

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

**PROHIBITION
AND
THE CONSTITUTION**

by

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PROHIBITION : THE BEGINNINGS

- 1937
 - PROVINCE OF MADRAS
 - C. RAJAGOPALACHARI – (CM)
- 1950
 - ARTICLE 47 – DRAFT ARTICLE 38
 - PAGE 151, 156
 - WHY DPSP? EACH STATE CAN DECIDE
- 1950-2021
 - PROHIBITION – WHETHER SUCCESSFUL?

PROHIBITION - THREE LEGAL PRINCIPLES

- (i) PRIVILEGE
- (ii) POLICE POWER
- (iii) RES EXTRA COMMERCIIUM

- **PRIVILEGE:** More than a right

- Oxford Dictionary: Special right, advantage or immunity, granted to an individual or a group

- Ramanatha aiyar – Law Lexicon: Vol 3, pp. 4401 - 4403

1. *C.S.S. MOTOR SERVICES v. STATE OF MADRAS*, AIR 1953 Mad 279

2. Approved in *SAGHIR AHMED v. STATE OF U.P.*, AIR 1954 SC 728

3. NO FUNDAMENTAL RIGHTS – PRIVILEGE – ONLY IN A MONARCHY!

POLICE POWER : UNITED STATES

1827

- *BROWN v. MARYLAND* - 25 U.S. 419, 442-43
- INHERENT POWER – TO SECURE PUBLIC PEACE, LAW AND ORDER
- DISTINCT FROM LEGISLATIVE POWER
- PUBLIC MORALS, SOCIAL CONTROL
- POWER ONLY FOR THE STATES – NOT CONGRESS

U.S. v. LOPEZ (1995) 514 US 549, 566

- **POLICE POWER – INDIA**

1. *CHIRANJIT LAL CHAUDHURI v. UNION OF INDIA*, AIR1951 SC 41

- - NOT APPLICABLE
- - VARIABLE AND INDEFINITE CONNOTATIONS

2. *WEST BENGAL v. SUBODH GOPAL BOSE*, AIR 1954SC 92

- - SPECIFIC, DETAILED LEGISLATIVE LISTS
- - NO PLACE FOR POLICE POWER

WRONGLY APPLIED:

3. *COVERJEE BHARUCHA v. EXCISE COMMISSION, AJMER*, AIR 1954 SC 220 (Liquor)

4. *P.N. KAUSHAL v. UNION OF INDIA*, AIR 1978 SC 1457 (Liquor)

5. *COMMISSIONER OF POLICE v. ACHARYA J. AVADHULE*

(2001) 12 SCC 770, 802 (*SOCIETY v. INDIVIDUAL*)

6. *FRIENDS COLONY DEVELOPMENT COMMITTEE v. STATE OF ORISSA*

(2004) 8 SCC 733, 743 (Planning city development)

RES EXTRA COMMERCIIUM

- ROMAN LAW

- *RES IN COMMERCIO*

- CAPABLE OF OWNERSHIP

- *RES EXTRA COMMERCIIUM*

- Property incapable of ownership

- Examples: Rivers, sea-shore

1951 - *ANUGURBALA MULLICK v. DEBABARA MULLICK* AIR 1951 SC 293
(N.C. Aiyar J.)

- *Shebaitship* – is not transferable; no ownership - res extra commercium

1957 - WRONGLY APPLIED

- *R. M. D. CHAMARBAUGWALLA'S CASE*

- LIQUOR, BETTING AND GAMBLING

- RELIGIOUS OVERTONES (DAS J.)

- **LIQUOR AND ARTICLE 19(1)(g)**

1. *KRISHNA KUMAR NARALA v. J&K*, AIR 1967 SC 1368

2. *KERALA BAR HOTELS ASSOCIATION v. STATE OF KERALA* (2015) 16 SCC 421, 441

- RIGHT EXISTS UNDER ARTICLE 19(1)(g)
- SUBJECT TO ARTICLES 19(6) AND 47
- “PROHIBITION HAS NOT SUCCEEDED”
- REGULATION - ADVERTISING BAN, OTHER RESTRICTIONS



THANK YOU

&

HAPPY NEW YEAR - 2022

