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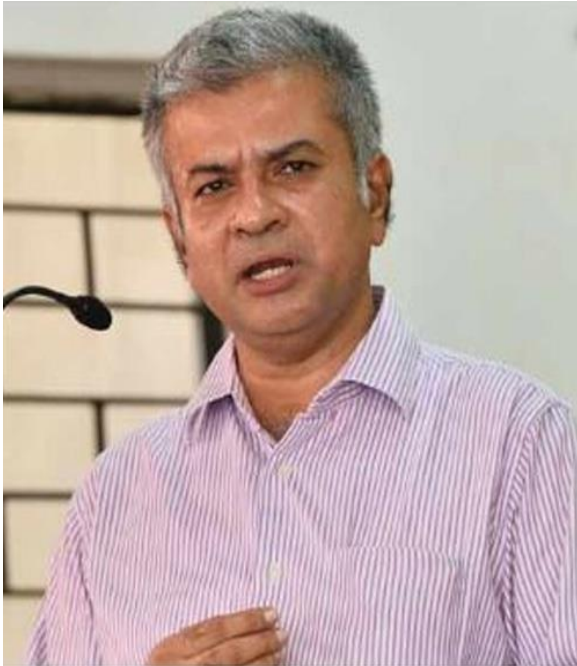
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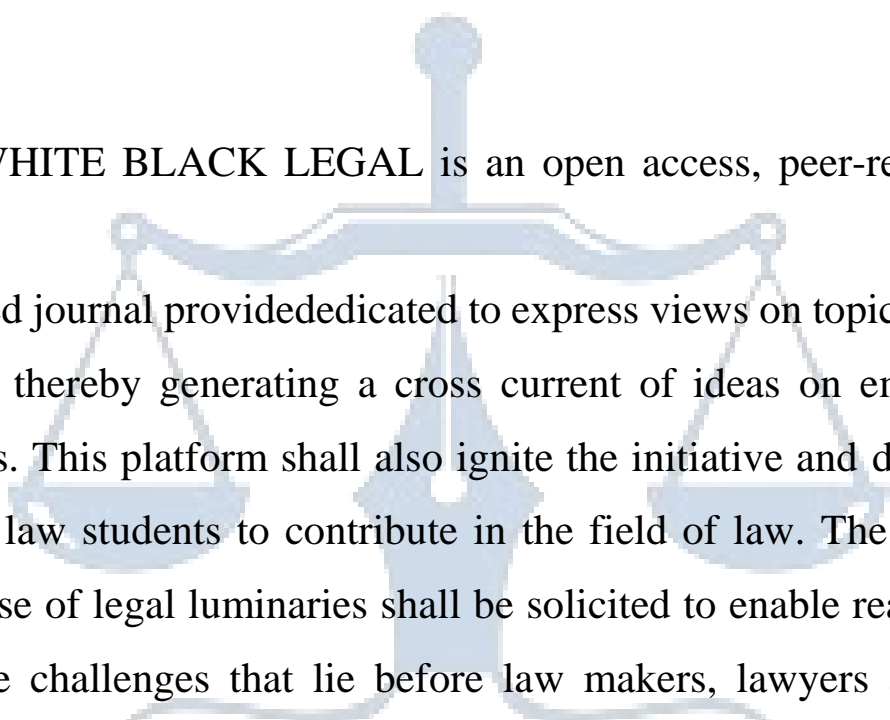


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With this thought, we hereby present to you

SUPREME COURT ON CLOSURE OF LIQUOR SHOPS TO PREVENT ROAD ACCIDENTS IN INDIA: A DISCOURSE IN REFERENCE TO THE CHHATTISGARH EXCISE ACT 1915

AUTHORED BY - VAIBHAV KARTIKEYA AGRAWAL

ABSTRACT:

India is declared to be the accident capital in the report of Union Ministry of Road Transport and Highways. Hon'ble Supreme Court took cognizance of this report in State of Tamil Nadu v. K. Balu and directed for closure of all liquor shops located in the National and State Highways within a distance of 500 metres from the highway. Section 17 of Chhattisgarh Excise Act 1915 permits sale of liquor in the National and State Highways which go through Municipal area. This paper states the judgment of Hon'ble Supreme Court in State of Tamil Nadu v. K. Balu in the year 2016 and 2017 to demonstrate why the closure of liquor shops is directed. The paper further states the provisions of Chhattisgarh Excise Act 1915 to ensure compliance with the judgment in K. Balu and to protect safety of people on road from the menace of drunkenness.

KEYWORDS: Liquor; Highways; K. Balu; Accidents.

INTRODUCTION:

India is declared to be the accident capital in the report of Union Ministry of Road Transport and Highways. Hon'ble Supreme Court took cognizance of this report in State of Tamil Nadu v. K. Balu and directed for closure of all liquor shops located in the National and State Highways within a distance of 500 metres from the highway. Section 17 of Chhattisgarh Excise Act 1915 permits sale of liquor in the National and State Highways which go through Municipal area. This paper states the judgment of Hon'ble Supreme Court in State of Tamil Nadu v. K. Balu in the year 2016 and 2017 to demonstrate why the closure of liquor shops is directed. The paper further states the provisions of Chhattisgarh Excise Act 1915 to ensure compliance with the judgment in K. Balu and to protect safety of people on road from the menace of drunkenness.

CHHATTISGARH EXCISE ACT ON SALE OF LIQUOR IN

HIGHWAYS:

Section 17 of the Chhattisgarh Excise Act 1915 provides 'License required for sale of intoxicant'. Section 17 states:

Section 17: Licence required for sale of intoxicant. -

(1) No intoxicant shall be sold except under the authority and subject to the terms and conditions of licence granted in that behalf;

Provided that -

- a) a person having the right to the tari drawn from any tree may sell such tari without a licence to a person licensed to manufacture or sell tari under this Act;
- b) a person under Section 13 to cultivate the hemp plant may sell without a licence those portions of the plant from which the intoxicating drug is manufactured or produced to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may prescribe; and
- c) nothing in this section shall apply to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives interest upon his quitting a station or after his decease.

(2) On such conditions as the Excise Commissioner may determine, a licence for sale under the Excise Law for the time being in force in other States or Union territories may be deemed to be licence granted in that behalf under this Act.

(3) Sale or supply of liquor-

(a) The sale of liquor shall be permitted only through licensed liquor vends, which shall not be located within 500 meters radial distance from the outer range of the National or State Highway or Service Lane along such highway and such liquor vends shall neither be directly visible nor accessible from such National or State highway:

(a) Provided that the above provision shall not be applicable for those National or State Highways which pass within any municipal area;

(b) Notwithstanding anything anything contained in any judgment, decree or order of any Court, Tribunal or Authority hotels having a liquor license shall be entitled to engage in the supply of liquor to members, guests or other persons for consumption of such liquor within the premises of such hotels, irrespective of whether such hotel is located on or near any National or State Highway;

- (c) Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or Authority, any license issued to any hotel and common drinking house, for the sale of liquor shall be deemed to have been always issued for the supply of liquor and all relevant provisions of this Act and the rules made there under shall continue to apply as they did for sale of liquor.

Explanation- For the removal of doubt, it is hereby clarified that all taxes, duties, cess or other levies as applicable to sale of liquor shall apply to supply of liquor unless otherwise specified in this Act or any other Act, rule or notification made there under.

SUPREME COURT ON CLOSURE ON CLOSURE OF LIQUOR SHOPS **IN K. BALU AND THE ACT OF 195 IN CHHATTISGARH:**

Section 17 of the Chhattisgarh Excise Act 1915 provides provisions on license required for sale of intoxicant. This provision is amended after the decision of hon'ble Supreme Court in K. Balu of 2016. The amended provision is specifically inserted in clause (3) of Section 17 of the Act 1915 in the year 2020. This provision of Section 17 (3) of Act 1915 prohibits grant of license for sale of liquor in the National and State Highways. However, the provision permits any such sale of liquor in the national or State Highways which pass through any Municipal area. Sub-clause (b) of clause (3) of Section 17 of the ACT of 1915 permits sale of liquor by the hotels located in the National and State Highways. The impact of these provisions on road accidents in the State of Chhattisgarh and the implications in reference to the judgment of Hon'ble Supreme Court can be contemplated on following grounds:

1. Article 38 of the Constitution of India provides directive for good governance stating:

Article 38:

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

2. Article 42 of the Constitution of India provides: The State shall make provision for securing just and humane conditions of work and for maternity relief. This provision also empowers the State to make provisions to secure health of workers to ensure humane conditions of work which includes prohibition of unsafe conditions or the

prohibition of danger posed due to intoxicated people riding on the road. The judgment of Supreme court also directs people to inform local authorities if they find anyone intoxicated riding a vehicle to save life of people at large.

3. Article 47 of the Constitution of India provides: 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. Liquor consumption is hazardous to health and could be fatal in certain cases i.e. where a person consumes alcohol and goes on the road on a vehicle. Article 47 of the Constitution empowers the State to prohibit liquor consumption.
4. Hon'ble Supreme Court in *State of Tamilnadu v. K Balu*¹ referred to the 'Road Accidents in India- 2015 report prepared by the Union Ministry of Road Transport and Highways which provides, 'Intake of alcohol/drugs by drivers resulted in 16,298 road accidents and 6,755 fatalities in 2015 within the category of drivers' fault, intake of alcohol/drugs accounted for 4.2 per cent and 6.4 per cent respectively.'
5. 'The Ministry of Road Transport and Highways (MoRTH) issued a circular to all the state governments advising them to remove liquor shops situated along national highways and not to issue fresh licenses. Since 26 October 2007, when an advisory was issued, MoRTH has consistently advised all the state governments to remove liquor shops and not to issue fresh licences to liquor vends along national highways.

On 1 December 2011, MoRTH in an advisory to the Chief Secretaries of all the States and Union Territories noted that India had reported the highest number of road accident fatalities in the world and data of 2009 indicated that a road accident occurred every four minutes. Drunken driving, it was stated, was a leading cause of road accidents with as many as 27,152 road accidents being caused under the influence of alcohol in that year.²

6. 'The position was illustrated in another advisory dated 18 March 2013 of MoRTH to the Chief Secretaries of States and Union Territories where it was stated that in 2011, 1.42 lakh people were killed in 4.9 lakhs road accidents. 24,655 road accidents were caused due to drunken driving resulting in 10,553 deaths and injuries to 21,148 persons.

¹ (2017) 2 SCC, paragraph 6.

² *ibid.*

The advisory requested the removal of all liquor vends on national highways and a ban on the issuance of fresh licences on the ground that “prevention is better than cure”.³

7. The judgment of Hon'ble Supreme Court in *State of Tamilnadu v. K Balu* further notes that:

"In an advisory dated 21 May 2014, MoRTH stated that in 2012, 1.38 lakh people were killed in 4.9 lakh road accidents. 23,979 road accidents were caused due to drunken driving resulting in 7835 deaths and injuries to 23,403 persons.

The Union government has constantly issued advisories setting out, as a matter of policy, its position.

The material which has been placed on record indicates that : (i) India has a high rate of road accidents and fatal road accidents – one of the advisories states that it is the highest in the world with an accident occurring every four minutes;"

8. Hon'ble Supreme Court in *State of Tamilnadu v. K Balu* held that the restriction on sale of liquor would equally apply in both national and State Highways for the reason that both of these pose a danger to road accidents.
9. Hon'ble Supreme Court in *State of Tamilnadu v. K Balu* observed on the assertion of trade in liquor:

"There is no fundamental right under Article 19(1)(g) to trade in liquor. Liquor has been regarded as *res extra commercium* : *State of Bihar v. Nirmal Kumar Gupta*, (2013) 2 SCC 565; *Amar Chandra Chakraborty, Appellant v. Collector of Excise, Govt of Tripura, Agartala*, (1972) 2 SCC 442; *Nashirwar v. State of Madhya Pradesh*, (1975) 1 SCC 29; *Har Shankar v. Deputy Excise and Taxation Commissioner*, (1975) 1 SCC 737; *Secretary to Government, Tamil Nadu v. K. Vinayagamurthy*, (2002) 7 SCC 104; *State of Punjab v. Devans Modern Breweries Ltd.* (2004) 11 SCC 26. *State of Kerala v. Kandath Distilleries*, (2013) 6 SCC 573."

10. On the issue whether the national or State Highways which pass through any Municipal area could be excluded from the prohibition of closure of liquor shops, Hon'ble Supreme Court in *State of Tamilnadu v. K Balu* observed:

"We see no rational basis to exclude stretches of national highways and state highways which fall within the limits of a municipal or local authority (with a population exceeding a stipulated figure) from the ambit of the suggested prohibition. Where a national or state highway passes through a city, town or through the area of jurisdiction of a local authority, it would completely deny sense and logic to allow the sale of liquor along that stretch of the

³ *ibid.*

highway. Such an exclusion would defeat the policy since the presence of liquor shops along such stretches of a national or state highway would allow drivers to replenish their stock of alcohol, resulting in a situation which the policy seeks to avoid in the first place. Once it is an accepted position that the presence of liquor vends along the highways poses a grave danger to road safety an exception cannot be carved out to permit the sale of liquor along a stretch of the highway which passes through the limits of a city, town or local authority. Such an exception would be wholly arbitrary and violative of Article 14."⁴

11. In *State of Tamilnadu v. K. Balu*, Hon'ble Supreme court directed for closure of liquor shops alongside the National and State Highways and to file an affidavit stating implementation of the order. However, Tamil Nadu Marketing Transport Corporation informed that the liquor shops in the State Highways do not come within the purview of the notification. Further, Section 26-A of the Punjab Excise Act 1914 (hereafter 'Act of 1914') provides in sub-section (3) that the prohibition for grant of license for sale of liquor do not apply to areas adjoining National Highway and State Highways or the Municipal limits or any local authority having a population of twenty thousand or more.⁵ Court specifically averred that, "the advisories issued for closure of National Highways were applicable solely to National Highways since State highways are under the domain of the State. However, since both National and State highways suffer from road accidents and there cannot be any rationale in exclusion of State Highways from the prohibition, the liquor shops in the State Highways must be closed." This observation of Hon'ble Supreme Court in *State of Tamilnadu v. K Balu* (2016) squarely applies to the State of Chhattisgarh too. The proviso to sub-section (3) of Section 17 of Act of 1915 in operation in the State of Chhattisgarh permits grant of license of liquor vends in the National and State Highways which pass through any Municipal area.

12. Such a prohibition was also contained in section 26-A of the Act of 1914 in operation in the State of Punjab. Hon'ble Supreme Court in *State of Tamilnadu v. K Balu* specifically noted that the prohibition of liquor sale in the National and State Highways would equally apply to such shops which are located in any Municipal area forming part of a National or State highway.

⁴ *Id* at 290-291, Paragraph 20.

⁵ Section 26-A (3) of the Punjab Excise Act 1914 states:

(3) The restrictions referred to in sub-section (2) shall not apply to the liquor vends situated in the areas adjoining to National Highway and State Highway, passing through the limits of Municipal Corporation/Municipal Council/Municipal Committee/ Notified Area Committee/ Nagar Council/ Cantonment Board or any other Authority having a population of twenty thousand or more."

In para 24, Court observes, ' The High Court rejected the case of the state that the prohibition should be confined only to the national highways. The High Court has, in our view, justifiably held that it can hardly be contended that drunken driving is not permissible on national highways but does no harm on state highways. In relation to the States of Punjab as well as Haryana the High Court has held that the prohibition would apply to state and national highways. '

The observation of the Hon'ble Supreme Court from paragraphs 25 to 27 are:

Paragraph 25: For the reasons that we have already indicted, we have come to the conclusion that the views of the High Court of Madras and the High Court of Punjab and Haryana are unexceptionable. No distinction can be made between national and state highways in regard to the location of liquor shops. In regulating the use of national and state highways, the safety of the users of the road is of paramount concern. It would defy common sense to prohibit liquor shops along national highways while permitting them on state highways. Drunken driving as a menace and as a cause of road accidents is a phenomenon common to both national and state highways. Nor, is it a plausible defence to urge that while it is impermissible to drink and drive on a national highway, it is permissible to do so on a state highway.

Paragraph 26: Moreover, we find merit in the restrictions suggested by the Punjab and Haryana High Court that the prohibition should extend not merely to the national and state highways but must be so appropriately tailored so as to ensure that the policy is not defeated by locating liquor shops in close proximity of the highway. A restriction that the shop should not be accessible or visible from the national or state highways or from a service lane along such highways is necessary to ensure that the policy is not surreptitiously violated. Our attention has been drawn during the course of the hearing to a report filed by the OSD Vigilance before the High Court indicating that the prohibition was sought to be defeated by setting up liquor vends which, though not visible from the highway, were situated in close proximity with signboards indicating their presence. The entry to the shop is camouflaged or placed at the rear portion to evade the judicial direction. A detailed survey has been made by the OSD in which observations in regard to liquor shops located along the highway have been recorded. We may also advert at this stage to a letter dated 4 August 2012 of the Project Director of National Highways Authority of India (NHAI) to the Deputy Commissioners of various regions in Punjab. The letter highlights that on a stretch of 291 kilometres on the Panipat-Jalandhar section of NH- 1, there are as many as 185 liquor shops (though in comparison the trauma centres and hospitals where immediate medical service can be provided to road accident victims is almost negligible). Many of the liquor shops have encroached on national highway land. Though,

NHAI has sought the removal of these shops, “concrete action” is yet to be taken due to the lack of support from various quarters. Liquor shops, the Project Director notes, are owned by influential people making the removal of unauthorised encroachment impossible without the support of the district administration.

Paragraph 27: For all these reasons, we have come to the conclusion that no licences for liquor shops should be allowed both on the national and state highways. Moreover, in order to ensure that this provision is not defeated by the adoption of subterfuge, it would be necessary to direct that no exception can be carved out for the grant of liquor licences in respect of those stretches of the national or state highways which pass through the limits of any municipality corporation, city, town or local authority. Necessary safeguards must be introduced to ensure that liquor vends are not visible or directly accessible from the highway within a stipulated distance of 500 metres from the outer edge of the highway, or from a service lane along the highway. Thus, such a provision is specifically contained in sub-section (3) of section 17 of Act of 1915 which states for closure of all liquor shops within 500 metres radial distance from the National and State Highways throughout the State of Chhattisgarh.

13. Hon'ble Supreme Court at para 29 of the judgment ordered for closure of all liquor shops in the National State Highways. The orders from para 29.1 to 29.5 are:

Paragraph 29:

We accordingly hereby direct and order as follows :

29.1 All states and union territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;

29.2 The prohibition contained in Para 29.1 above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

29.3 The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1 April 2017;

29.4 All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;

29.5 No shop for the sale of liquor shall be

(i) visible from a national or state highway;

(ii) directly accessible from a national or state highway and

(iii) situated within a distance of 500 metres of the outer edge of the national or state highway or of a service lane along the highway.

Later, the vires of this judgment were re-evaluated by the Hon'ble Supreme Court in State of

Tamilnadu v. K. Balu⁶ to ensure proper enforcement of directions issued therein. The judgment observes from paragraph 23:

"The pernicious nature of the sale of liquor along the national and state highways cannot be ignored. Drunken driving is a potent source of fatalities and injuries in road accidents. The Constitution preserves and protects the right to life as an over-arching constitutional value. The preservation of public health and of public safety is an instrument of enhancing the right to life as a constitutionally protected value. Where a balance has to be drawn between protection of public health and safety and the need to protect road users from the menace of drunken driving (on the one hand) and the trade in liquor (on the other hand) the interests of the latter must be subordinate to the former.

Another submission which has been urged on behalf of the applicants is that the expert committee appointed by this Court (chaired by Justice S Radhakrishnan, a former Judge of this Court) has recommended a distance of 100 metres with reference to highways. In view of this recommendation it has been submitted that this Court ought not to have fixed the minimum distance at 500 metres. We find no merit in the submission. The recommendation of the Committee cannot be placed on a higher footing than what it purports to be namely, a recommendation. The opinion of the Expert Committee was duly cited before this Court during the course of the proceedings leading upto the judgment dated 15 December 2016. We are of the view that a distance of 100 metres with reference to the highway is not adequate to ensure that users of the highway do not seek access to the sale of liquor in close proximity to the highway. A distance of merely 100 metres will not serve the purpose which is sought to be achieved. Hence, we have not accepted that part of the recommendation of the Committee but have considered it appropriate to enhance the minimum distance. "

Therefore, in view of the judgment of the Hon'ble Supreme court in State of Tamil nadu v. K. Balu of 2016 and 2017, the permission for grant of license to sale liquor in the State Highways is illegal. Sub-section (3) is inserted in Section 17 of the Act of 1915 by the amendment Act of 2020. Thus, it can be necessarily inferred that the insertion of sub-section (3) in section 17 of the Act of 1915 was in compliance of the directions of the Hon'ble Supreme Court in State of Tamil nadu v. K. Balu. However, Section 17(3) of Act of 1915 is in direct conflict with the judgment of the Hon'ble Supreme Court in State of Tamil nadu v. K. Balu on the grounds:

- (a) Proviso to paragraph (a) of sub-section (3) of section 17 of the Act of 1915 permits grant of license for opening liquor shops in a National and State Highway which pass

⁶ (2017) 6 SCC 715.

through any Municipal area. This exclusion of municipal area from the closure of shops of liquor has been foreclosed by the Supreme Court in K. Balu (paragraph 27, (2016) 2 SCC 294);

(b) Paragraph (b) of sub-section (3) of section 17 of the Act of 1915 permits operation of hotels to which license has been granted for sale of liquor irrespective of whether they are located in the National or State Highways. The provision states:

"Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or Authority hotels having a liquor license shall be entitled to engage in the supply of liquor to members, guests or other persons for consumption of such liquor within the premises of such hotels, irrespective of whether such hotel is located on or near any National or State Highway;" Thus, the provision initiates with a non obstante clause to exclude the operation of any judgment, decree or order of any Court, Tribunal or Authority and declares the grant of license for sale and supply of liquor in hotels located in National and State Highways to be valid. This provision would certainly make the prohibition of sale of liquor in the National and State Highways redundant for the reason that people who could not consume liquor from the prior smaller shops or segregated individual liquor vends can consume them from the hotels. When the States like Punjab and Tamil nadu made provisions for exclusion of State Highways from the prohibition of liquor shop closure, Supreme Court observed:

" Advisories have been issued to the State Governments and Union Territories to close down liquor vends on national highways and to ensure that no fresh licences are issued in the future. The reason why these advisories are confined to the national highways is because of the distribution of legislative competence between the Union and the States under the Seventh Schedule to the Constitution. State highways fall under the domain of the states. Both the national highways and state highways share a common experience of an unacceptably high number of road accidents, the prevalence injuries and fatalities; drunken driving being one of the major causes. Hence, the content of the advisories which have been issued by the Union government as well as their basis, rationale and foundation would equally apply to state highways. Human life is precious."

Therefore, the prohibition on sale of liquor becomes applicable in the National and State Highways which pass by any Municipal area. Such a restriction on the sale of liquor also applies to any hotels which might be located in the highways and thus makes the provision of section 17(3) of the Act of 1915 in supersession of the judgment of Hon'ble Supreme Court.

The judgment of Hon'ble Supreme Court in State of Tamilnadu v. K. Balu granted time up to 01/04/2017 for the closure of liquor shops located in the National and State Highways. The

relevant part of the judgment states:

" However, we have also duly borne in mind the practical difficulty which has been expressed on

behalf of the licence holders (including those in the town of Mahe) and the states that there are licences which have been duly renewed and whose term is still to expire. The states apprehend that

premature termination may lead to claims for refund of licence fee for the unexpired term, with large financial implications. Hence we would direct that current licences may continue for the existing term but not later than 1 April 2017."

Later this time of 01/04/2017 was urged for extension by different states arguing that there are different dates for initiation of excise year in different States all over the country. Thus, if the States are compelled for immediate closure of liquor shops to which fresh licenses have been granted, the liquor shop owners might impose suits for recovery of the license expenses and the financial implications of such closure. So, Hon'ble Supreme Court in State of Tamilnadu v. K. Balu in 2017 held at paragraph 26 and 27 of the judgment:

" In our view, the ends of justice would be met by issuing the following direction in continuation of direction (iii) in paragraph 24 of the judgment of this Court :

“In the case of those licences for the sale of liquor which have been renewed prior to 15 December 2016 and the excise year of the concerned state is to end on a date falling on or after 1 April 2017, the existing licence shall continue until the term of the licence expires but in any event not later than 30 September 2017”.

In other words, no licence shall either be granted or renewed or shall remain in operation in violation of the direction of this Court beyond 30 September 2017.

In the State of Tamil Nadu, liquor vendors are operated by TASMAL which is a state owned entity. In the judgment of this Court, time until 1 April, 2017 was granted on the request of the State. Hence, we decline to grant any further extension to the State of Tamil Nadu."⁷

Therefore, in State of Tamilnadu v. K. Balu of 2017⁸, Hon'ble Supreme Court issued a moratorium of 30/09/2017 for all the liquor shops. Paragraph (b) of sub-section (3) of section 17 of the Act of 1915 permitted sale of liquor in all the hotels to which license has been granted. This provision might have been specifically inserted to save the licenses already granted to the hotels. However, such a grant of license to the hotels which are located in the national and State

⁷ (2017) 6 SCC 715, paragraph 26, 27.

⁸ (2017) 6 SCC 715, paragraphs 26, 27.

Highways becomes illegal and overrides the deadline specifically issued by the Hon'ble Supreme Court. The deadline of 30th September 2017 could have been extended or exempted for the hotels in the State of Chhattisgarh if a petition to that effect is filed before the Courts. Chhattisgarh is an agriculture rich State often called, 'a Bowl Of Rice'. This connotation reflects that agriculture and agricultural products is the lifeline for the economy in Chhattisgarh. Liquor including Landa, Handiya and out-still liquor is consumed by tribals in their festivals. So, section 16 of the Act of 1915 in Chhattisgarh is amended in the year 2011 to permit manufacture and possession of Landa, Handiya and out-still liquor to the extent of 5 litres in occasions by the Scheduled Castes and Scheduled Tribes of the region. Section 16 of the Act of 1915 states: "On the occasion of religious festivals of Scheduled Tribes in the Scheduled Areas, no 'pass' shall be required under clause (b) if subsection (2) of section 16 of the Act, for the transportation of 'landa' and 'Handiya' made from rice or millet as the case may be, and 'out-still liquor' made form 'mahua' subject to a maximum quantity of 5 litres, for household consumption within the Scheduled area, by the member(s) of the Scheduled Tribe of the said scheduled Area."

This specific provision denotes that consumption of liquor is a necessary part of sacrament of tribals even in the festivals. There are various National and State Highways which pass through Municipal area where tribal population is richly located. Therefore, when the possession or manufacture of liquor in such Municipal area is permitted, the State Legislature might also have granted permission of sale of liquor to hotels to which license has already been granted? However, any such permission for sale of liquor comes in direct conflict of the judgment of Supreme Court in State of Tamilnadu v. K. Balu for the closure of liquor shops in the National and State Highways.

Hotels sale variety of substances and are not confined to 'liquor'. So, whether the direction for closure of liquor shops would entail prohibition of sale of substances similar to liquor or substances which contain alcohol? Section 2(13) of the Act of 1915 of Chhattisgarh State defines liquor, "'liquor' means intoxicating liquor, and includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act;"

This question is specifically answered by the Hon'ble Supreme Court in State of Tamilnadu K. Balu of 2017⁹, the Court stated:

⁹ (2017) 6 SCC 715 at 726, paragraph 30.

"Finally we clarify that we are not inclined to issue a direction in terms as sought by Shri Aryama Sundaram, learned senior counsel and other counsel that the judgment of this Court should be clarified so as to apply only to shops involving sale of liquor. Since the object of the direction is to prevent drunken driving, no such relaxation can be made which would defeat the object which is sought to be achieved. Consequently, the directions issued by this Court cannot be read down, as suggested. The directions shall be read, as they stand."

Therefore, the judgment in K. Balu of 2017 specifies that the direction for closure of liquor shops would apply to all the establishments either shops which sale liquor and the shops which sale substances similar to liquor which contain alcohol. The judgment specified that the object of issuance of such a direction is just to prevent the menace of road accidents due to the effect of alcohol while riding the vehicles. Therefore, to protect the health and safety of people on road, the Supreme Court desired fit to issue directions for closure of liquor shops or shops which sale substances that contain alcohol located in the National and State Highways.

Later, the decision in K. Balu is challenged in Arrive Safe Society v. State (Union Territory of Chandigarh)¹⁰ wherein the Hon'ble Supreme Court held:

"The purpose of the directions contained in the order dated 15 December 2016 is to deal with the sale of liquor along and in proximity of highways properly understood, which provide connectivity between cities, towns and villages. The order does not prohibit licensed establishments within municipal areas. This clarification shall govern other municipal areas as well. We have considered it appropriate to issue this clarification to set at rest any ambiguity and to obviate repeated recourse to IAs, before the Court."

However, still the directions for closure of liquor in municipal area located in a National or State Highway is not overruled. This is because:

- (i) Hon'ble Supreme Court in K. Balu at paragraph 26 held section 26-A of the Act of 1914 in force in the State of Punjab to be unconstitutional. Section 26-A of the Act of 1914 permits sale of liquor in the Municipal area which passes through the National or State Highways. Court stated in K . Balu,

"Where a national or state highway passes through a city, town or through the area of jurisdiction of a local authority, it would completely deny sense and logic to allow the sale of liquor along that stretch of the highway. Such an exclusion would defeat the policy since the presence of liquor shops along such stretches of a national or state highway would allow drivers to replenish their stock of alcohol, resulting in a situation which the policy seeks to avoid in

¹⁰ (2018) 13 SCC 132.

the first place. Once it is an accepted position that the presence of liquor vends along the highways poses a grave danger to road safety an exception cannot be carved out to permit the sale of liquor along a stretch of the highway which passes through the limits of a city, town or local authority. Such an exception would be wholly arbitrary and violative of Article 14."¹¹

- (ii) the judgment in *Arrive Safe Society v. State (Union Territory of Chandigarh)*¹² and the judgment in *State of Tamilnadu v. K. Balu* of 2018¹³, both are classified to be a 'clarification' of the prior K. Balu judgment of 2016 and 2017, rather than a connotation of 'partially modified' or 'overruled'. Otherwise, the objective for closure of liquor shops would be defeated. People in the highways could choose to take liquor from the shops located across the highways and drive their vehicles in the highways.

The Status Report 2023 on ROAD SAFETY IN INDIA by Transportation Research and Injury Prevention Centre, Indian Institute of Technology, Delhi notes that, "The second most important measure to be taken seriously is driving under the influence of alcohol. 30%–40% of fatal crashes in India may have alcohol involvement."¹⁴

MOTOR VEHICLES ACT 1988 ON PROHIBITION OF DRUNKENNESS:

Section 185 of the Motor Vehicles Act 1988 prohibits drunken driving and imposes a limit of 39 mg per 100 mL in the breath test. The provision states:

Section 185: Driving by a drunken person or by a person under the influence of drugs. – Whoever, while driving, or attempting to drive, a motor vehicle - 5[(a) has, in his blood, alcohol exceeding 30 mg. Per 100 ml. of blood detected in a test by a breath analyser, or] (b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle. shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two year, or with fine which may extend to three thousand rupees, or with both. Explanation – For the purposes

¹¹ (2016) 2 SCC at 290-291, Paragraph 20.

¹² *Supra* note 10.

¹³ (2018) 13 SCC 129.

¹⁴ Status Report 2023 on ROAD SAFETY IN INDIA by Transportation Research and Injury Prevention Centre, Indian Institute of Technology, Delhi at 68.

of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.

ROAD ACCIDENTS IN INDIA 2021 BY THE UNION MINISTRY:

The report of Union Ministry of Road Transport and Highways entitled Road accidents in India 2021 provides that in the National Highways, 3416 accidents in 2020 and 2949 accidents in 2021 were caused due to intake of alcohol. Though these statistics are demonstrated to be moderate than compared to the accidents due to excess speeds and driving on the wrong sides. 85616 accidents in 2020 and 95785 accidents in 2021 were a consequence on excessive speeds. 6050 accidents in 2020 and 5568 accidents in 2021 were caused due to driving on the wrong sides.

The report notes that, " The number of road accident deaths and injuries on State Highways presented in Chart 2.13 show declining trend since 2016, except for slight increase recorded in 2018 and 2021. Total number of death and injuries have stabilized during 2018 to 2020. Other roads include District Roads, Rural Roads, Urban Roads and Project Roads which together accounted for 95 percent (60.59 lakh km) of total road network in the country. In 2021, a total of 4,12,432 road accidents were reported, of which, 1,87,225 were on other roads, killing 60,002 people and causing injury to 1,74,100 persons."

The report of Union Ministry of Road Transport and Highways entitled Road accidents in India 2021 provides that in different roads all over the country including the National highways and State Highways constitute 8355 accidents in 2020 and 9150 accidents in 2021 were caused due to intake of alcohol. Though these statistics are demonstrated to be moderate than compared to accidents due to excess speeds and driving on the wrong sides. 2,65,343 accidents in 2020 and 2,55,643 accidents in 2021 were a consequence of excessive speeds. 20,228 accidents in 2020 and 21,491 accidents in 2021 were caused due to driving on the wrong sides.

The report of Union Ministry of Road Transport and Highways entitled Road accidents in India 2021 provides that 12,375 accidents have been reported to be caused in 2021 in the State of Chhattisgarh of which 3610 in the National Highways and 2166 in the State Highways. These incidents killed 998 people and injured about 2056 people in the year 2021 in the State Highways of Chhattisgarh.

The Union ministry of Road Transport and Highways issued a notification on 01/06/2017 to comply the judgment of Supreme Court in K. Balu of 2016 and 2017.

CONCLUSION:

Road accident is a major threat to the life and liberty of people. These incidents becomes more grave when they cause injuries which destructs the physical frame of a person or compels them to to change their livelihoods. Hon'ble Supreme Court in State of Tamilnadu v. K. Balu took cognizance of the cause of road accidents in highways on the touchstone of the report by Union Ministry of Road Transport and Highways on Road Accidents in India 2015. Court notes that, 'India can well avoid the tag of being the accident capital of the world. In an advisory dated 21 May 2014, MoRTH stated that in 2012, 1.38 lakh people were killed in 4.9 lakh road accidents. 23,979 road accidents were caused due to drunken driving resulting in 7835 deaths and injuries to 23,403 persons.' Therefore, to reduce the menace of road accidents, Hon'ble Supreme Court directed for closure of all the liquor shops in the National and State Highways.

Pursuant to this judgment of Supreme Court in the year 2016 and 2017, the State Legislature of Chhattisgarh inserted sub-section (3) in Section 17 of the Act of 1915 which permits sale of liquor in the National and state Highways which pass through any Municipal area. Section 26-A of the Act of 1914 in State of Punjab is similar which permits sale of liquor in National and State Highways which pass thorough any Municipal area. Section 26-A of the Act of 1914 is declared unconstitutional by the Hon'ble Supreme Court in K.Balu judgment of 2016 specifically stating that such an enabling provision would defeat the object of closure of shops. Therefore, this specific judgment on a specific provision would apply to the Act of 1915 in Chhattisgarh, thus the proviso to paragraph (a) of sub-section (3) of Section 17 of the Act of 1915 becomes unconstitutional.

Similarly, Paragraph (b) of sub-section (3) of Section 17 of the Act of 1915 permits sale of liquor in hotels to which license has already been granted, irrespective of whether they are located in a National or State Highway. Therefore, the provisions of this paragraph (b) of Section 17(3) of the Act of 1915 must be a subject of discussion in the State Legislature of Chhattisgarh to ensure compliance with the directions of Hon'ble Supreme Court in State of Tamil nadu v. K. Balu and to prevent the menace of road accidents due to consumption of liquor. I hope that Chhattisgarh could become a State with no incidence of road accident due

to drunkenness or consumption of alcohol or liquor.

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