

IMPERATIVE NEED FOR A CENTRAL LAW TO PREVENT THE PUBLIC HEALTH HARM AND SOCIAL CONSEQUENCES CAUSED BY ALCOHOL USE

Indian Alcohol Policy Alliance (IAPA) Recommendations

The increasing production, distribution, promotion and easy availability of alcohol across India, in the absence of a Central Law has created diverse administrative problems, besides alarming increase in public health harm and socio-economic problems among the general population in the country. Since the Alcoholic Beverage sector is a State Subject under the 7th Schedule of the Constitution of India, the Union Government has little or no say with regard to the Excise Policies / Acts or Rules that are being followed in the different States and Union Territories of India. It is from this realization that the Ministry of Food Processing Industries, which is the Central Nodal Agency on Alcoholic Beverages of the Government of India has constituted a Joint Working Group of the concerned Ministries and State Excise Commissioners with a view to frame Model Excise Policy / Taxation structure / Act / Rules for possible adoption by States and Union Territories. Though the Draft Model Policy has already been announced, IAPA strongly feel that the Government will not be able to implement it satisfactorily without a Central Law. It is also the duty and responsibility of the Government to include provisions to address the Public Health Harm and Social Consequences of the harmful use of Alcohol, taking into consideration the spirit of Article 47 of the Directive Principles of the Constitution of India.

It is in this context Indian Alcohol Policy Alliance (IAPA) urge the Government of India to enact a Central Law, taking into consideration the following points and evidences:

1. World Health Organization (WHO) on adverse effects of Alcohol

- i. As per World Health Organization (WHO), the protection of human health is a recognized legitimate objective under the treaties of the World Trade organization (WTO). The fast pace of globalization of economies has however resulted in the local Indian alcohol industry acquiring a new status due to recent tie ups with more established transnational companies & brands. This along with other factors has led to increasing use and abuse of alcohol. Pub culture has become widely prevalent and is gradually becoming an acceptable norm. More & more women and youth are taking intoxicating drinks. Young impressionable minds are continuously being bombarded with surrogate alcohol advertisements. Even in rural areas the consumption of liquor is going up. The existing Excise laws of the States could neither check the increasing consumption, because it gives lot of revenue to States nor could bring any law to check the extent of consumption by Individuals.
- ii. The impact of consumption of liquor as per WHO has been found to be very harmful and as such have expressed great concern about the risks to the health of population as it leads to various ailments viz. oesophageal cancer, liver cancer, cirrhosis of liver, blurred vision, nausea, vomiting, hepatitis, depression, heartburns, anaemia, pancreatitis, various cardio vascular diseases, premature mortality and strokes.
- iii. Given the poor socio-economic status of many communities, especially in rural areas, disproportionate amount of family income is spent on alcohol, leaving very little money for food, education, housing, health & other needs. The household of the alcohol dependent person often finds itself in total impoverishment with the individual sometimes spending

most of the money earned to purchase alcohol. As per study of alcohol dependent persons in Bangalore, it was found that most people took loans to support their habit of drinking and 9.7% sent children under 15 to work to supplement family income.

- iv. Other adverse effects of alcohol consumption have been: domestic violence, absenteeism at work places and rash / negligent driving. The role of alcohol in domestic violence as per study found that 33% of spouse-abusing husbands were consuming alcohol. In the study for injury prevention and safety promotion by NIMHANS, Bangalore, it was found that alcohol consumption contributed to most of the road accidents.

2. **Role of States in India with regard to intoxicating liquors**

Production, manufacture, possession, transport, purchase and sale of intoxicating liquors is regulated by States Excise Acts (viz. Punjab Excise Act, 1914, Orissa / Bihar Excise Act 1915, A.P. Excise Act 1968, etc). The States collect excise duties. Their primary concern is the revenue. However they display notices that drinking is injurious to health; they do not allow drinking at public places; prosecute offenders for advertisements on liquor. They also notify dry days & ban liquor vends near schools, hospitals, religious places, etc. They also impose curbs on possession limits & hours of sale etc. Neither the said steps have brought down consumption of liquor nor any law has been promulgated by states to check alcohol abuse .

3. **Prohibition (under Article 47 of the Indian constitution) wherever introduced in India failed – Hence need for a Central Law**

- i. Supreme Court of India in one of its recent Judgements in the case of State of Punjab versus Devans Modern Breweries (2004) 11 Supreme Court Cases 26 observed that Prohibition wherever introduced in India failed and had to be withdrawn.
- ii. If the Directive Principles as enunciated under Part –IV of the Indian Constitution, which also include a directive for introducing prohibition on consumption of intoxicating liquors, are not followed, then it becomes the duty of State to make appropriate law to give effect to the Directive Principles. This has been clearly enunciated in the case of Razakbhai Issakbhai Mansuri Versus State of Gujrat (1993) Supp (2) Sec 659 decided on 4.12.1992.

4. **Children’s Fundamental Rights to Development to be ensured by State.... Possible only through a Central Law on the subject to control Alcohol menace**

Indian Constitution aims at ensuring fuller development of every child, as per observations of the Supreme Court in the case of M/s Shantistar Builders versus Narayan Khimalal Totame & others. (1990) 1SCC 520. Neglect of children by alcoholic parent would adversely effect their development. For ensuring their right to development, children of alcoholic parents can’t approach the courts against their parents. The solution lies only in enacting a Central Law to check alcohol abuse so that Children’s Fundamental Right to Development is ensured by the State.

5. **Central Law essential to prevent the deterioration of Public Health and Social Consequences resulted from Alcohol Use**

In the case of Khoday Distilleries Ltd. And others versus State of Karnataka & others decided on 19.10.1994 (1995) 1SCC 574 Supreme Court of India mentioned that

intoxicating drinks are injurious to health and impede the raising of level of nutrition and the standard of living of the people and improvement of public health.

Since Article 47 of the Constitution in which the principle of prohibition is enshrined, is fundamental in the governance of the country, and the states could accordingly prohibit completely the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, they could not do so primarily because of revenue considerations. In such a situation, health aspects of the people could not be ignored and since no state has enacted any law in this regard, it is absolutely essential that at this juncture the Central Government, keeping in view the interest of Public Health, bring out a central law to check alcohol abuse and to ensure that the money / earnings which should be used for education etc of children are not frittered away in alcoholic drinks.

6. **SUMMING UP – Points which facilitate the enactment of a Central Law to check Alcohol abuse**

- i. Prohibition as envisaged under Art: 47 of the constitution could not be introduced anywhere in India because wherever it was introduced, it led to illicit distillation of liquor, consumption of harmful products, smuggling of liquor, clandestine trade, hooch tragedies, Parallel distribution system in grey/ black market & loss of revenue to the state.
- ii. Fundamental Right of Children to grow as enunciated by the Supreme Court of India under Art: 21 of the Constitution should not be allowed by the State to be infringed by the alcoholic parents, who fritter money in intoxicating drinks.
- iii. No State has brought or promulgated any Law so far to check adverse effects of over consumption of liquor by negligent parents / Guardians etc. That is why central intervention is needed by a Central Law as excessive drinking could be made a cognizable offence under the proposed new Central Law. WHO has in this connection mentioned :-
 - (a) Alcohol consumption is no more just an individual choice of drinking or not drinking. It can be described as the sum total effect on the individual, the family & society.
 - (b) There is a need to focus on prevention of harm from alcohol consumption for the purpose of health promotion as well as social and economic development.
- (iv) Several previous examples are available where Directive Principles lead to promulgation of Central Laws on the subjects viz Equal Remuneration Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, Maternity Benefit Act 1961.
- (v) State is under a constitutional obligation to ensure that there is no violation of fundamental right of any person particularly when he is unable to wage a legal battle. (Bandhua Mukti Morcha v Union of India (1984) 3SCC 161. In respect of Children, whose fundamental right of development is infringed, the said judgment would apply requiring a central law to enforce the fundamental rights.
- (vi) Child is to be protected against all neglect (Vishal Jeet V Union of India) (1990) 3SCC 318.
- (vii) Though Directive Principle are not enforceable by Courts, nonetheless it is the duty of State to give effect to these Principles by making appropriate Laws (Razakbhai Issakbhai Mansuri & others V State of Gujarat & others (1993 Supp (2) SCC 659).

- (viii) The proposed Law needs to be promulgated by Ministry of Health as much of the effect of alcohol abuse is absorbed by the health sector, either directly or indirectly (WHO- Alcohol Control Series -2). As per WHO, gains in terms of revenue from alcohol sales in India are INR 216 billion every year, losses from adverse effects of alcohol are estimated to be INR 244 billion & as such State is gaining less in revenue and losing more in terms of hospitalisation, medicines, rehabilitation of effected families, loss of income, lesser productivity, etc and various other costs.

7. **Proposed Contents for a new Central Law to Control and Prevent the Public Health Harm of Alcohol in India**

- (i) Prescribing limits of drinking.
- (ii) Excessive drinking i.e. more than prescribed limits to be made a cognizable offence.
- (iii) Steps for temperance to be laid.
- (iv) Permitting ingress / entry of the authorities /police into any premises / tenement to check alcohol abuse.
- (v) Dissemination of adverse effects of alcohol to all i.e. creating awareness.
- (vi) Clearly defining roles of Directors of Prohibition, Excise Commissioners, Police, Social Welfare Directorates & Voluntary organizations to check alcohol abuse.
- (vii) Procedure for detecting problem drinkers.
- (viii) Health Audits / Disciplinary proceedings against workers to check alcoholic menace at work places.
- (ix) Prescribing Educational /Training Programmes.
- (x) Extension of help to individual sufferers through trained welfare officers etc.
- (xi) Contents of leaflets / posters for awareness.
- (xii) Offences relating to alcohol abuse to be laid.
- (xiii) Cognizance of offences by Magistrate.
- (xiv) Penalties (Imprisonment / Fine) in respect of offences.
- (xv) Appeals / revision / review in respect of orders / judgments passed by the Magistrates.
- (xvi) Over riding effect of this law on other States enactments.