discouraged most State Governments from enforcing prohibition on a long-term basis.
- Prohibition slowly gave way to temperance as the negative effects of prohibition included:
 - a) Wide-scale sale of spurious and cheap liquor which can cause health problems and deaths,
 - b) Rise of organized crime and bootlegging due to the growth of a black market for alcohol.
 - c) Loss of jobs to people working in breweries and vineyards was another stumbling block.



Concluding Remarks

- **Erstwhile rational behind total prohibition - based upon untested hypothesis, pre-set notions regarding British influence upon alcohol and religious morality.**
- **The failure of absolute prohibition in US during the 1920s as well as in State of Madras and Uttar Pradesh during 1940s suggests that dependency of State on alcohol and such other revenue sources which greatly influence its public functions, including upliftment of health and standard of living among the masses.**
- **Regulation of liquor is a much more effective and sophisticated measure to control consumption of alcohol among the masses and spurious and under quality intoxicating substances by the society.**
- **Strict policies of prohibition increase expenditure on policing, implementation of norms, processing of the defaulters as well as the excess medical costs due to consumption of illicit alcohol.**
- **The Courts have sided with the Government whenever question of prohibition and Article 47 is brought upon.**



Concluding Remarks

- **While the directives under Article 47 are paramount, and revenue generation however significant, is only subservient to the constitutional mandates**
- **A balance between prohibitory policies and revenue generation is necessary to ensure individual liberties and to avoid dangers of other spurious substances available to the public.**



Concluding Remarks



THANK YOU

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