

(1995) 04 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22999 of 1994

Kanaka Durga Wines and Others

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 2(2), 2(21)
Andhra Pradesh Prohibition Act, 1995 — Section 15(1), 2(7), 7, 9
Constitution of India, 1950 — Article 14, 19(1), 19(6), 21, 226

Citation : (1995) 3 ALT 228 : (1995) 2 APLJ 31

Hon'ble Judges : Syed Shah Mohammed Quadri, J;S. Parvatha Rao, J;P.L.N. Sarma, J

Bench : Full Bench

Advocate : Koka Raghava Rao, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Syed Shah Mohammed Quadri, J.—Intoxicating drinks, a much desired beverage, a favourite topic of poetry in oriental countries, a routine drink and indispensable item of parties and dinners in occidental countries, have nonetheless been subject of controversy from time immemorial. Their virtues and vices have been debated by the addicts and the reformists for ages. Some religions prohibited their use on the ground of their predominantly delirious effects which outweigh the pleasure, enjoyment and benefits, if any, of the drinks. Though the petitioners have placed some material on record to show that all intoxicating drinks are not injurious to health and that some drinks like beer, draught beer have good nutrition value and that some others, if taken in small quantities, not only have no delirious effect but also have many advantages and the State relied on some literature to show that intoxicating drinks are injurious to health, we are not inclined to discuss these aspects inasmuch as our constitutional framers imposed a duty on every State to endeavour to bring about prohibition of the consumption except for medicinal purposes of the intoxicating drinks and of drugs which are injurious to health as one of the Directive Principles of the State

Policy by including it in Article 47 (Part-IV) of the Constitution of India.

2. In the composite State of Madras an attempt was made to bring about the prohibition of the consumption of intoxicating drinks by enacting the Madras Prohibition Act, 1937 (Madras Act X of 1937). The Bombay Prohibition Act, 1949 (Act XXV of 1949) was another attempt in the pre-constitutional era to introduce prohibition but that attempt also was not successful. In discharge of that constitutional mandate many States implemented the policy of prohibition by banning consumption of intoxicating drinks. We learn, there is total prohibition in the States of Gujarat, Rajasthan, Delhi and partial prohibition in the States of Tamilnadu and Uttar Pradesh. In our State the manufacture, sale and consumption of intoxicating liquors were prohibited by making the Andhra Pradesh (Andhra Area) Prohibition Act, 1937 applicable to the erstwhile State of Andhra By Andhra Adaptation Act, 1953. Later, after formation of Andhra Pradesh, that Act was applicable only to the Andhra area of the State. But in the whole State the production, manufacture, possession, transport, purchase and sale of intoxicating liquor are regulated by the Andhra Pradesh Excise Act, 1968, hereinafter referred to as "the Excise Act". Licences were granted for manufacture of liquor and for sale; however, no permit was required for consumption of intoxicating drinks under the Excise Act.

3. There was an unprecedented agitation, commonly known as "the anti- arrack agitation" by the women of this State, which started from Nellore District, demanding that the Government should impose ban on the manufacture, sale and consumption of intoxicating liquors. Their agitation resulted in the then Government constituting a Cabinet Sub-Committee in G.O. Rt. 4362., G.A.D., dated 12-10-1992, which may be regarded as the first step in implementing the prohibition policy, inter alia, to analyse the reasons for the said agitation and to outline the steps that can be taken to meet the demands. On receipt of the report of the Sub-Committee dated November 27,1992, the Government decided that its ultimate objective would be to have total prohibition and issued orders indicating the future course of action in G.O.Ms. No. 402, Revenue (Excise-II) Department, dated April 24, 1993.

4. In the last State Assembly elections, held in December, 1994, the Telugu Desam Party included in its election manifesto the policy of total prohibition. Having received the mandate of the electorate and after forming the Government it embarked on giving effect to the prohibition policy. First, on December 12, 1994 the Government issued notices to all the retailers, u/s 32 of the Excise Act withdrawing the licences granted to them on the ground of prohibition policy. On the same ground notices were issued to the manufacturers of the intoxicating drinks prohibiting them from manufacturing or distilling the intoxicating liquor. The second step taken by the Government was to promulgate the Andhra Pradesh Ordinance, 1994 (Andhra Pradesh Ordinance No. 19 of 1994) on December 29, 1994, which was brought into force with effect from January 16, 1995. Immediately thereafter the State Legislature enacted the Andhra Pradesh

Prohibition Act, 1995 (Act No. 17 of 1995), hereinafter referred to as "the Prohibition Act", which received the assent of the President of India on February 17, 1995.

5. The steps taken in implementation of the prohibition policy are subject matter of five pronged attack by filing various Writ petitions. In the first batch of Writ Petitions, Writ Petition No. 22993 of 1994 and batch, hereinafter referred to as "retailers batch", notices dated December 12, 1994 withdrawing the licences u/s 32 of the Excise Act, are challenged. The second attack is by a batch of Writ Petitions questioning the validity of the Andhra Pradesh Prohibition Ordinance, 1994, in Writ Petition No. 364 of 1995 and batch. In some of the Writ Petitions, applications are filed for amendment of the prayer so as to question the constitutional validity of the Prohibition Act, but in the remaining cases no applications for amendment are filed. The third attack is in the batch of Writ Petitions relating to the constitutional validity of the Prohibition Act. The fourth one comprises of batch of cases wherein the individuals assailed the constitutional validity of the ordinance and the Act as interfering with their right to have intoxicating drink of their choice. The fifth attack is in the batch of Writ petitions by the manufacturing companies and the distilleries making grievance of the orders passed by the Excise Authority dealing to grant renewal of licences on the ground of prohibition policy. The Writ Petitions before us comprise of the categories one to four above mentioned and as the contentions urged in them relate to the constitutional validity of the Prohibition Act, we propose to deal with them together.

6. Various contentions raised by the learned counsel for the parties may be summed up in the following points for consideration:-

(i) Is the definition of "liquor in sub-section (7) of Sections 2, 7, 9 and 15 of the Prohibition Act violative of Articles 14 and 19 of the Constitution of India?

(ii) Are the impugned provisions of the Act protected under Article 31-C of the Constitution of India from challenge based on violation of fundamental rights in Articles 14 and 19 of the Constitution of India on the ground that they are enacted to give effect to the Directive Principles of State Policy in Part IV as contained in Article 47 of the Constitution of India?

(iii) Whether an individual has a fundamental right to take intoxicating drinks of his choice?

7. First, we shall take up the second point. Part IV of the Constitution of India contains the principles of governance and are called "Directive Principles of State Policy". Article 47 which is in Part IV enshrines the principle based on human declaration. It reads as follows:-

"47. Duty of the State to raise the level of nutrition and the standards 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 endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

This Article directs every State to regard the raising of the level of nutrition and the standard of its people and the improvement of public health as among its primary duties and particularizes and dictates the State to endeavour to bring about prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health duly excepting their use for medicinal purposes.

8. Article 31-C was inserted in Part III by the Constitution (Twenty-Fifth Amendment) Act, 1971, to save laws which give effect to certain directive principles, with effect from April 20, 1972 and it reads as follows:-

"31-C. Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

A plain reading of this Article makes it explicit that no law which gives effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 shall be deemed to be void on the ground that it takes away or abridges any of the rights conferred by Article 14 or Article 19 or Article 31 of the Constitution of India notwithstanding anything contained in Article 13. It further injuncts that no law containing declaration that it is to give effect to such policy shall be called in question in any Court of law on the ground that it does not give effect to such policy. The proviso lays down the requirement for taking benefit of that article where such law is made by the Legislature of a State and, that is, the law should have been reserved for the consideration of the President and has received his assent.

9. We may incidentally refer to the contents of Article 13 here. It has four clauses. Clause (1) declares that all laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part III, shall, to the extent of inconsistency, be void. Clause (2) enjoins the State not to make any law which takes away or abridges the rights conferred by Part III and further declares that any law made by the State in contravention of that clause, shall, to the extent of contravention be void. Clause (3) defines the expressions used in Article 13. Clause (4) states that this article does not apply to the amendment of the Constitution made under Article 368. It will not be out of place to record here that last part of Article 31-C

- "no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy", was declared invalid in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, .

10. For the words "the principles specified in Clause (b) or Clause (c) of Article 39" in Article 31-C, tire clause "all or any of the principles laid down in Part IV" was inserted by the Constitution (Forty-Second Amendment) Act, 1976 with effect from January 3, 1977 but it was held to be unconstitutional by the Supreme Court in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, . Consequent upon declaring the said substituted clause as unconstitutional, Article 31-C, as inserted by the Constitution (Twenty-Fifth Amendment) Act, 1971, quoted above, stood restored except, of course, that part of the Article which was declared invalid by the Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, .

11. Now a reference to relevant clauses of Article 39 will be appropriate. Article 39 enumerates certain principles of policy to be followed by the State. Clause (b) contains direction to formulate the policies of the State that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and clause (c) contains the direction regarding policy to ensure that operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. A close reading of each of the Articles contained in Part IV of the Constitution of India, viz., Directive Principles of State Policy, shows that the directions contained in all the other Articles of Part IV are not aimed at attaining of the objective of building a welfare State and achieving social economic goal but deal with various other aspects which though of vital importance in the governance of the State, cannot be so regarded as to make the rights conferred under Part III subservient to them. It is for this reason that Section 4 of the Constitution (Forty Second Amendment) Act, 1976 was not sustained in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, as it was pointed out therein that the main controversy in that case centered round the question whether the directive principles of State policy contained in Part TV can have primacy over the fundamental rights conferred by Part III of the Constitution and that controversy was resolved by holding that the goals set out in Part IV have to be achieved without abrogation of the means provided by Part III.

12. However, it is contended by the learned Advocate General that in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, the Constitution Bench held that the observation in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, is obiter, therefore a legislation by the State which gives effect to directive principles of the State Policy contained in Part IV will get the protection of Article 31-C and that the same cannot be confined to the legislation referable to clauses (b) and (c) of Article 39.

13. In Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , by

majority Section 4 of the Constitution (Forty-Second Amendment) Act, 1976 was held to be void as being destructive of the basic structure of the Constitution. Justice P.N. Bhagwati (as he then was), in his dissenting judgment, held that the said Section did not damage or destroy the basic structure of the Constitution and was within the amending power of the Parliament. In view of the majority decision, Article 31-C, as it stood prior to amendment of the said provision by the Constitution (Forty-Second Amendment) Act, 1976, got restored.

14. In *Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.* (3 supra), writs were filed in Calcutta High Court questioning the Coking Coal Mines (Nationalisation) Act, 1972 pursuant to which the Coal Mines and Coke Oven Plants belonging to the petitioner, were nationalized. The cases were withdrawn to the Supreme Court. The challenge to the nationalization of Coal Mines was founded, inter alia, on the ground of violation of Article 14. The Central Government claimed protection of Article 31-C of the Constitution of India. The question that arose for consideration of the Supreme Court, was whether the Coking Coal Mines (Nationalisation) Act, 1972 was entitled to the protection of Article 31-C of the Constitution. We may note here that the protection of Article 31-C was claimed on the ground that the legislation was passed to give effect to the policy of the State towards securing the principle specified in Article 39(b) of the Constitution. Therefore, the question which arose for consideration was whether the Constitution (Twenty Fifth Amendment) Act, 1971 by which Article 31-C was inserted in the Constitution, was valid. Having regard to the judgment of the Supreme Court in *Kesavananda Bharathi v. State of Kerala* (1 supra), it was conceded that the Constitution (Twenty-Fifth Amendment) Act, 1971 was valid. Dealing with *Minerva Mills Ltd. v. Union of India* (2 supra) on which heavy reliance was placed by the learned Counsel for the petitioners, the Supreme Court has observed that the argument advanced in *Minerva Mills* case (2 supra) and the conclusions arrived at appear to be general, applicable to every clause of Article 39 and every Article in Part IV of the Constitution no less to clauses (b) and (c) than to other clauses and it was further observed that the dialectics, the logic and the rational involved in upholding the validity of Article 31-C when it confined its protection to laws enacted to further clauses (b) and (c) of Article 39 should uncompromisingly lead to the same resolute conclusion that Article 31-C with its extended protection was also constitutionally valid, the Supreme Court held that the impugned Act in that case was a legislation for giving effect to the policy of the State towards securing the principle specified in Article 39(b) of the Constitution and was therefore immuned under Article 31-C from attack on the ground that it offends the fundamental rights guaranteed by Article 14 of the Constitution. However, the Supreme Court pointed out in Para 14 that it was not really concerned with the decision in *Minerva Mills* case (2 supra) since that was not the point in issue before the Supreme Court. Referring to *Minerva Mills* case (2 supra) it case observed that what was held in that case was that Section 4 of the Constitution (Forty-Second Amendment) Act, 1976 was invalid but in *Sanjeev Coke Mfg. Co.* case (3 supra) the Supreme Court was not faced with that

question but was concerned with the validity of the Constitution (Twenty-Fifth Amendment) Act, 1971 and it was conceded in *Minerva Mills* case (2 supra) that the Constitution (Twenty-Fifth Amendment) Act, 1971 was constitutionally valid.

15. Now reverting to *Minerva Mills* case (2 supra), it may be noticed that the majority judgment noted that the question for consideration in the group of petitions under Article 32, was whether Sections 4 and 55 of the Constitution (Forty-Second Amendment) Act, 1976 transgresses the limitation on the amending power. The minority judgment of P.N. Bhagwati, J. (as he then was) referred to the question before the Supreme Court thus: "The question which arises for determination in these writ petitions is as to whether Section 4 of the Constitution (Forty-Second Amendment) Act, 1976 amending Article 31-C of the Constitution is constitutionally valid." There the cause for the petitioner to approach the Supreme Court under Article 32 of the Constitution of India, was the nationalisation of the petitioner's textile undertaking under the Sick Textile Undertakings (Nationalization) Act, 1974. From the above it can clearly be seen that the constitutional validity of Section 4 of the Constitution (Forty-Second Amendment) Act, 1976 was Considered by the Supreme Court in *Minerva Mills* case (2 supra), and the Court pronounced upon that question by majority holding that Section 4 was constitutionally invalid and that that question was not before the Supreme Court in *Sanjeev Coke Mfg. Co. case* (3 supra), as pointed above. Clauses (b) and (c) of Article 39 of the Constitution were held in *Kesavananda Bharathi's case* (1 supra) to contain the objective of building a welfare State and egalitarian social economic goal for immediate attainment by bringing about a non-violent social revolution which itself seeks to fulfill the basic needs of the common man and to change the structure of the State policy without which political democracy has no meaning. Though Part IV of the Constitution of India contains various principles which are of prime importance in the governance of the State, all the Articles in that part do not aim at achieving the social, economic goal which is substratum of clauses (b) and (c) of Article 39; the other Articles aim at achieving other objectives; to name a few, Article 48 contains directive to the State to endeavour to organize agriculture and animal husbandry on modern and scientific lines and to preserve and improve the breeds to prohibit the slaughter of cows and calves and other milch and draught cattle. Article 48-A gives directive to the State to endeavour to protect and improve the environment and to safeguard the forests and wild life; Article 49 imposes an obligation on the State to protect every monument or place or object of artistic or historic interest which are of national importance and Article 51 aims at promotion of international peace and security. Further, in *Sanjeev Coke Mfg. Co. case* (3 supra), the Supreme Court did not overrule the judgment in *Minerva Mills* case (2 supra).

16. From the above discussion it follows that it is only such of the Acts which are enacted to give effect to the Directive Principles of the State Policy contained in clauses (b) and (c) of Article 39 of the Constitution that are entitled to protection under Article 31-C, and Article 47 does not obviously fall within the declaration of

law in *Minerva Milk case* (2 *supra*). So, the impugned Act in our case cannot be immunised, under Article 31-C, from attack under Articles 14 and 19 of the Constitution.

17. The ground to entertain challenge under Articles 14 and 19 having been cleared, we shall now examine the merit and substance of the contentions in that behalf.

18. The mandate of Article 14 is that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The import of this Article is that all persons should be treated alike under like circumstances and conditions if they are subjected to any legislation. What this Article ensures is that not merely equals are not treated unequally but also unequals are not treated equally. Having regard to the judicial pronouncements on the scope and ambit of Article 14, the exposition of the principle is succinctly and aptly summarized by H.M. Seervai in his treatise "*Constitutional Law of India*" (Fourth Edition (Silver Jubilee Edition) Volume I - Para 9.15) thus:

"The State shall not deny to any person equality before the law or equal protection of the laws provided that nothing herein contained shall prevent the State from making a law based on or involving a classification founded on an intelligible differentia having a rational relation to the object sought to be achieved by the law."

19. We must address ourselves to the question, are the impugned provisions of the Act discriminatory and as such violative of Article 14? To satisfy the mandate of Article 14, as per the old doctrine, classification for purposes of legislation is permissible; what is forbidden is class legislation. The classification will be valid if it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and further the differentia must have a rational nexus with the object sought to be achieved by the statute under scrutiny. These principles are well settled by a catena of decisions of the Supreme Court. The earliest case in which the doctrine of classification found favour from the Supreme Court is *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, . That doctrine was adopted in various subsequent cases and was finally established by the time it was summarized in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . The principles have been reiterated very often both by the High Courts as well as the Supreme Court. No useful purpose will be served by multiplying the case. We shall, however, refer to the following cases, *The State of West Bengal Vs. Anwar Ali Sarkar*, , *Budhan Choudhry and Others Vs. The State of Bihar*, , *Pathumma and Others Vs. State of Kerala and Others*, and *In Re. Special Courts Bill, 1978*, AIR 1979 SC 1978.

20. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, , Bhagwati, J. (as he then was), speaking for the majority, laid bare a new dimension of Article 14 and pointed out that it has highly activist magnitude and it embodied a guarantee

against arbitrariness in all State actions and ensures fairness and equality of treatment. The new interpretation of Article 14 was reiterated in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, .

21. In this batch of cases Section 2(7), Section 7, Section 9 and Section 15 of the Prohibition Act are challenged as being violative of Article 14 of the Constitution. It is contended that under the Excise Act, "toddy" is included within the meaning of "liquor" but excluded from the definition of liquor" under the Prohibition Act and that it is also an intoxicant and contains alcohol, therefore, the definition of "liquor" is violative of Article 14 of the Constitution.

22. Section 2 of the Prohibition Act is the definition Section. The term "liquor", which is a key word in the Act, is defined in sub-section (7) of Section 2 as follows:-

""Liquor" includes,-

(a) spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine, beer and every liquid consisting of or containing alcohol; and

(b) any other intoxicating substance which the Government may, by notification, declare to be liquor for the purposes of this Act,

but does not include toddy;"

It is an inclusive definition and is very wide indeed but excludes "toddy". However, that term "liquor" is defined in Section 2(21) of the Andhra Pradesh Excise Act, 1968 in the following terms:-

""Liquor" includes,-

(a) spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine, beer, toddy and every liquid consisting of or containing alcohol; and

(b) any other intoxicating substance which the Government may, by notification, declare to be liquor for the purposes of this Act."

This definition of "liquor" has had the approval of the Supreme Court in *State of Bombay v. Balsara* AIR 1951 SC 318. A plain reading of the two definitions, quoted above, makes it clear that whereas under the Excise Act toddy is included within the meaning of "liquor", it is excluded from the meaning of "liquor" under the Prohibition Act. But for purposes of showing that Section 2(7) of the Prohibition Act is violative of Article 14, the fact that the definition of "liquor" in A.P. Excise Act includes "toddy" will not be material. At best it shows that in a cognate legislation the definition is more comprehensive but does not justify challenge that the definition of "liquor" in the Prohibition Act is discriminatory and violative of Article 14 of the Constitution of India. The reasons for exclusion are - first, as a matter of State policy prohibition is introduced in a phased

manner; and secondly, having regard to the number of toddy trees and number of tappers in the State, the State decided to exclude toddy from the operation of the Act. In the counter-affidavit it is stated that toddy has been excluded from the operation of the Ordinance and the Act as the Government intended to impose prohibition in a phased manner. The ingredients of the toddy, it is stated, are minerals and vitamins and no injurious ingredients are present in natural toddy, which is a sap from coconut, date, toddy palm trees or any other kind of palm tree which has undergone alcoholic fermentation. It is pointed out that alcoholic content of toddy is about 4% while the alcoholic content of other liquors ranges between 18% to 43% except in the cases of beer. Further, ethyl acetate, amyl alcohol, aldehydes and furfural, which are harmful ingredients, are not present in toddy. It is stated that the State has considered all the above facts while imposing prohibition in the various kinds of liquors mentioned in the Ordinance and the Act. On these facts, two things become dear, viz., first, ingredients of toddy and secondly, having regard to the presence of alcoholic and other harmful material, so also the presence of the mineral and other beneficial ingredients, as also the number of toddy trees and persons in the State carrying on the profession of toddy tappers, the State has taken a decision to exclude toddy from the ambit of the Prohibition Act at present.

23. It is however, vehemently contended by the learned Counsel for the petitioners that the definition of "liquor" also suffers for improper classification inasmuch as beer which is not merely a beverage but also a nutrient and draught beer which has no element of alcohol in it, are brought within the sweep of the language of definition of "liquor" whereas toddy, which has equal content of alcohol, has been excluded.

24. That draught beer is a form of beer is not disputed. It is also not in dispute that it has alcohol content. To what extent alcohol contents is found in draught beer or beer and whether it should be excluded for purposes of bringing about total prohibition in a phased manner, is matter for the Legislature to decide. It is not for this Court to study and examine in the light of the chemical analysis of various beverages and declare what should be prohibited and what should not be prohibited in the light of the prohibition in a phased manner. Where the Legislature has decided to include certain intoxicating drinks and exclude certain other intoxicating drinks on consideration of relevant aspects, we may not be inclined to interfere with the classification so long as the classification satisfies the test of Article 14.

25. On these facts, can we say that the test of reasonable classification is not satisfied and therefore the definition of "liquor" in Section 2(7) of the Prohibition Act should be struck down so as to exclude all other intoxicating drinks from the definition of "liquor"? We think we cannot and we shall not. Firstly, in our view, the test of classification is satisfied. The classification of alcoholic beverages into natural alcoholic (toddy) and man made alcoholic beverages, having regard to the good and the bad qualities of toddy, above mentioned, is a reasonable

classification and this has nexus with the object of the Act, to impose total prohibition in a phased manner by excluding toddy at present. Secondly it has been well settled that the Legislature understands and correctly appreciates the needs of its own people and that its laws are directed to the problem made manifest by experience and that its discriminations, including beer and draught beer in and excluding toddy from the definition of "liquor" are based on adequate grounds and further that the Legislature is free to recognize degree of harm and may confine its restrictions to those cases where the need is clear. These principles are reiterated in the recent judgment of the Supreme Court in *Gauri Shanker and others Vs. Union of India and others*, . Thirdly though toddy is also an intoxicating drink, the State has, however, chosen to prohibit sale, purchase, possession and consumption of other intoxicating drinks and yet has left out toddy from the ambit of "prohibition", we do not think that the Court should strike down such a legislation on the ground of discrimination so as to destroy achievement of that part of the constitutional objective of endeavouring to bring about prohibition which the Legislature has admittedly covered by the impugned legislation. In our view the application of the test of classification which is *sine qua non* for validity of every legislation under Article 14 of the Constitution will not be rigidly applied in case of classification of intoxicating drinks and while granting relief under Article 226, being discretionary, the High Court will be too slow to strike down a statute where the Legislation has done away with some vices, banned consumption of some intoxicating drinks but has not eradicated all of them or has not prohibited consumption of all the intoxicating drinks because it would result in restoring the vices and permitting consumption of intoxicating drinks and thus destroy that part of good which sub-serves public interest.

26. The Full Bench judgment of the Allahabad High Court in *Sheo Kumar Vs. State of U.P. and Others*, has been relied upon by the petitioners in support of their contention that the definition of "liquor" being discriminatory, has to be struck down. It would be appropriate to extract the passage in the said judgment, relied upon by the petitioners, which reads as follows:-

"..... Foreign liquor is as much an intoxicating liquor as country liquor or for that matter Tari. From the point of view of enforcing the policy of prohibition both stand on an identical footing. The placing of foreign liquor and country liquor to separate classes is arbitrary, fanciful and illicit. This classification is not based on any intelligible differentia which may have any rational nexus with the object sought to be achieved. The object of Section 37-A was to execute the policy of prohibition in this State. This classification defeats, rather than achieves, the aim and object Section 37-A(2) and notifications thereunder dated 30-3-1978 and 31-3-1978 are violative of the equality clause of the Constitution."

27. To understand the passage, quoted above, it would be necessary to notice the facts and the background in which the above observation was made. In that case the Uttar Pradesh Excise Act, 1910 was amended and Section 37-A was inserted on 22-1-1972. Sub-section (1) of Section 20 of the Uttar Pradesh Excise

Act, 1910 provided that possession of intoxicants in excess of the quantity prescribed by the State Government u/s 6 of that Act, was prohibited except under a permit. Sub-section (2), *inter alia*, provided that the prohibition contained therein should not extend to any foreign liquor which had been purchased by any person for his bona fide private consumption and not for sale. Rule 12 defined "foreign liquor" to include imported as well as Indian made liquor. The effect of sub-section (2) of Section 20 was that though a person could possess foreign liquor for private consumption for which no limit was prescribed, the newly inserted provision, viz., sub-section (1) of Section 37-A empowered the State Government to prohibit import or export of intoxicants into or from Uttar Pradesh or any part thereof and sub-section (2) delegated to the State Government the power to prohibit possession of intoxicants by any person or class of persons subject to exceptions prescribed in the notification in Uttar Pradesh or any specified area or areas thereof, of any intoxicant. The State Government issued notification u/s 37-A(1) and (2) prohibiting import, transport and possession of intoxicants in certain districts. The submission made before the Full Bench was that possession of foreign liquor for private consumption without limit was permissible u/s 20 of the Act but the notification issued u/s 37-A, which operated without prejudice to the provisions of Section 20, resulted in discrimination against possession of intoxicants other than foreign liquor for private consumption. It is in dealing with that contention the Full Bench observed that the provisions of Section 37-A(i) and (2) and Section 20(2) have to be construed harmoniously and that Section 37-A operated subject to an exemption in favour of foreign liquor possessed by an individual for his personal consumption and resulted in invidious distinction against other kinds of intoxicating liquors and for this there was no apparent reason in Section 37-A. Here we may also point out that the consumption of tari (toddy) had been prohibited in the entire State of Uttar Pradesh while country liquor and foreign liquor were banned only in specified parts of the State. The contention that such an action of the State Government is violative of the equality clause contained in Article 14 of the Constitution, was rejected by the Full Bench holding that toddy production and possession could be controlled much more easily than that of country liquor. As foreign liquor as toddy was tapped from palm trees in a few districts of the State it was easier for the Government to enforce prohibition by keeping an eye on those trees. It was laid down that there was no discrimination in prohibiting consumption of toddy through out the State while introducing prohibition in respect of country liquor and foreign liquor in selected areas.

28. We have already held that if out of the intoxicating drinks a few are not prohibited and the others are prohibited the provision incorporating the prohibition clause cannot be struck down as being violative of Article 14 of the Constitution, in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, merely on the ground that the other equally intoxicating drinks have not been prohibited because that would destroy the little good that has been achieved and restore the pre-prohibition position making possession,

sale and consumption of intoxicating drinks licit. In this view of the matter with great respect to the learned Judges of the Full Bench of the Allahabad High Court we are unable to agree with the ratio of the decision in Sheo Kumar v. State (16 supra) to the extent it lays down that the classification placing country liquor and foreign liquor in separate classes resulting in prohibition of the one without the other was violative of equality clause of the Constitution.

29. We have already noticed that by G.O.Ms.No.402, dated 24-4-1993 ban was imposed on sale or consumption of arrack in the State. In W.P. No. 13400 of 1993 that G.O. was assailed on the ground that imposing total ban on sale or consumption of arrack in the State was illegal and void. The petitioners therein were the licencees and the workers who were employed in the shops and the consumers. The main contention of the petitioners was that if any one of the intoxicants was taken up for total prohibition within the State while permitting the production, manufacture, sale and distribution of other intoxicants, the mandate of Article 14 was violated. They relied upon the decision of the Full Bench of the Allahabad High Court in Sheo Kumar v. State (16 supra). The Division Bench which dealt with the Writ Petition, relied on the observations of the Full Bench of the Allahabad High Court holding that production of tari could be controlled very easily than that of foreign liquor since tari was tapped from palm trees in a few districts of the State of Uttar Pradesh, so the State Government could enforce the prohibition by keeping an eye on those trees and therefore there was no discrimination in prohibiting the consumption of tari throughout the State while introducing prohibition in respect of country liquor and foreign liquor in selected areas and upheld the G.O. we are in agreement with the view taken by the Division Bench in the above case, viz., W.P. No. 13400 of 1993, dated 18-1-1994 in following the observation of the Allahabad High Court in Sheo Kumar's case (16 supra) holding that there was no discrimination in prohibiting tari in the entire district and prohibiting country liquor in some parts of the district. We have support for our view in the recent pronouncement of the Supreme Court in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, where the Constitution Bench of the Supreme Court observed:

".....There may be more such dangerous products, the harmful effects of which are today unknown. But merely because their production and consumption is not today banned, does not mean that products like alcohol which are proved harmful, should not be banned."

30. In the result we hold that the definition of "liquor" in sub-section (7) of Section 2 of the Prohibition Act is not violative of Article 14 of the Constitution.

31. There is yet another argument based on Article 47 of the Constitution which may conveniently be dealt with here, the substance of the submission is that Article 47 enjoins only total prohibition of intoxicating drinks but not partial prohibition, therefore, purporting to act under Article 47, it is not permissible to enforce prohibition in the way it has been done which is violative of Article 47

itself. The extension of this argument is based on Article 14 which we shall deal with presently.

32. The directive principles of State policy embodied in Article 47 and other directives contained in Part IV are fundamental in the governance of the State. To give effect to those policies, the power to legislate is conferred by the Constitution under Articles 245 and 246 of the Constitution and field of legislation in the entries in Lists 2 and 3 of Schedule VII to the Constitution. There are three lists in Schedule VII. The first list contains entries of subjects on which the Union of India can legislate; the second list enumerates subjects on which a State can legislate and the third list is concurrent list of subjects on which both a State as well as the Union can legislate. Entries 6 and 8 in List No. 2 are the relevant entries. They read as follows:-

"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."

On the subject of intoxicating liquor relating to their production, manufacture, possession, transport, purchase and sale the State Legislature is having competence to enact laws. The power of the State Legislature in respect of any entry in List 2 of Schedule VII can be validly exercised to enact laws de hors directive principles in Chapter IV of the Constitution. So also the power can be exercised to give effect to the intendment of directive principles. The validity of any law does not, in our view, depend upon the intention of the legislature to give effect to the intendment of Article 47 or otherwise, but if the legislature has enacted any law with a view to give effect to the Directive Principles of the State Policy contained in clauses (b) and (c) of Article 39, the law will have the protection of Article 31-C; but if the law is enacted to give effect to any other directive principle, it has already been pointed out above that, in view of Section 4 of the Constitution (Forty-Second Amendment) Act, 1976, having been held to be void in *Minerva Mills case* (2 *supra*), the protection of Section 31-C will not be available. Therefore, the intention of the State to give effect to Article 47 would neither advance the case of the State nor that of the petitioners. Article 47 contains the ultimate objective which every State should endeavour to attain. Merely because the objective of Article 47 is not achieved in full measure by an Act, the Act cannot be said to be violative of the said Article. In our view any step towards achieving the objective however feable it may be and however partial it may be, will have to be upheld as giving effect to the intention of Article 47 rather than striking it down on the ground that it achieves the objective not wholly but partially. It is evident that the objective of Article 47, *inter alia*, is to achieve complete prohibition. To attain that objective the Government appointed a Cabinet Sub-Committee consisting of four Ministers to formula te the future policy of excise keeping in view the welfare of the people and also the impact of such decision on State's finances. The Committee was to consider as to whether the prohibition should be imposed partially. It was also to go into the experience

of the other States where this has been done fully or partially and also to consult various interested groups including political parties. Further, it was also to consider the administrative, legal and financial implications and the consequences. Accordingly the Committee visited various States where the prohibition policy has been implemented and after considering various aspects it submitted its report. As a first step towards achieving the objective of Article 47 of the Constitution, the Government imposed ban on the sale of arrack in respect of one district, called Nellore District, with effect from April 15, 1993. It has also imposed total ban on the sale of arrack with effect from October 1, 1993 - the date from which the new excise year commences - in the whole State closed all toddy shops in the municipal areas and shops in villages where trees are located beyond five kilometres and has also initiated adequate steps for various educational publicity measures to highlight the evils of drinks and wean the people away from the drinking habit. Further, it also decided to constitute a State level Committee and District Level Committees consisting of the people committed to the ideology of eradicating the evil of drinking, to educate the people and create a social awareness against the evil by educating people. This decision of the Government of the day is reflected in G.O.Ms. No. 402, Revenue (Excise-II) Department, dated 24-4-1993. The next step taken by the present Government was to promulgate the Andhra Pradesh Prohibition Ordinance, 1994 with effect from January 16, 1995. Last of these steps, is the enactment of the Andhra Pradesh Prohibition Act, 1995 (Act 17 of 1995) which came into effect from February 20, 1995. These steps taken by the State clearly and sufficiently indicate endeavour of the State to bring about prohibition of consumption of liquor. So, in our view, the prohibition imposed by the State in a phased manner cannot be said to be unconstitutional on the ground of being violative of Article 47 of the Constitution.

33. The next argument built upon the phraseology of Article 47 is that the objective of Article 47 directs prohibition of intoxicating drinks injurious to health, therefore, such of those drinks which are not basically injurious to health and drinks which if taken in moderate quantity are not injurious to health, have not been classified and as such the impugned legislation in bringing about prohibition is violative of Article 47 of the Constitution itself. We are unable to countenance this submission. The directive "the State shall endeavour to bring about prohibition of consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health" has been referred to by the Supreme Court in *State of Bombay v. F.N. Balsara* (14 supra), though the legislation in question in that case was not passed to give effect to the directive in Article 47; Justice Fazl Ali observed thus:

".....This Article (Article 47) has no direct bearing on the Act which was passed in 1949, but a reference to it supports to some extent the conclusion that the idea of prohibition is connected with public health and to enforce prohibition effectively the wider definition of a word "liquor" would have to be adopted so as to include all alcoholic liquids which may be used as substitutes for intoxicating

drinks to the detriment of health."

While reversing the judgment of the Bombay High Court on the question of definition of "liquor" the learned Judge held that the definition of "liquor" there was not ultra vires. In the latest case in which Article 47 came up for consideration of the Supreme Court is *Khoday Distilleries Ltd. v. State of Karnataka* (17 supra) wherein the Supreme Court held that potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commercium being inherently harmful and that Article 47 of the Constitution considered intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health, it, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. In view of the authoritative pronouncement of the Supreme Court we find it impossible to accede to the contention of the petitioners.

34. The next provision questioned as constitutionally invalid, is Section 7 of the Prohibition Act. Section 7 is in the following terms:

"7. Prohibition of selling, buying and consumption of liquor:-The selling, buying, being in possession and consumption of liquor, otherwise than in accordance with the provisions of this Act, or as the case may be, the Andhra Pradesh Excise Act 1968, is hereby prohibited."

This provision prohibits selling, buying or being in possession and consumption of liquor except in accordance with the provisions of the Prohibition Act or the Excise Act. The challenge to this section is two fold. It is argued that the definition of "liquor" itself being discriminatory and violative of Article 14 of the Constitution, Section 7 which prohibits selling, buying, consumption of liquor is equally violative of Article 14 of the Constitution. This line of attack interlinks sub-section (7) of Section 2 and Section 7. So, Section 7 sinks or sails with sub-section (7) of Section 2. Consequently if the definition of "liquor" were to be held as invalid and unconstitutional, Section 7 would automatically fall to the ground but if the definition of liquor" as given in sub- section (7) of Section 2 is held valid, the challenge against Section 7 has to be rejected. It follows, that as we have held that the definition of "liquor" in Section 2(7) is not violative of Article 14 of the Constitution, we must uphold Section 7.

35. The other line of attack in questioning the constitutional validity of Section 7 is, on the ground of legislative competency. The argument proceeds that the definition of liquor" includes spirits of wine, denatured spirits, methylated spirits, rectified spirits, which is industrial alcohol in respect of which the Central legislation alone has competence to legislate, therefore Section 7 which has embarked on legislation on a topic exclusively within the legislative competence

of the Parliament so the provision suffers for want of legislative competence. We are unable to accept this contention. Though the definition of "liquor" is wide enough to include rectified spirit which is nothing but industrial alcohol, yet as Section 7 prohibits selling, buying, being in possession and consumption of liquor which in the context only means potable alcohol, the legislation being one to give effect to the directive principles of State policy contained in Article 47 with a view to bring about prohibition of consumption, neither Section 2(7) nor Section 7 can be so understood as dealing with industrial alcohol; further even in respect of "industrial alcohol, the State has regulatory power; as such those provisions are within Entries 6 and 8 of List II of Seventh Schedule and would thus be within the legislative competency of the State.

36. The constitutional validity of Section 9 of the Prohibition Act is questioned by the individuals who claim that their right to use and drink beverage of their choice cannot be taken away by the impugned legislation so as to make them liable for punishment u/s 9 of the Prohibition Act. They further contend that Section 9 is wholly discriminatory and unconstitutional.

37. The individuals" claim that they have a right to take the liquor /drink of their choice. Firstly, according to them, taking of liquors in small quantities is beneficial rather than injurious to health and secondly even if taking of drink is injurious to health it is their choice which cannot be controlled by the State and that forms part of right under Article 21 of the Constitution. The straight, curt but vivid answer to this submission is that Article 47 mandates prohibition of consumption of liquors and no individual can be allowed to assert a right other than a fundamental right, which if given effect to, would run counter to directive principles of State policy contained in Article 47 of the Constitution. We would also like to add that though reference to life and personal liberty in Article 21 of the Constitution does not mean right to live in a forced manner yet it postulates a right to live in a manner permissible in law. Be it remembered the law grants only so much of liberty as would not jeopardise interest of another or the society. What has been prohibited under a valid law cannot be allowed to be done by an individual claiming right to have a life of his choice and to exercise his personal liberty in such a way as to affect others. Consumption of intoxicating drink is not merely an individual action but is an action which affects the community at large. It is because of this it is treated as a social evil and sought to be prohibited while including it in the directive principles of State policy. We may with advantage refer here the observation of His Lordship Hansaria, J. of the Supreme Court in *P. Rathinam v. Union of India* 1994 SCC (Cri.) 740, made in the context of declaring Section 309 of the Indian Penal Code as violative of Article 14 and unconstitutional. The observation reads thus:

".....Any conduct which a sufficiently powerful section of any given community feels to be destructive of its own interest, as endangering its safety, stability or comfort is usually regarded as heinous and it is sought to be repressed with severity and the sovereign power is utilised to prevent the mischief or to punish

anyone who is guilty of it. Very often crimes are creations of Government policies and the Government in power forbids a man to bring about results which are against its policies."

We have already indicated above that the Prohibition Act itself has come to be passed to give effect to the policy of the Government in power. We shall conclude our discussion on this aspect negating the claim of the right of the individuals to have the intoxicating drink of their choice by referring to the judgment of the Supreme Court in *Khoday Distilleries Ltd., v. State of Karnataka* (17 supra). While summarising the law on the subject of prohibiting the production, possession, transport, sale, consumption of liquor, the Supreme Court laid down certain propositions. Clause (d) of para 60 which is relevant for our purpose, reads as follows:-

"(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes."

A plain reading of the observation of the Supreme Court extracted above makes it clear that the Supreme Court has upheld the power of the State to completely prohibit, manufacture, sale, possession, distribution and consumption of potable liquor as a beverage both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

38. Chapter III of the Prohibition Act deals with "Prohibition and Penalties". It contains eight sections (Sections 8 to 14). Section 7 prohibits selling, buying and consumption of liquor and Section 8 provides for punishment of the activities prohibited u/s 7. Section 9 prescribes punishment for being found in a state of intoxication. Section 11 provides for punishments for offences not otherwise provided for. The other sections in Chapter III are not relevant for the present discussion. Section 9, which is challenged, reads as follows:-

"9. Punishment for being found in a state of intoxication:- Whoever is found in a state of intoxication in any public place and whoever, not having been permitted to consume any liquor in pursuance of this Act, is found in a state of intoxication in any private place, shall be punishable with imprisonment which may extend upto six months, or with fine which may extend upto one thousand rupees or with both".

39. This section is attacked as being violative of Article 14 of the Constitution; firstly it is arbitrary and secondly it is discriminatory as it fails to satisfy the test of classification, before we examine the twin reasons, it may be useful to analyse the provisions of this Section.

40. A close reading of Section 9 shows that it is in three parts. The first part of the Section is "whoever is found in a state of intoxication in any public place"; the second part of the section is "whoever, not having been permitted to consume any liquor in pursuance of this Act, is found in a state of intoxication in any private place" and the third part reads ".....shall be punishable with imprisonment which may extend upto six months, or with fine which may extend upto one thousand rupees, or with both." The first two parts describe the offence and the third part prescribes punishment for those offences. The first part of the Section speaks of the act of a person who is found in a state of intoxication in any public place and the second part speaks of a person who is found in a state of intoxication in any private place without having been permitted to consume liquor in pursuance of the Prohibition Act. Both these acts of any person are placed on equal footing and the punishment for them is prescribed in the third part, which may extend upto six months or with fine which may extend upto one thousand rupees or with both. Insofar as the first part is concerned, mere presence of a person in a state of intoxication in any public place is sufficient to impose the punishment prescribed in the third part. The persons who could be caught by the mischief of the first part of Section 9 are either those who might have taken toddy which is outside the purview of the Act or those who fall under the exempted categories, foreigners, non- resident Indians, guests of companies, Corporations, industrialists coming from outside the State, tourists from outside the State. They come for short sojourn. Taking intoxicating drink is a matter of course for them and perhaps that is why they are exempted. Such persons normally go-round important places, visit cities, towns and places of historical importance, unlike those who are permitted to take intoxicating drinks on medical grounds, who would lie down in bed.

41. From the above discussion it is plain that being in a "state of intoxication" attracts the section. But then, this expression is not defined. In the absence of a definition of the expression "state of intoxication" the meaning of expression becomes vague and indefinite and thereby renders the provision arbitrary and violative of Article 14 of the Constitution of India.

42. While the Prohibition Act provides the consumption of "liquor" as defined under sub-section (7) of Section 2; it also provides for certain exemptions u/s 15 and provides for granting of permits for possession and consumption of liquor to certain persons. While Section 7, inter alia, prohibits consumption of liquor otherwise than in accordance with the provisions, Section 8 provides for the punishment, inter alia, all persons who consumed liquor unless that is done in accordance with the provisions of Prohibition Act or any licence or any permit etc. issued therein. But, consumption of liquor is one thing; and consumption of

liquor to the extent of attaining a state of intoxication is entirely different. The letter is the target of Section 9.

43. In P.N. Kaushal and Others Vs. Union of India (UOI) and Others, , Krishna Iyer, J., has elaborately dealt with the deleterious effect of intoxication and the connection between crime and intoxication. The learned judge refers to the observation of the noted Criminologist Dr. Walter Reckless, which reads as follows:

"Of all the problems in human sodety, there is probably none which is as closely related to criminal behaviour as is drunkenness."

The learned Judge also refers to the following observations of Dr. Sethna dealing with the society and the criminal:

"Many crimes are caused under the influence of alcohol or drugs. The use of alcohol, in course of time, causes a great and irresistible craving for it. To retain the so called "satisfaction", derived from the use of alcohol or drugs, the drunkard or the drug-addict has got to go on increasing the quantities from time to time; such a state of affairs may lead him even to commit thefts or frauds to get the same otherwise. If he cannot understand the consequences of his acts he is quite likely to do some harmful act- even an act of homicide. Very often, crimes of violence have been committed in a state of intoxication. Dr. Hearly is of the opinion that complete elimination of alcohol and harmful drug habits would cause a reduction in crime by at least 20 per cent; not only that, but there would also be cumulative effect on the generations to come, by diminishing poverty, improving home conditions and habits of living and environment, and perhaps even an improvement in heredity itself."

44. What is a "state of intoxication"? The Shorter Oxford English Dictionary defines "intoxication" as-

"The action of stupefying with a drug or alcoholic liquor the making drunk or inebriated, the condition of being so stupefied or made drunk."

In P. Ramanatha Aiyer's "The Law Lexicon", the expressions "intoxicated" "intoxication" are explained as follows:

"A man is intoxicated whenever he is so much under the influence of spirituous or intoxicating liquors that it so operates upon him, that it so affects his acts or conduct or movement, that the public or parties coming in contact with him could readily see and know that it was affecting him in that respect. A man to that extent under the influence of liquor that parties coming in contact with him or seeing him would readily know that he was under the influence of liquor by his conduct or his words or his movements would be sufficient to show that such party was intoxicated. The word "intoxicated" is synonymous with "drunk" and in the Standard Dictionary "drunk" is defined as under the influence of intoxicating liquor to such an extent as to have lost the normal control of one's bodily and mental faculties, and commonly to evince a disposition to violence and

quarrelsomeness.

There are degrees of intoxication or drunkenness. A man is said to be dead drunk when he is perfectly unconscious, powerless. He is said to be stupidly drunk when a kind of stupor comes over him. He is said to be staggering drunk when he staggers in walking. He is said to be foolishly drunk when he acts the fool. All these are cases of drunkenness, of different degrees of drunkenness. So it is a very common thing to say a man is badly intoxicated, and again that he is slightly intoxicated. There are degrees of drunkenness, and therefore many persons may say that a man was not intoxicated because he could walk straight, or he could get in and out of a wagon. Whenever a man is under the influence of liquor, so as not to be entirely himself, he is intoxicated. Although he can walk straight, attend to his business, and may not give any outward and visible signs to the casual observer that he is drunk, yet if he is under the influence of the liquor so as not to be himself so as to be excited from it, and not to possess that clearness of intellect and control of himself that he otherwise would have, he is intoxicated."

45. Thus, degrees of intoxication vary considerably and in the absence of a proper definition, the provision would work arbitrarily and unreasonably. It is for these reasons a proper definition of the expression of "state of intoxication" is necessary and significant because the provision applies equally to those who are given permits for consuming liquors and those who drink toddy, the drinking of which is not prohibited. A person drinking toddy can also get inebriated and drunk and attain a state of intoxication of different degrees.

46. We are, therefore, of the view that in the absence of a definition of the expression "state of intoxication", Section 9 would work in an arbitrary manner and therefore has to be struck down as violative of Article 14 of the Constitution on this ground. In this view of the matter we do not consider it necessary to examine the second aspect of the argument, viz., discrimination on the ground that it fails to satisfy the test of reasonable classification and we leave this matter open.

47. It would be open to the Legislature to provide for punishments separately in respect of persons found in a state of intoxication, provided the expression "state of intoxication" is defined in a precise manner so as to ascertain it with certain amount of definiteness.

48. Section 15 of the impugned Act is in Chapter IV which deals with exemptions. Section 15(1) contains as many as eight exemptions and reads as follows:-

"(1) Subject to such rules as may be made in this behalf, the prescribed authority may issue,-

"(i) permits to persons who are foreigners under the Foreigners Act, 1939 and to persons who are non-resident Indians to consume liquor;

"(ii) licences to hotels and restaurants recognised as three star and above in accordance with such rules as may be made and to such categories of institutions as maybe specified by notification subject to such criteria as may be prescribed to sell foreign liquor or Indian liquor to the holders of permits granted under this Act;

"(iii) permits to those who are medically certified by any notified medical authority as requiring to consume liquor on account of any diagnosed health condition or problems to consume liquor;

"(iv) permits to persons who are tourists from outside the State and to persons who are not ordinarily residents of the State to consume liquor;

"(v) permits to members serving or retired belonging to the armed forces to consumer liquor;

"(vi) permits to companies, corporations, institutions, industrialists, exporters, importers and similar such functionaries as may be notified, who normally entertain foreigners, non-resident Indians and guests coming from outside the State in pursuance of their business activity or the activity connected with their institutions to buy and serve liquor;

"(vii) permits to consume liquor in cases of medical emergency; and

"(viii) permits for sacramental wine used in masses conducted in Churches."

49. To maintain challenge under Article 14 of the Constitution against Section 15 of the Prohibition Act, the petitioners must show that there has been no proper classification in the matter of granting exemptions and the exemptions are discriminatory. Insofar as the first exemption is concerned, it applies to permit holders falling under the category of foreigners under the Foreigners Act, 1939 and to persons who are non-resident Indians. These two categories of persons vis-a-vis the residents in the State form entirely different classes. The object of the Act is to prohibit liquor in the State for the residents of the State. The classes of persons mentioned in the first exemption are either foreigners under the Foreigners Act, 1939 or non-resident Indians. They ex facie form a different class from those of the residents within the State. Therefore, the first exemption satisfies the test of reasonable classification and this classification has a nexus with the object of the Act, viz., to impose prohibition in the State for the residents of the State.

50. The second exemption is in favour of hotels and restaurants recognised as three star and above in accordance with such rules as may be made and to such categories of institutions as may be specified by notification, subject to such criteria as may be prescribed, to sell foreign liquor or Indian liquor to the holders of permits granted under the Prohibition Act. In fact, no blanket exemption is granted under this category to all hotels and restaurants recognised as three star and above. It is only when they have been granted licence they will be entitled to the exemption under that category and only for the purposes of selling foreign

liquor or Indian liquor to the holders of permits granted under the Act. Even this clause, in our view, satisfies the test of classification under Article 14 of the Constitution.

51. The third category of persons are those who are medically certified by any notified medical authority as requiring to consume liquor on account of any diagnosed health condition or problems to consume liquor. Such persons will be granted permit under the rule. They also form different class and this clause also satisfies the test of classification under Article 14 of the Constitution. Indeed, not exempting them would have been violative of Article 14.

52. The fourth category entitles persons who are tourists from outside the State and to persons who are not ordinarily residents of the State, they are entitled to permits. Like the first category, the categories of persons who fall under clause (iv) also form a distinct class. The tourists visit this State either from other State or from places outside India. So, also persons not ordinarily residents of the State come from other States, they may require the drink as a matter of routine and not granting permits to them to consume liquor, would result hardship because their stay in this State would be only temporary and casual. For purposes of prohibition they fall in a different class. Therefore, exemption granted in their favour can hardly be said to be violative of Article 14 of the Constitution of India.

53. The category of persons falling under clause (v) are those members of armed forces who are either in service or retired. The exemption granted under this clause has not been questioned.

54. The sixth clause grants exemption in favour of companies, corporations, institutions, industrialists, exporters, importers and similar such functionaries as may be notified. Though these categories of persons appear to be vague at first sight, yet on close examination we find that there are in-built safe-guards which justify their falling in a different class. The first limitation is that they must normally entertain foreigners, non-resident Indians and guests coming from outside the State for purposes of their business activity or the activity connected with their institutions and it is only then they become entitled to permit. Secondly, the authority granting permit would have to ensure that the persons enumerated therein normally entertain foreigners, non-resident Indians and guests coming from outside the State in connection with their business activity or activity connected with their institutions. These persons fall under the exempted category under clause (iv) of sub-section (1). Therefore, the charge that this category is vague, does not stand to scrutiny. In our view the categories of persons falling under clause (vi) also satisfy the test of classification under Article 14.

55. The persons falling under clause (vii) as well as under clause (iii) fall under the same category, that is for medical reasons and can be classified under the same head, viz., for medical reasons. These two categories of persons also

satisfy the test of classification under Article 14 of the Constitution.

56. The last one, viz., clause (viii) permits for sacramental wine used in masses conducted in Churches. This clause has not been questioned.

57. In so far as exemptions granted under clauses (iv) and (vi) to various categories of persons including those who are not ordinarily residents of the State, it is contended that the classification on the basis of residence is illegal. In support of this contention, reliance is placed on Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . The question in that case arose in the context of admission to M.B.B.S. and B.D.S. courses. Reservations on the basis of residential requirements or institutional preferences was questioned as being violative of Article 14 of the Constitution. The Supreme Court having emphasised the concept of the word "domicile" pointed out that, that word was used in the rules regulating admission to medical colleges in some-what loose sense of permanent residence and not in the technical sense and observed that the word was used for purposes other than its legitimate purpose and might give rise to lethal radiations which might in the long run tend to break up unity and integrity of the country and urged upon the State Government to eliminate the wrong use of the expression "domicile" from the rules regulating admissions to the educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions. It was further observed that as the object of any rule for regulating admission was to secure the best and most meritorious students from any part of the Union of India the requirement as to residence should be dispensed with. Here we are dealing with the State law implementing the policy of the prohibition which is mainly aimed at the persons who are ordinary residents of the State and it must be noted that the impugned Act has no extra territorial application. Any exemption with regard to those who are not residents of the State for purposes of implementing the law, is based on reasonable classification of the persons into categories who are residents of the State and those who were not the residents of the State; there is thus an intelligible differentia. This classification has nexus with the object sought to be achieved, viz., to impose prohibition within the State of Andhra Pradesh for those who are ordinarily residents of the State. The judgment of the Supreme Court in Pradeep Jain v. Union of India (20 supra), in view our view, does not advance the case of the petitioners.

58. Article 19 of the Constitution confers six freedoms. The one with which we are concerned here is contained in sub-clause (g) of clause (1) of Article 19, viz., to practise any profession or to carry on any profession or to carry on any occupation, trade or business. Clause (6) of Article 19 not merely saves the existing laws but also gives liberty to the State for making any law imposing reasonable restrictions on the exercise of the rights conferred by sub-clause (g). It is true the economic freedom is essential for the upliftment and self-reliance of a nation, but we should also, inter alia have regard to the resolve of the people

of India to secure social justice which permeates the spirit of the Constitution. That goal was earlier sought to be achieved by resorting to nationalisation of the various industries and undertaking public enterprises. The experience to achieve the goal of socialism by excluding or minimising private ownership and private management of various industries and undertakings not having yielded the desired result, the nation is now on the route to privatisation. But in view of the modern emphasis to allow full scope for privatisation, the ultimate objective to achieve the goal of socialism cannot be lost sight of. The experience of other capitalist countries shows that socialism, though in lesser degree, has been achieved by those countries. It is in this background that we have to now interpret the right guaranteed under Article 19(1)(g) and subject to the restrictions under clause (6) protect this fundamental right of the citizens. This right exists in respect of all the trades, businesses etc. except in respect of trade in intoxicating drinks or drugs injurious to health. It will be unnecessary for us to embark upon the amplitude of the right under Article 19(1)(g) vis-a-vis the trade in intoxicating liquor in view of the observation of the Supreme Court as early as in 1951 in *State of Bombay v. F.N. Bakara* (14 supra) as also in the latest pronouncement in *Khoday Distilleries Ltd. v. State of Karnataka* (17 supra). We have referred to the observations of the Supreme Court in these two cases above and we do not consider it necessary to repeat the same here. In view of the observation of the Supreme Court no person can claim a fundamental right to trade or do business in intoxicating liquor or beverages. Therefore, the prohibition imposed on selling, buying, being in possession and consumption of liquor by Section 7 of the impugned Act, has to be upheld and we accordingly hold that Section 7 is not violative of Article 19(1)(g) of the Constitution.

59. Two more contentions remain to be considered:

The petitioners-licencees claim that they had legitimate expectation that their licences which were valid till the end of September, 1995 will not be withdrawn before the expiry of the period when they have not violated the conditions of the licences. Further that they are licencees and they are deprived of their right to carry on their business even without affording an opportunity of being heard to them. They say that they had taken the business premises on lease by spending huge amounts and stored stocks and they suffered great hardship and irreparable loss.

60. The learned Advocate-General submitted that the petitioners had no legal, muchless fundamental right to carry on business in liquor and that the petitioners' right to carry on the business was denied by virtue of a legislation; that there was no reasonable basis for the petitioners to have legitimate expectation but in any event no legitimate expectation could be claimed against: legislation.

61. That a person has no fundamental right to trade or carry on business in liquor or beverages is a well settled principle of law; as long back as in 1951 in *State of Bombay v. F.N. Balsara* (14 supra) it was laid down that there was no

fundamental right in a person to carry on trade in intoxicants etc. To the same effect is the recent judgment of the Supreme Court in Khoday's case (17 supra). After referring to all the earlier cases the Supreme Court has summarised the law on the subject in Para 60. Sub-paras (b) and (c), which are relevant for our purpose, read as follows:-

"(b) The right to practice any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public i.e. *res extra commercium*, (outside commerce). There cannot be business in crime. (c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited."

62. In view of the above said authoritative pronouncement of the Constitution Bench of the Supreme Court, the claim of the petitioners that they have fundamental right to carry on business cannot be countenanced.

63. Their legal right to carry on business in liquor under the A.P. Excise Act was available so long as the licences granted under that Act subsisted. That Act authorises withdrawal of licences and accordingly the licences were withdrawn and their right to carry on business in liquor, under law, came to an end. Therefore, there is no legal right in the petitioners to carry on business in liquor. But then absence of a legal right will not defeat legitimate expectation.

64. The doctrine of legitimate expectation is an equitable doctrine. In (Halsbury's Laws of England Vol. (i) Fourth Edition Para 81 at pages 151-152) Halsbury's Laws of England the doctrine is elucidated as follows:-

"81. Legitimate expectations:-A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment."

In a recent judgment of the Supreme Court in *Madras City Wine Merchants Association v. State of T.N.* AIR 1994 SCW 3915 the Supreme Court re-stated the principle as follows:

"For the above it is clear that legitimate expectation may arise-

(a) if there is an express promise given by a public authority; or

(b) because of the existence of a regular practice which the claimant can reasonably expect to continue;

(c) such an expectation must be reasonable."

Thus, it can be seen that the doctrine of legitimate expectation can be invoked either where there is an express promise given by a public authority or where there is existence of a regular practice which a claimant can reasonably expect to continue. The claim for legitimate expectation can be defeated by showing (a) that the expectation itself is unreasonable; or (b) that the conduct of the person seeking to enforce the claim is such that it disentitles him to the equitable relief of the doctrine; or (c) that the expectations run counter to a public policy; or (d) that the policy or the circumstances which gave rise to expectation have changed; or (e) that the claim is contrary to the provisions of a statute.

65. On the facts stated above the claim for legitimate expectation cannot be denied on the ground that the petitioners have no legal right as existence of legal right is not a condition precedent to enforce the doctrine. As the petitioners have been carrying on the business for a number of years under licences granted to them in the past and therefore, they can reasonably expect to continue the business; they can therefore claim to enforce the rule. The requirement as to the expectation being reasonable, is also fulfilled as the claim to continuance of the licences for the period for which they were granted in our view, is a reasonable expectation. However, the withdrawal of the licences is pursuant to the implementation of the policy of prohibition contained in Article 47, which has now been translated into a statute by passing the Andhra Pradesh Prohibition Act, 1995 (Act No. 17 of 1995) by the State Legislature which is a complete defence to the claim to enforce the doctrine of legitimate expectation. There can be no legitimate expectation against the mandate of a statute. In this view of the matter, the petitioners' claim for legitimate expectation cannot be accepted.

66. The last contention to be considered is raised in the writ petitions filed by the employees working in shops of retail dealers in intoxicating liquors. It is urged by their learned Counsel that while implementing the mandate of Article 47, the State cannot so act as to violate the mandate contained in Article 39(a), 41 and 43 of the Constitution by creating unemployment, as such a direction be issued to the respondents to frame a scheme for their reemployment. In our view, the contention, though attractive, is devoid of any substance. The action of the State in implementing the directive contained in Article 47 of the Constitution by prohibiting selling, buying, being in possession and consumption of liquor otherwise than in accordance with the Prohibition Act, cannot be said to be an action in violation of mandate contained in Articles 39(a), 41 and 43 of the Constitution. Those who take up employment in industries or establishment the business of which is within the teeth of Article 47, cannot on the implementation of the directives contained in that Article, legitimately complain that the State is responsible for their unemployment. The action of the State in implementing the policy of prohibition contained in Article 47 may, as a consequence of the prohibition imposed by the Prohibition Act, result in some persons getting unemployed but that cannot be said to be an action in violation of Article 39(a), 41 or Article 43 of the Constitution so as to hold the State responsible for the consequential unemployment of the petitioner-employees. There can be no doubt

that the State is under an obligation to endeavour to secure work for the citizens but no direction as such can be given to the State to provide alternative employment to the persons who are rendered unemployed due to the prohibition imposed under the Prohibition Act because such a direction would run counter to the express command of Article 37. What all we can observe here is that the cases of the employees who are rendered jobless due to the implementation of the policy present a human problem which calls for attention and consideration by the Government. As to what should be done for such persons is a matter entirely within the discretion of the Government and we cannot issue any directive in that regard.

67. In the result, the constitutional validity of sub-section (7) of Section 2, Section 7 and Section 15 of the Andhra Pradesh Prohibition Act, 1995 (Act 17 of 1995) is upheld; and Section 9 of the said Act is held to be violative of Article 14 of the Constitution of India and is accordingly struck down.

68. Accordingly Writ Petition Nos. 22999 of 1994, 22344 of 1994, 368 of 1995, 92 of 1995, 333 of 1995, 22530 of 1994, 22604 of 1994, 500 of 1995, 474 of 1995, 483 of 1995, 546 of 1995, 319 of 1995, 123 of 1995, 384 of 1995, 249 of 1995, 446 of 1995, 2 of 1995 and 842 of 1995 are accordingly allowed in part. There shall be no order as to costs.

69. Insofar as the batch of writ petitions (mentioned in Annexure-I) wherein notices issued by the Commissioner of Excise u/s 32 of the Excise Act on December 12, 1994, withdrawing the licences granted under that Act pursuant to the policy decision of the Government to "introduce total prohibition on the expiry of 30 days from the date of receipt of those notices are concerned, the policy is translated into the Prohibition Act which is held valid and the licences themselves have expired. For the above mentioned reasons, these Writ Petitions are dismissed. There shall be no order as to costs.

70. In the other batch of Writ Petitions (mentioned in Annexure-II) in which the constitutional validity of the Andhra Pradesh Prohibition Ordinance, 1994 (Ordinance No. 19 of 1994) was questioned, that Ordinance was repealed by the Andhra Pradesh Prohibition Act, 1995 (Act 17 of 1995) on February 20, 1995 but no applications were filed in these Writ Petitions for amending the Writ Petitions so as to challenge the validity of the said Act No. 17 of 1995. Consequently, these Writ Petitions have also become infructuous. They are accordingly dismissed. There shall be no order as to costs.