

Freedom of Trade in Liquor - A Fundamental Right?

Courts in India, have from the inception of the Constitution considered the scope of fundamental right to trade in liquor. The scope of this right has to be analysed in the light of constitutional obligation to bring about prohibition.¹ The question whether the nature of a transaction can affect the quality of trade also has to be pondered over in a discussion on the subject.

Restriction on the Right to trade under the Constitution

The Supreme Court did not maintain a consistent view on the question of fundamental right to trade in liquor. The question assumes more significance in the context of the specific directive for the state to introduce pieces of legislation known as temperance laws.

The Constitution confers on every citizen the fundamental right to carry on any occupation, trade or business.² The same is subject to reasonable restrictions in the interest of the general public.³ The state may even totally deny it by creating a

-
1. Article 47 of the Constitution speaks about the obligation of the state to bring about prohibition of the consumption except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.
 2. Article 19 (1) (g) of the Constitution of India speaks. "All citizens shall have the right to practice any profession or to carry on any occupation, trade or business".
 3. Article 19 (6) provides;
"Nothing in sub clause (g) of the said clause shall affect the operation of any law in so far as it imposes, or prevent, the state from
(f. n. contd.)

monopoly in its favour or in any corporation owned or controlled by it.⁴

A scrutiny of the debates in the Constituent Assembly on Article 19 (1) (g)⁵ as regards the right to trade in general goes to show that there was reconciliation of two opposing views, one for retaining that right and the other for not having such a provision.⁶ The scope of the restriction which could be imposed on the said right was also subjected to a lot of criticism⁷ The nature of the restriction to be imposed on the right

making any law, imposing in the interest of general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to or prevent the state from making any law relating to;

- i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or
 - ii) the carrying by State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise".
4. Article 19 (6) (ii). Originally this power was not there in the Constitution. Later the same was introduced by the Constitution (First Amendment) Act 1951, Section 3.

5. See Constituent Assembly Debates (CAD), Vol. 7, p. 712.

6. *Id.*, at p. 755.

Shri. K. Hanumanthaiya vehemently attacked this provision He was of the view that the three sub clauses providing the right to reside and settle in any part of the country; to acquire, hold and dispose of property; and to practice any profession and to carry on any occupation, trade or business — do not partake the character of fundamental rights. They are matters incidental to legislation, that can be passed either by the Parliament or the legislature of the units. . . . He continued "the men who did the work of shaping these constitutional proposals, a majority of them, have come from the uppermost strata of society. After all, they can think of what suits their psychology, and their class or their strata of society. . . . these are rather not rights but liabilities that are sought to be imposed on the people of the village.

7. See C.A.D., Vol. 7, pp. 766-767, 733.

Sardar Hukum Singh advocated the deletion of this clause. He said, "The very object of Bill of Rights is to place these rights

(f. n. contd.)

was finally resolved by substituting the word 'reasonable' before the word restriction and importing the word 'general public' for 'morality or health'.

The concept of restrictions on fundamental rights has been subjected to serious debates by the judiciary. The main problem was whether restriction will amount to prohibition. In other words, the question was whether the state can totally deprive a person of his fundamental right on the grounds detailed in various provisions relating to imposing reasonable restrictions.

The earlier decisions were to the effect that restriction did not mean deprivation.⁸ The question whether restriction included prohibition though raised in some other cases, the same was left open.⁹ The court held in some other cases that the law would be valid or invalid according as the interference with fundamental rights was reasonable or not in the interests of general public.¹⁰ In all these cases prohibition was treated as only a kind of restriction.

Finally the Supreme Court answered the question in the affirmative in *Narendrakumar v. Union*¹¹ Here the petitioners were dealers in imported copper. They entered into contracts of purchase of copper with importers from other states. Before they could take delivery of copper Government of India issued an order called the "Non Ferrous Metal Control Order, 1958" under the Essential Commodities Act. As per this order the

out of the influence of the ordinary legislature, and if as under Clauses (2) to (6) of Article 13 we leave it to this very body which in a democracy, is nothing beyond one political party to finally judge when these rights, so sacred on paper and glorified as fundamental rights are to be extinguished, we are certainly making these freedoms illusory".

8. *A. K. Gopalan v. State*, A.I.R. 1950 S.C. 27.

9. *Sagir Ahamed v. U.P.*, A.I.R. 1954 S.C. 699.

10. *Coovergee B. Bharucha v. Excise Commissioner, Ajmer*, A.I.R. 1954 S.C. 220. *M. B. Cotton Association Ltd., v. Union*, A.I.R. 1954 S.C. 634.

11. (1960) 2 S.C.R. 375.

sale and purchase of non-ferrous metal was controlled as per the price fixed by the Government. The petitioners challenged the same under Article 14, Article 19 (1) (f), Article 19 (1) (g). The Government sought to justify the Non-ferrous metal Control Order as per the reasonable restriction clause provided under Article 19 (6). Justice Das Gupta held that the word 'restriction' included prohibition. According to him Constitution makers must have considered the word 'restriction' to be wide enough to save laws taking away Article 19 (1) provided the same was reasonable in the interest of different matters mentioned in the clause.¹²

Power of the State government to Prohibit trade in liquor

In a discussion on Fundamental Right to trade in liquor the power of the state government in imposing prohibition deserve consideration. Apart from the legislative competence to enact a prohibition law the Directive Principles of State Policy also throw light on the topic.

The power of the state government to impose prohibition can be traced to entry 8 of List II of the VIIth Schedule of the Constitution.¹³ The Kerala High Court has held in *Moni Sevan v. State of Kerala*¹⁴ that the Kerala Abkari Act and the Rules made thereunder is in truth and substance within the legislative competence of the state falling under entry 8 of List II of the VIIth Schedule of the Constitution.

Article 47 of the Constitution speaks about the obligation¹⁵ to bring about prohibition of the consumption except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health. When this Article was debated in the Constituent Assembly reference was made to the teaching of Mahatma

12. *Id.* at p. 387.

13. Entry 8 of List II of the VIIth Schedule of the Constitution deals with intoxicating liquors, that is to say the production, manufacture, transport, purchase and sale of intoxicating liquors.

14. 1984 K.L.T. 1060 at p. 1067.

15. C.A.D. Vol. 7, pp. 496 *et Seq.*

Gandhi and the religious instruction against drinking in every community. A feeble opinion was also expressed that it was premature and that prohibition was against the religious practice of the tribal peoples. However, Dr. Ambedkar interfered and said that whether to act on the principle and when to do so and in what stages to do so are questions left to the state and to public opinion.¹⁶ Prohibition found a place in the Constitution because of the puritanical thinking which predominated the Constituent Assembly, drawing inspirations from the teachings of Mahatma Gandhi. It is submitted that a socio-economic problem however should find a pragmatic solution only; it cannot be resolved by preconceived notions and beliefs.

In *State of Bombay v. F. N. Balsara*¹⁷ the constitutional validity of Bombay Prohibition Act, 1949 was challenged on the ground that it is violative of certain Fundamental Rights. Here the Supreme Court observed that though Article 47 has no direct bearing on the Act which was passed in 1949, a reference to it supports to some extent the inference that the idea of prohibition is connected with public health, and to enforce prohibition effectively the wider definition of the word "liquor" will have to be adopted so as to include all alcoholic liquids which may be used as substitute for intoxicating drinks, to the detriment of health.¹⁸

An attempt was also made to validate the law based on the entry relating to public order. Justice Fazal Ali remarked: 'At first sight it may appear to be far fetched, to bring the subject of intoxicating liquor under 'public order'. He went on to observe that there was a tendency in Europe and America to regard alcoholism as a menace to public order.¹⁹ He relied on the famous decision of the Privy Council in *Russel v. Queen*.²⁰ In this case, a Canadian temperance law was challenged, but was found valid as it was a law relating to 'peace, order and

16. *Id.* at pp. 563-564.

17. A.I.R. 1951 S.C. 318.

18. *Id.* at p. 325.

19. *Id.* at p. 325.

20. 1882 7 A.C. 829.

good government' of Canada. A passage in *Encyclopaedia Britannica* was also referred in order to justify the temperance law under the head 'public order'.²¹ This passage was quoted to lend support to the contention of the state government that the Prohibition Act fell within the subject of public order but the matter was not pursued further as the particular entry had a remote bearing on the object and scope of the Act.

Article 37 of the Constitution says that Part IV of the Constitution shall not be enforceable by any court.²² It only means the government cannot be compelled to achieve every objective set out in the preamble and to implement every directive principle. This does not mean that the preamble and directive principles are pious platitudes which can be ignored while making state policy either by legislation or by administrative action.

Commenting on Article 47, Justice V. R. Krishna Iyer has said;²³

"We, the people of India" have enacted Article 47 and "we, the Justices of India" cannot lure it back to cancel half a life" or "wash out a word of it", especially when progressive implementation of the policy of prohibition is, by

21. *Encyclopaedia Britannica* (14th Edn.), Vol. 14, p. 191.

The passage reads; "the dominant motive everywhere, however, has been a social one, to combat a menace to public order and the increasing evils of alcoholism in the interests of health and social welfare. The evils vary greatly from one country to another according to differences in climate, diet, economic condition and even within the same country according to difference in habits, social customs and standards of public morality. A new factor of growing importance since the middle of the 19th century has been the rapid urbanisation, industrialisation and mechanisation of our modern everyday life in the leading nations of the world, and the consequent wider recognition of the advantage of sobriety in safeguarding public order and physical efficiency.

22. Article 37 speaks: "The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws".

23. *P. N. Kaushal v. Union of India* (1978) 3 S.C.C. 558 at p. 573.

Articles 38 and 47 made fundamental to country's governance. The Constitution is the property of the people and the courts know how to apply the Constitution, not to assess it. In the process of interpretation, Part IV of the Constitution must enter the soul of Part III and the laws".

Even if it is admitted that there is a fundamental right to trade in liquor, prohibition is only a reasonable restriction which can be justified under Article 19 (6) in the interests of general public. Moreover the state has a constitutional obligation under Article 47 to bring about prohibition of the consumption of liquor. In *State of Bombay v. F. N. Balsara*²⁴ the Supreme Court held that absolute prohibition of manufacture or sale of liquor is permissible and the only exception can be for medicinal preparation. So there is no legal impediment in enacting a prohibition law.

Does the nature of a deal affect the quality of the trade?

The question of fundamental right to trade in liquor depends on whether the nature of a deal can affect the quality of the trade. In this respect what has to be considered is whether trade in liquor can be treated on par with other illegal activities like gambling, trafficking in women etc.

The court had the occasion to consider if prize competition was gambling and for that matter did gambling fall within the ambit of Article 19 (1) (g) to be protected as a fundamental right.²⁵ The respondent contended that even a criminal or immoral activity, if it yielded a profit or income must be looked upon as trade or business and was therefore protected by Article 19 (1) (g). Chief Justice Das after referring to a number of Australian and American cases concluded that prize competition being of a gambling nature could not be regarded as trade or commerce. Gambling activities from their very nature

24. *Supra* n. 17.

25. *State of Bombay v. R. M. D. Chamarbaugwalla* A.I.R. 1957 S.C. 699. "Here Bombay Lotteries and Prize Competition Control and Tax Act 1948 was challenged as imposing restriction on the right to carry on the activity of prize competition.

and in essence are extra commercium although the external forms, formalities and instruments of trade may be employed and they are not protected by either Article 19 (1) (g) or Article 301.²⁶ Referring to the ideal of welfare state in Part IV of the Constitution he observed, that 'activities which lead to the loss of hard earned money of the common man by lot or chance and which disrupt the peace and happiness of his humble home could not have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made a subject of fundamental right guaranteed under Article 19 (1) (g).'²⁷

Here the court thus gave a restricted meaning to the word 'trade' and kept out extra commercial activities from the purview of the word 'trade' in holding that gambling is not trade or business coming under Article 19 (1) (g) and Article 301. A Constitution Bench of the Supreme Court struck a different note in *Krishnakumar Narula v. State of J. & K.*²⁸ in holding that dealing in liquor was morally a business and a citizen had a right to do business in that commodity subject to reasonable restrictions by the state. Here the Court rejected the contention of the state that dealing in liquor was not a business or trade, as the dealing in noxious and dangerous goods like liquor was dangerous to the community and subversive of its morals. Chief Justice Subba Rao observed that acceptance of this broad argument would make the meaning of the expression trade or business depend upon and vary with the general acceptance of the standards of morality obtaining at a particular point of time. According to him standards of morality can afford a guid-

26. *Id.* at p. 720 — Article 301 provides. "Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free".

27. *Id.* at p. 720.

28. A.I.R. 1967 S.C. 1368.

In this case the appellant who was doing business in liquor in a hotel, under annual licence issued under the Jammu & Kashmir Excise Act 1958 challenged an order of the Excise and Taxation Commissioner asking him to shift the licensed premises to some other approved locality.

ance to impose restrictions but cannot limit the scope of the right.²⁹ He went on to say that the morality or illegality of a deal does not affect the quality of the activity though it may be a ground for imposing restriction on the said activity. He finally concluded that dealing in liquor is business and a citizen has a right to do business in that commodity; but the state can make a law, imposing reasonable restriction on the said right in public interest.

In *Krishnakumar Narula*,³⁰ Chief Justice Subba Rao distinguished the observation of Chief Justice Das in *State of Bombay v. R. M. D. Chamarbaugwalla*³¹ as limited to gambling.

Eminent Jurist Shri H. M. Seervai has vehemently criticised the observation of Chief Justice Subba Rao cited above in the following words.³²

“It is submitted that the observation that the quality of a deal does not affect the quality of an activity as business proceeds on a total misconception of the decision in *Chamarbaugwalla* Case. The definition of business there suggested was all activities carried on with a view to earning profit. Das, C.J. rightly rejected this approach and his judgment far from leading to “incoherence in thought and expression” with which Subba Rao C.J. apparently characterised it, focussed attention on the real issue. Subba Rao C.J. asked, ‘If dealing in ghee is business, why not dealing in liquor? He would have got the answer if he had asked: if dealing in ghee is business why not dealing in slaves or trafficking in women or dealing in currency notes or counterfeit coins?’”

According to Seervai, Chief Justice Das was right in holding that activities which are criminal as also dealing in articles or goods which are *res extra commercium*, could not have been

29. *Id.* at p. 1371.

30. *Supra* n. 28.

31. *Supra* n. 25 at p. 720.

32. H. M. Seervai, *Constitutional Law of India* (3rd edn.) Vol. I, p. 475.

intended to be permitted in the first instance by Article 19 (1) (f) and (g) relating to fundamental rights to property, trade or business, or by Article 301 relating to the freedom of trade and commerce, with permission to state to restrict or prohibit them.³³

It may be submitted that the answer suggested by Seervai in the above passage³⁴ would not have been correct. Dealing in slaves or trafficking in women or dealing in currency notes or counterfeit coins are dealings expressly prohibited by the Constitution of India³⁵ and the Indian Penal Code³⁶ unlike dealing in liquor which is expressly permitted under the statute.³⁷

The writer is of the view that the reasoning of Chief Justice Subba Rao in *Krishnakumar Narula*³⁸ appears to be more sound and logical. There is no reason why trade in liquor should cease to be a fundamental right as long as Constitution permits reasonable restriction on any trade in the interest of general public.

Nature of the Right to trade in liquor

What is the nature of the right to trade in liquor? Can it be treated as a fundamental right? It is felt that the conferment of the status of fundamental right to trade in liquor will

33. *Ibid.*

34. *Supra* n. 29.

34. *Supra* n. 32.

35. Article 23 (1) of the Constitution of India says "Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law".

36. As per Sections 231 and 232 of the Indian Penal Code counterfeiting coin is made punishable as an offence.

37. Section 18A of the Kerala Abkari Act confers power on the State Government to part with the exclusive privilege of manufacture and sale of any liquor or intoxicating drugs to any person after obtaining some amount as rental in consideration of the grant of such privilege. Similar enactments are in force in other states.

38. *Supra* nn, 28, 29.

not give rise to any problem in as much as the same is subject to reasonable restriction which includes prohibition. In this context Chief Justice Subba Rao has rightly said that the morality or illegality of a deal does not affect the quality of the activity though it may be a ground for imposing restriction on the said activity.

In *Coovergee B. Bharucha v. Excise Commissioner*,³⁹ the Supreme Court considered whether the grant of lease either by public auction or for a sum is a regulation pertaining to liquor. Here the Supreme Court concurred with the following observations in an American case, *Crowley v. Chistensen*.⁴⁰

“There is no inherent right in a citizen to sell intoxicating liquors by retail, it is not a privilege of a citizen of the state or of a citizen of the United States. As it is a business attended with danger to the community, it may as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evil. The manner and extend of regulation rest in the discretion of the governing authority”.

Relying on the above observations the Supreme Court negated the contention of inherent right of citizen to carry on trade in intoxicating liquors. In *Coovergee* case the Supreme Court laid down three propositions. First, there is no inherent right of citizens to carry on trade in intoxicating liquor. Second, the auction sale of liquor shop is a method by which carrying on particular trade in liquor is regulated and one of the purposes of regulation is to raise revenue. Third, there can be a monopoly only when a trade which could be carried on by all persons is entrusted to one or more persons to the exclusion of general public.

After considering all the authorities cited above Supreme Court has finally concluded, in *Harshankar v. Dy. Excise and Taxation Commissioner*,⁴¹ that “there is no fundamental right

39. *Supra* n. 10.

40. (1890) 34 L.Ed. 620 at p. 624.

41. 1975 (1) S.C.C. 737.

to do trade or business in intoxicants". Justice Chandrachud held that the state under its regulatory powers has the right to prohibit absolutely every form of activity in relation to intoxicants, its manufacture, storage, export, import, sale and possession. He observed:⁴²

"While engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to governmental control. This power of control is an incident of society's right to self protection and it rests upon the right of the state to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime".

After considering its earlier decisions in this area,⁴³ the Court continued to observe:⁴⁴

"These unanimous decisions of five Constitution Benches uniformly emphasised after a careful consideration of the problem involved that the state has the power to prohibit trade which are injurious to health and welfare of the public that elimination and exclusion from business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealing in liquor have, from their inherent nature, been treated as a class by themselves by all civilised communities. The contention that the citizen had either a natural or fundamental right to carry on trade or business in liquor thus stood rejected".

42. *Id.* at p. 758.

43. Eg. see, *State of Bombay v. F. N. Balsara*, *supra* n. 17; *State of Assam v. A. N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, A.I.R. 1957 S.C. 414; *Cooverjee Bharucha v. Excise Commissioner, Ajmeer*, *supra* n. 10; *Nagendranath Bora v. Commissioner of Hills Division and Appeals, Assam*, A.I.R. 1958 S.C. 398; *Amar Chandrachakroborty v. Collector of Excise, Government of Tripura*, (1972) 2 S.C.C. 442.

44. *Supra* n. 41 at p. 755.

In *Nashirwar v. State of M.P.*⁴⁵ it was held that the state had the exclusive right or privilege of manufacturing and selling liquor and that it had the power to hold a public auction for granting the right or privilege to sell liquor also. It was also reiterated that there was no fundamental right for a citizen to carry on trade or business in liquor. Ray, C.J. stated three principal reasons for holding the opinion that there was no fundamental right to carry on trade in liquor. First, the police power of the state to enforce public morality to prohibit trade in noxious or dangerous goods; secondly, the power of the state to enforce an absolute prohibition of manufacture or sale of intoxicating liquor; and thirdly, the history of excise law showed that the state had the exclusive right or privilege of manufacture or sale of goods.⁴⁶

Recently in *Synthetics and Chemicals Ltd. v. State of U.P.*,⁴⁷ the Supreme Court considered the constitutional validity of levies imposed by the states on industrial alcohol. In a separate and concurring judgment in the very same case Justice Oza has made a bold attempt to reopen the question of fundamental right to trade in liquor:

"It sounds contradictory for a state which is duty bound to protect human life which is duty bound to improve public health and for that purpose expected to move towards prohibition claims that it has the privilege of manufacture and sale of alcoholic beverages which are expected to be dangerous to human life and injurious to human health. . . . In view of Articles 21 and 47 with all respect to the learned Judges who so far accepted the privilege doctrine it is not possible to accept any privilege of the state having the right to trade in goods obnoxious and injurious to health".⁴⁸

Referring to Article 21⁴⁹ Justice Oza says that it casts a

45. A.I.R. 1975 S.C. 360.

46. *Id.* at p. 365.

47. 1990 (1) S.C.C. 109.

48. *Id.* at p. 165.

49. Article 21 speaks:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

duty on the state to protect the life of every citizen and if the same is compared with the scheme of privilege it would mean that the state has a privilege to endanger human life and such a privilege runs contrary to Article 21.

Thus it can be seen that Justice Oza has given a new dimension to the question of fundamental right to trade in liquor in holding that the doctrine of privilege in respect of trade in liquor cannot be reconciled with in the context of Article 21 and Article 47 of the Constitution. It has been rightly indicated by Justice Oza that the doctrine of police powers does not apply under the scheme of Indian Constitution. H. M. Seervai is of the view that the statement that government is the owner of these privileges is not accurate. According to him the privilege of selling liquor belongs not to government but to the party who pays licence fee for that privilege and the right conferred on the government under the Excise Act to raise revenue by charging a licence fee cannot be called a privilege. Nor can the right be accurately called the property of government.⁵⁰

Doctrine of police power has been invoked by the Indian Supreme Court in most of its decisions in holding that there is no fundamental right to trade in liquor.⁵¹ It is submitted that the doctrine of police power as evolved by the U.S. Supreme Court does not apply in the Indian context. According to Seervai, the doctrines evolved by the U.S. Supreme Court in the context of U.S. Constitution require severe scrutiny before the same can be imported into our Constitution.⁵² Our Constitution has deliberately rejected the due process clause of U.S. Constitution as a result of which it is not necessary in India to evolve a doc-

50. H. M. Seervai, *Constitutional Law of India* (3rd edn.), Vol. I, p. 678.

51. See for eg. *Coovergee v. Excise Commissioner, Ajmeer*, *Supra* n. 10; *Harshankar v. Dy. Excise and Taxation*, *Supra* n. 41; *Nashirwar v. State of M.P.*, *Supra* n. 45.

52. H. M. Seervai, *Constitutional Law of India* (3rd edn.) Vol. I, p. 107.

trine of police power in order to mitigate the rigour of the due process clause. Also the distribution of legislative power between the Union and the States as per Lists I, II and III of the VIIth Schedule of the Constitution and the limitation on fundamental rights provided in Part III of the Constitution clearly indicate that theories evolved in the context of the U.S. Constitution cannot be read into the Indian Constitution. In this respect it is worthwhile to quote the principle laid down by Justice Bose in interpreting Indian Constitution.⁵³

"I deprecate the use of doubtful words like 'police power', 'social control', 'eminent domain' and the like, I say doubtful not because they are devoid of meaning but because they have different shades of meaning in different countries and because they represent powers which spring from widely different sources. In my opinion, it is wrong to assume that these powers are inherent in the state in India and then to say how far the Constitution regulates and fits in with them. We have to interpret the plain provisions of the Constitution and it is for jurists and students of law, not for judges, to see whether our Constitution also provides for these powers and it is for them to determine whether the shape which they take in India resemble any of the varying forms which they assume in other countries".

Conclusion

Doctrine of privilege and that of police power were the two main doctrines on the basis of which the Supreme Court held that there is no fundamental right to trade in liquor. The Court proceeded on the assumption that the state had the exclusive privilege of manufacture and sale of liquor. It is submitted that if the state cannot claim any such privilege and if the doctrine of police power has no application as per the scheme of Indian Constitution, the decision of the Supreme Court in

53. *Dwarkadas Shrinivas v. Sholapur Sp. Wg. Co.* A.I.R. 1954 S.C. 119 at p. 137.

Krishnakumar Narula will have to be brought back and the earlier decisions of the Supreme Court which denied fundamental right to trade in liquor will have to be re-examined. As the restriction clause provided under Article 19 (6) confers very wide discretion on the state to prohibit the trade in question, no harm will result from conferring the status of fundamental right to liquor trade. Rather it will bring accountability to public officers responsible for regulating the trade. It can also ensure free, fair and healthy competition benefiting the trade and economy of the country.

— Romy Chacko*

* B.Sc. LL.B. (Gandhiji), LL.M. (Cochin); Advocate, High Court of Kerala.