

Policing the Alcohol Prohibition: An Analysis of Enforcement Powers, Over-Criminalization, And Constitutional Burdens on India's Criminal Justice System

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Abstract

The current paper is a purely doctrinal overview of the alcohol prohibition laws in India with a focus on the police powers legal architecture of the prohibition, the criminalisation standard and the procedural safeguards of the Constitution. Although Article 47 requires the State to make a good-faith effort to ban intoxicating beverages, the form of legislative and enforcement structure embraced in such states as Bihar and Gujarat has raised the most fundamental constitutional compatibility question. The design of prohibition offences in statutes, broad granting of search, seizure, and arrest authority to the police, reduction of the mens rea threshold, and the introduction of the strict-liability type offences are all critiqued in the paper. Through the critical analysis of the constitutional clauses in Articles 14, 19, 21, and 22, judicial review by the Supreme Court and different High Courts, the paper evaluates whether prohibition policing contributes to the disproportionate liberty and procedural fairness limitations. The question of whether the classification of a minor consumption offence as cognizable but not bailable leads to over-criminalisation, over-delegation and breach of established criminal jurisprudential principles is discussed further. The paper will end by concluding that the present condition of the legal system is too burdensome to criminal justice, contrary to the principle of proportionality, and requires a doctrinal correction of prohibition policing to fit within constitutional morality and the modern criminal law theory.

Keywords- Alcohol prohibition laws, Constitution of India, Criminal justice system

INTRODUCTION

The legal framework of prohibition on alcohol in India today is a product of a complicated combination of constitutional requirements, criminal laws, and judicial interpretation. Although Article 47 of the Constitution commits the State to strive to achieve the prohibition of intoxicating drinks, the legislative and enforcement policies adopted by some States, especially Bihar, Gujarat and Nagaland, evoke underlying concerns about the structure, form and constitutionality of criminalisation within a democratic polity. It has resulted in the substantive expansion of police authority, the establishment of strict liability and reverse-burden offences, and invasive search and seizure proceedings in the transition to non-regulatory control and absolute prohibition. All of these characteristics put pressure on re-evaluating the doctrine of proportionality, fairness, due process, and the rule of law against the criminalisation of prohibition statutes.

In the past, prohibition has been highly controversial in the Indian constitutional jurisprudence. *State of Bombay v. F.N. Balsara*, the Supreme Court rejected the policy of total prohibition as a valid exercise of legislative power, largely due to the explicit fact that it seemed to serve the end of furthering the objectives that Article 47 of the Constitution.¹ Despite the fact that *Balsara* laid early foundations towards the legitimisation of prohibition, its reasoning is well established on a post-colonial, moralistic dream of state power. This outdated scheme no longer sits very well with the development of the fundamental rights jurisprudence, especially following the establishment of the substantive due process, right to privacy, proportionality, and the expanded interpretation of Article 21. Criminal procedure and substantive criminal law have changed their structure with the *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)* and *Bharatiya Nyaya Sanhita, 2023 (BNS)*. Such trends render the question of whether or not the modern-day prohibition enforcement can still be justified in the contemporary constitutional order worth re-evaluating.

This paper has made the point that prohibition laws, especially in the form of policing systems, are a theological aberration of the accepted norms of Indian criminal jurisprudence. The categorisation of minor consumption or possession offences as cognizable and non-bailable, the introduction of strict presumptions, the power to provide wide-ranging searches, and criminalisation of much victimless behaviour all place an undue burden on the criminal justice system. These legal

¹*State of Bombay v. F.N. Balsara*, AIR 1951 SC 318.

characteristics cast doubt on doctrinal decency in Articles 14, 19, 20, 21 and 22. Furthermore, the constitutional justification, which is commonly referred to in Article 47, does not confer the unlimited power to impose disproportionate criminal penalties, or to override the basic rights.

The present paper continues to follow a doctrinal analysis of pure form, looking at the constitutional text, judicial precedent and the statutory fabric of prohibition law. It attempts to place prohibition policing within the wider theoretical context of criminalisation, procedural justice, and constitutionalism, and questions the validity of the existing enforcement paradigm as per current standards of jurisprudence. This paper presents a contention that prohibition policing in its present form is a constitutionally disproportionate and jurisdictionally inconsistent paradigm of criminal policing through this doctrinal inquiry.

CONSTITUTIONAL SCHEME OF PROHIBITION: ARTICLE 47 VIS-À-VIS FUNDAMENTAL RIGHTS

The constitutional underpinning of the state legislation on prohibition lies mainly in Article 47, which commands the State to make every effort to ban intoxicating drinks and drugs harmful to health.² Although contained in Part IV as a Directive Principle of State Policy (DPSP), Article 47 does not lend itself to an interpretation that it grants plenary or unrestricted powers to States to criminalise the prohibition of intoxicating drinks and drugs harmful to health without reference to basic rights. Jurisprudence of the Supreme Court has repeatedly stated that DPSPs do not prevail over Part III rights, but they need to be reconciled.³

A. The Doctrinal Position of Directive Principles

In *Minerva Mills Ltd. v. Union of India*, the Supreme Court made it clear that the harmony of the Constitution is that of a balance between Part III and Part IV.⁴ It is true that DPSPs are basic in governance, but they cannot be used to justify the enactment of a legislation that abrogates or dilutes the fundamental rights. Using this doctrine propounded on prohibition laws, it is clear that Article 47 may not be used to justify criminalisation programs that are in violation of Articles 14, 19 and 21.

B. Article 19: Reasonable Restrictions and the Prohibition Question

Alcohol Prohibition laws often deal with the right to movement (Article 19(1)(d)) and the right to carry on a business or occupation (Article 19(1)(g)). In *Khoday Distilleries Ltd. v. State of Karnataka*⁵, it was reiterated that citizens had no fundamental right to trade in liquor; the Court still said that the criminal penalties of possession or consumption could not be subjected to constitutional criticism. Privatisation of criminal behaviour should pass the test of proportionality as developed in the case of *Modern Dental College and Research Centre v. State of Madhya Pradesh*.⁶

C. Article 21: Substantive Due Process, Privacy, and Autonomy

The advent of the substantive due process in *Maneka Gandhi v. Article 21* was converted into a general right against governmental arbitrariness after *Puttaswamy* to autonomy in decision-making, integrity of the body, and the sanctity of personal choice.⁷ Laws that criminalise individual consumption of alcohol are particularly implicated with the main privacy principles. A ban regime that allows warrantless searches of personal premises, sanctioning intrusive bodily searches, and aiding the criminalisation of personal behavioural options, thus, casts grave constitutional issues.

D. Article 14: Arbitrary Classifications and Overbreadth

Article 14 requires that criminal laws should be aligned with Article 14 by not making arbitrary classifications and going overboard with delegation. In the *Shayara Bano* case, the Supreme Court restated that the test of arbitrariness is now a free-standing principle of invalidating a statute.⁸ There are numerous prohibition laws, which make minor consumption crimes

²INDIAN CONST. art. 47.

³*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁴*Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

⁵*Khoday Distilleries Ltd. v. State of Karnataka*, (1995) 1 SCC 574.

⁶*Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

⁷*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁸*Shayara Bano v. Union of India*, (2017) 9 SCC 1.

non-bailable and cognizable, and the reasons are not rational. This imbalanced statutory construction makes such a classification arbitrary.

E. Article 22: Safeguards against Unreasonable Arrest and Detention

The laws that ban prohibition frequently sanction prohibition without a warrant, presumptions concerning the offender and severe bail. Such provisions have to be tested against the doctrinal soundness of such considerations as applied in the *DK Basu* case by the Supreme Court and the *Joginder Kumar* case.⁹

CRIMINALIZATION UNDER PROHIBITION STATUTES: A DOCTRINAL CRITIQUE

Indian prohibition laws on criminalisation need to be tested against the classical criminal law theory, constitutionalism, and the proportionality doctrine. The Bihar, Gujarat, and Nagaland prohibitions follow a maximalist criminalisation model, which extends beyond possession, consumption, and transportation, storage of liquor, and even being at a premise where liquor is located.¹⁰ This expansive approach is a drastic shift in the concept behind criminal law as a means of harm prevention, and not the promotion of moral values or the control of personal behaviour.

A. The Principle of Harm and Victimless Conduct

The first principle of the criminalisation doctrine is the harm principle, which is most well-known in the liberal theory developed by J.S. Mill and is used in comparative criminal jurisprudence. There is no explicit reference to the harm principle in the Indian Constitution; however, criminal law scholars and the legal system have acknowledged that criminalisation should be based on verifiable harm as opposed to paternalistic or moralistic factors.¹¹ Alcohol use in the privacy does not necessarily cause harm to the populace. Thus, making it a crime by mere possession or consumption is thus prone to contravening constitutional tenets of autonomy and privacy, which arise as a result of Puttaswamy.

B. Dilution of Mens Rea and the Rise of Strict Liability

Prohibition laws often give rise to offences that omit mens rea or use presumptive culpability instead. The Bihar Prohibition and Excise Act, as an example, has highly presumptive clauses: the presence of liquor in a premises constitutes a presumption of guilt of all adults present on the premises unless expressly and convincingly proved otherwise by the legislature.¹²

In numerous cases, the Supreme Court has declared that the statutes should be explicit as to why the element of mens rea is being swept away, especially when serious consequences are attached to a certain statute and when the statute is characterised by warrantless arrests or encroachment into personal space. In *R. Suresh v. The Court*, once again held that strict-liability offences that are necessary in the interest of the welfare of the people and that there are other measures to protect these interests, the prohibition statutes fail to satisfy the constitutional test of proportionality and procedural fairness.

C. Overbreadth and Vagueness

Although not explicitly cultivated in Indian jurisprudence as in the U.S, the doctrine of overbreadth is reflected in the arbitrariness and proportionality studies in Articles 14 and 21. Laws against prohibition tend to make attempts and likelihood of consumption or possession criminal offences, which are ambiguous and prone to arbitrary interpretation. *Shreya Singhal v. the Supreme Court*. It was believed by the Union of India that unclear criminal clauses are unconstitutional since they permit unchecked discretion.¹³ The language of most prohibition acts falls in this category and has the potential of arbitrary police victimisation.

⁹*DK Basu v. State of West Bengal*, (1997) 1 SCC 416; *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.

¹⁰Bihar Prohibition and Excise Act, 2016, Section 30–37.

¹¹See H.L.A. Hart, *Law, Liberty and Morality* (1963); See also *State of Maharashtra v. Madhukar Narayan Mardikar*, 1991 AIR 207.

¹²Bihar Prohibition and Excise Act, 2016, S 52.

¹³*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

D. Disproportionate Penalties and Legislative Unreasonableness

A declassification of minor cases involving possession of alcohol to non-bailable and cognizable offences is a disproportionate categorisation. In *Anuj Garg v. Hotel Association of India*, the Supreme Court declared invalid a paternalistic law with a discriminatory and disproportionate impact.¹⁴ The same argumentation goes to the prohibition penalties in which the State criminalises private conduct on the basis of moral considerations and without a sufficient rational nexus with harming society.

ANALYSIS OF POLICE POWERS UNDER PROHIBITION LAWS

The wide police powers that such prohibition regimes give are, perhaps, the most constitutionally controversial element. These involve warrantless entry, search and seizure, warrantless arrest, any form of bodily samples (breath, blood, urine) collection and property seizure. These powers should be carefully scrutinised in regards to their doctrinal compatibility with Articles 14, 19, 21, and 22.

A. Warrantless Searches and Constitutional Right to Privacy.

Indeed, most prohibition laws permit police to enter and search private property without a warrant based on their mere suspicion of keeping or using alcohol.¹⁵ These have to be weighed against *K.S. Puttaswamy*, where privacy was declared an essential right that entailed the right to decide matters, the integrity of the body, and the sanctity of the home, inspired by the comparative jurisprudence, including *Wolf v. Colorado*¹⁶ and *Mapp v. Ohio*.¹⁷

The four-pronged proportionality test laid down in *Modern Dental College* demands that:

1. The measure is sanctioned by law,
2. The measure pursues a legitimate aim,
3. The measure has a rational connection with the aim,
4. The measure is the least restrictive means.¹⁸

Warrantless intrusions into homes for alcohol detection fail the fourth limb, as less intrusive measures exist, such as requiring judicial warrants or limiting searches to public spaces.

B. Arrest Without Warrant and Article 22 Protections

Criminalising mere possession or consumption as cognizable and non-bailable authorises police to arrest individuals without a warrant.¹⁹ In *DK Basu*, the Supreme Court issued mandatory guidelines to prevent arbitrary arrests.²⁰ Prohibition arrests often violate these guidelines and, more importantly, raise the doctrinal question of whether arrest without warrant is intrinsically disproportionate for non-violent, victimless offences.

The Supreme Court in *Arnesh Kumar v. State of Bihar* emphasised that an arrest must not be mechanical and should be exercised only when necessary.²¹ Arrest for alcohol consumption is rarely necessary to secure justice or maintain public order, thereby rendering such provisions constitutionally suspect.

¹⁴*Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

¹⁵Gujarat Prohibition Act, 1949, Section 53-54; Bihar Prohibition and Excise Act, 2016, Section 41-43.

¹⁶*Wolf v. Colorado*, 338 U.S. 25 (1949).

¹⁷*Mapp v. Ohio*, 367 U.S. 643 (1961).

¹⁸*Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹⁹Bihar Prohibition and Excise Act, 2016, S 60.

²⁰*DK Basu v. State of West Bengal*, (1997) 1 SCC 416.

²¹*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

C. Bodily Samples, Compelled Evidence, and Article 20(3)

Prohibition laws allow compelled bodily sample collection (breath and urine tests). While the Court in *Selvi v. State of Karnataka* held that certain compelled tests violate Article 20(3), it allowed breath analysis as non-testimonial.²² However, the doctrinal extension to compulsory urine tests, which reveal private medical information, raises unresolved constitutional questions.

D. Presumptions and Reverse Burdens: Limits

The presumption that occupants of premises are guilty if liquor is found violates the presumption of innocence, recognised as a human right under Article 21 post-*Maneka Gandhi*.²³ In *Noor Aga v. State of Punjab*, the Supreme Court held that reverse-burden clauses must be construed strictly and applied only when procedural safeguards exist.²⁴ Prohibition statutes often lack such safeguards and therefore risk unconstitutional application.

E. Police Discretion and Arbitrary Enforcement

Vague offences and broad enforcement powers create a fertile ground for discriminatory enforcement. In *State of Punjab v. Gurmit Singh*, the Court warned against laws that give sweeping discretion to police.²⁵ Prohibition statutes, like the former section 66 of the Bombay Prohibition Act, have historically been criticised for promoting corruption and abuse.

CONSTITUTIONAL DIMENSIONS OF ALCOHOL PROHIBITION: RIGHTS, REASONABLENESS, AND JUDICIAL REVIEW

The question concerning the doctrine is whether the warrantless searches of alcohol pass the necessity and proportionality test. The prohibition laws against alcohol in India are on the border of the Directive Principles, fundamental rights, and administrative powers of the State.²⁶ The constitutional morality, though, cannot be synonymous with legislative absolutism; thus, judicial review of alcohol prohibition laws demands a delicate coordination between the public health, the individual freedom, the economic freedom and the administrative fairness.

The broad power of States to regulate intoxicants has long been maintained by the Supreme Court on the doctrine that no citizen has a fundamental right to trade in intoxicating liquor, on which the basis of judicial restraint in prohibition cases.

But the Court has also placed constitutional constraints on this, especially under Articles 14, 19, and 21, noting that prohibition regimes invariably impose unreasonable and disproportionate reburdens on the populace, in patterns of discriminatory enforcement, and intrusion into personal life.²⁷ As a case in point, in *Balsara*, the Court struck down prohibition measures which criminalised the possession of medicinal preparations containing alcohol on the basis that such restraint was arbitrary and unreasonable, and that there was no intelligible differentia.²⁸ The State of Gujarat warned that too much criminalisation of personal consumption infringes on Article 21 in circumstances where it leads to haphazard arrests and custodial maltreatment.²⁹

The greatest constitutional controversy is whether the issue of personal consumption of alcohol is within the right to privacy. After *K.S. Puttaswamy (Privacy)*,³⁰ several scholars argue that consumption of alcohol within the home is an extension of personal autonomy similar to food or lifestyle choices.³¹ While no Indian court has explicitly applied *Puttaswamy* to strike down a prohibition statute, the reasoning used by the Madras High Court in *Beedi Workers'*

²²*Selvi v. State of Karnataka*, (2010) 7 SCC 263.

²³*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁴*Noor Aga v. State of Punjab*, (2008) 16 SCC 417.

²⁵*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

²⁶See M.P. Jain, *Indian Constitutional Law* 212 (8th ed. 2018).

²⁷*State of Madras v. V.G. Row*, AIR 1952 SC 196.

²⁸*Khoday Distilleries Ltd. v. State of Karnataka*, (1995) 1 SCC 574.

²⁹(1981) 22 GLR 500.

³⁰(2017) 10 SCC 1.

³¹Deepika Kinhal & Shruti Pandey, "Alcohol and the Right to Privacy," 12(3) NULJ 45 (2018).

Association v. State of Tamil Nadu, that personal consumption of harmful articles has a privacy dimension, suggests a jurisprudential opening.³²

However, courts have also held that privacy is not an absolute shield against reasonable restrictions in the interest of public health, invoking the regulatory analogy with narcotics.³³ The likely constitutional approach, therefore, remains one of proportionality, requiring the State to justify: (a) the necessity of criminalising consumption, (b) the least restrictive means employed, and (c) the *rational nexus* between prohibition and public welfare.³⁴

Despite this framework, judicial review of prohibition statutes has been limited due to the perception that alcohol regulation is a matter of “state policy and legislative wisdom.”³⁵ However, as is shown by litigation initiated by Bihar, excesses in enforcement, overcrowding in custody and disproportionate punitive measures present strong reasons that justify a more rigorous Article 21 examination of the constitutional challenge to the Bihar Prohibition and Excise Act, 2016, though ultimately upheld, of which appear significant the abuses of mass arrests, criminalisation of innocent acts, and the promotion of disproportional punishments.³⁶

So the constitutional history of prohibition is defined by judicial moderation towards the end, but increasing dissatisfaction with the methods. The doctrine is changing: the tendency of the courts towards acknowledging the need for criminal justice regulation not to degenerate into moral policing, and the conversion of the criminal justice system into a disproportionate punishment mechanism is starting to grow.

OVER-CRIMINALIZATION AND PENAL EXPANSION UNDER PROHIBITION REGIMES

Another largest legal nightmares of prohibition laws in India is the so-called over-criminalisation. Essentially, politicians are transforming what was once a regulatory violation or an ethical violation into a criminal violation subject to severe punishment.³⁷ This change in the approach of regulation to penal law is a big constitutional challenge. In cases where the state chooses to consider something as a crime, it must meet high tests of necessity, intent (*mens rea*) and proportionality.³⁸

It is much to be regretted that prohibition laws in India do not pass these examinations. (a) mere consumption of liquor, (b) possession of negligible quantities, (c) presence in premises where alcohol is found, and (d) vicarious liability of household members.³⁹

Many of these provisions lacked traditional *mens rea* requirements and imposed near-strict liability, creating what scholars describe as “collective penal responsibility.”⁴⁰ The most striking example of this over-extension of the penal law is probably the Bihar Prohibition and Excise Act of 2016. The act was too general to the extent that it crippled the whole criminal justice system. Over the opening two years of operation, Bihar alone had over 160,000 minor offenders arrested on prohibition cases alone, which was quite literally overwhelming the courts.⁴¹ The Patna High Court, alarmed by this, noted that the statute had virtually created a second criminal docket, one which was overshadowing the more serious offences.⁴²

³²(1993) 1 MLJ 75.

³³*State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

³⁴*Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353.

³⁵*Khoday*, (1995) 1 SCC 574.

³⁶*Raj Kumar v. State of Bihar*, 2017 SCC OnLine Pat 401.

³⁷Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* 3-12 (2008).

³⁸*State of Maharashtra v. Mayer Hans George*, AIR 1965 SC 722.

³⁹Bihar Prohibition and Excise Act, 2016, Section 37-59.

⁴⁰Abhinav Sekhri, “Criminal Law and Collective Responsibility,” *IndiaCorpLaw* (2017).

⁴¹NCRB Crime in India Report 2017.

⁴²PUCL Bihar Report on Prohibition (2018).

This poses tremendous doctrinal issues on Article 14 of the Constitution as far as legislative fairness is concerned. The Supreme Court has reiterated that criminal acts should not be too broad or rest on irrational lines, as has arisen in the case of Chintaman Rao and Dalbir Singh⁴³, where the criminal acts are the mere occurrence of being at the location where there is a detected presence of alcohol, which does not logically relate to the ultimate aim of the prohibition.

Moreover, the punishment provisions of most of these laws contravene the principle of proportionality -i.e. the punishment to the crime. Although these laws might not make drastic steps such as an obligatory death penalty (which the Court quashed against some offences in *Mithu v. State of Punjab*⁴⁴), they tend to come up with punishments that are excessively disproportionate to the action. A good case in point is sending a sexual person to jail simply to eat.

The dissemination of the so-called reverse burden clauses contributing to the inversion of the principle of innocence until proven guilty is another significant weakness. In Gujarat, amendments were used to make presumptions that any person found anywhere near alcohol was considered to be in possession of it unless he could prove otherwise.⁴⁵ These reverse burdens are an enormous deviation of due process, which can only undergo strict scrutiny, and with a compelling state justification given by the prohibition statutes; something which these prohibition laws generally fail to accomplish.

Last, over-criminalisation is devastating to economic rights as stipulated in Article 19(1)(g). Although the courts have affirmed that there is no constitutional right to trade in intoxicants, overreaching restrictions against allied legitimate industries, such as transportation, hospitality, and food services, must be reasonable, sometimes demonstrating judicial reluctance to accept such regulation being overreaching.

In general, the trends toward the prohibition laws in India point to the troubling shift in their focus toward the control of public health, toward what is essentially criminal governance. They turn common conduct into criminal offences and blur radical ideals of criminal statutes. Excessive criminalisation is not merely a policy weakness, but a constitutional vulnerability, which requires more thorough judicial review.

ADMINISTRATIVE LAW DIMENSIONS: ENFORCEMENT, PROCEDURAL FAIRNESS, AND ABUSE OF POLICE POWERS

The administrative law problems that come with prohibition regimes are longstanding, including administrative extravagances, inferences against the accused and invasive methods of enforcement.

One of the major characteristics of prohibition enforcement is the increase in the power of warrantless search. The Bihar Prohibition and Excise Act of 2016 permitted police officers to trespass, search, and seal premises without a judicial officer.⁴⁶ Traditionally, warrantless searches have been viewed with distrust by the courts in a *district Registrar v. Canara Bank*, which privacy rights must entail structured and reasonable procedures even where police are exercising statutory power.⁴⁷ The broad power provided under prohibition laws lacks this requirement far too frequently.

In a similar manner, the right to warrantless arrest of mere suspicion of possession or consumption arouses fears in the *Joginder Kumar v. State of U.P.*, the Supreme Court stressed that the arrest has to be not a mechanical one, but it must be motivated by reasonable necessity.⁴⁸ But prohibition laws assume the need to enforce them by default, which compromises the fact that the application of mind by police officials, as it has been established by the courts, is required.

The enforcement of the statute by administrative law also mandates non-arbitrary and non-discriminatory discretion use, but the enforcement of the prohibition has been recurrently shown to exhibit a pattern of selective enforcement, especially

⁴³AIR 1951 SC 118; (2012) 3 SCC 346.

⁴⁴(1983) 2 SCC 277.

⁴⁵Gujarat Prohibition (Amendment) Act, 2009.

⁴⁶Bihar Prohibition and Excise Act, 2016, Section 74-78.

⁴⁷(2005) 1 SCC 496.

⁴⁸(1994) 4 SCC 260.

of the disadvantaged in society, who are migrant labourers, Dalits, and socio-economically weaker groups.⁴⁹ The Union of India needs equity of process and result.⁵⁰

The next administrative issue is the sealing and forfeiture of property. Prohibition laws frequently authorise a seizure of vehicles, premises or utensils which are claimed to be involved in the consumption or transportation of liquor, and in some cases without a final decision.⁵¹ In his decision, the Court stated that property deprivation without a prompt judicial decision contravened the rules of natural justice.⁵² However, some states use confiscation plans that are not based on proportionality and fairness.

Additionally, procedural fairness is compromised through summary trials and special courts constituted under prohibition laws.⁵³ While special courts are not unconstitutional per se, they must comply with due process norms, including the right to counsel and adequate opportunity to contest evidence.⁵⁴ Reports from Bihar indicate that thousands of cases were disposed of through mass “collective hearings,” raising serious doubts about compliance with natural justice.⁵⁵ Administrative convenience cannot justify erosion of procedural safeguards, as reaffirmed in *Union of India v. Tulsiram Patel*, which held that exceptions to natural justice must be narrowly construed.⁵⁶

Finally, prohibition enforcement frequently involves misuse of preventive detention laws, particularly the Bihar Control of Crimes Act and the Gujarat Prevention of Anti-Social Activities Act.⁵⁷ Courts have consistently held that preventive detention must not be used as a substitute for ordinary penal law enforcement.⁵⁸ Yet states often rely on detention orders for alleged habitual drinkers or bootleggers without proof of public disorder, violating standards laid down in *A.K. Roy v. Union of India*.⁵⁹

Thus, from an administrative law perspective, prohibition statutes raise significant concerns regarding arbitrariness, lack of proportionality, erosion of privacy, and procedural violations. Though it is superseding, judicial review in this field is not adequate to deal with systematic misuse on the part of the administration.

REFORM IMPERATIVES: TOWARDS A CONSTITUTIONALLY SUSTAINABLE MODEL OF ALCOHOL REGULATION

Despite the strong discretion that the States have when it comes to regulating intoxicants, a constitutionally workable prohibition regime should adhere to proportionality, due process, and administrative equity.⁶⁰ The above doctrinal failures indicate a necessity for structural change. A sustainable legal model can involve the following aspects:

Minor Possession and Consumption Decriminalisation.

Only commercial and harm-causing actions, including trafficking, adulteration and massive distribution, should be criminalised; rather than prosecution, administrative punishment must be applied in such instances (Article 21).⁶¹ South Africa and Canada have similar comparative standards on privacy.

⁴⁹*Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212.

⁵⁰PUCL Bihar Field Study (2018).

⁵¹*Raj Kumar v. State of Bihar*, 2017 SCC OnLine Pat 401.

⁵²(1999) 2 SCC 692.

⁵³Gujarat Prohibition Act Amendments (2011); Bihar Act 8 of 2016.

⁵⁴*A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602.

⁵⁵Amnesty International, Bihar Prohibition Briefing (2019).

⁵⁶(1985) 3 SCC 398.

⁵⁷PASA Act, 1985; Bihar Control of Crimes Act, 1981.

⁵⁸*Rekha v. State of Tamil Nadu*, (2011) 5 SCC 244.

⁵⁹(1982) 1 SCC 271.

⁶⁰*Modern Dental College v. State of M.P.*, (2016) 7 SCC 353.

⁶¹WHO, Global Alcohol Report (2018).

Proposal of Graded Penalties with Focus on Treatment.

The program of rehabilitation, counselling, and treatment, particularly in the case of habitual consumers, should be prioritised as part of the regulations of public health, which is in line with the best practices of granting restorative justice internationally, as well as within India's own system of developing jurisprudence.⁶²

Empowering Procedural Safeguards.

The powers of search and seizure should be limited by:

- Compulsory court warrants to search personal property,
- Written causes information that is made prior to arrest, and
- Time-limited courts review of confiscation orders.⁶³

These rights are provided by the Constitution in Articles 14 and 21.

Re-examination of Reverse Burden Clauses.

Reverse onus legislation is only to be maintained where it is essential and only supported by articulate legislative logic to avoid abuse.

Assuring Non-Discriminating and Uniform Enforcement.

States have to embrace principles that are modelled after the case the D.K. Basu to prevent discriminatory policing, profiling and arbitrary arrests. State of West Bengal to prevent arbitrary arrests, profiling, and discriminatory policing.⁶⁴ External audits of enforcement patterns are necessary to reduce selective targeting.

Criminal Justice Reviewing Systems.

To enhance compliance with constitutional and administrative law standards in the enforcement of prohibition, special oversight benches, or annual compliance reviews by High Courts may assist in conforming to the environmental PIL monitoring models.⁶⁵

CONCLUSION

Alcohol prohibition in India has a constitutional paradox. Although Article 47 is pleading the State to embrace policies that uphold abstinence, the tools that are used, extreme criminalisation, coercive policing, reverse burdens, and severe punishment, frequently clash with the fundamental rights, administrative law norms, and principles of proportionality. Jurisprudential rulings as far back as *Balsara* upheld the legitimacy of prohibition, and as far as *Khoday*, the same ruled out legislative and administrative overreach. The landscape of doctrines shows a profound contradiction between the moral life of the people and constitutionalism, the power of the state and personal independence.

Sustainable prohibition policy should abandon the punitive principle of governance and embrace the principles of public health, treatment, and controlled moderation with procedural fairness and rights-based protection. Since India still tries to experiment with prohibition, the constitutional debate should change the issue of whether prohibition is permissible to whether its techniques are permissible. Finally, the realisation of prohibition will not be based only on the morals, but on its applicability within the limits of the Constitution, respecting dignity, fairness, and proportional state action.

⁶²Ministry of Social Justice, National Drug Demand Reduction Policy Draft (2014).

⁶³*Canara Bank*, (2005) 1 SCC 496.

⁶⁴(1997) 1 SCC 416.

⁶⁵*M.C. Mehta v. Union of India*, AIR 1988 SC 1037.