"C.R"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 17TH DAY OF AUGUST 2020 / 26TH SRAVANA, 1942

WP(C).No.9630 OF 2020(S)

PETITIONERS:

1 KHADEEJA NARGEES, W/O. BEERAN,
AGED 66 YEARS, NEDUVANCHERRY HOUSE,
POOVANCHIRA, RANDATHANI,
MALAPPURAM DISTRICT, PIN-676510.

2 E.PADMINI, W/O.IYYACHERRY KUNJIKRISHNAN,
SABARMATHI, MACHUKUNNU P.O.,
KOZHIKODE DISTRICT, PIN-673307.

3 GRACE M.D., AKKARAPURAM HOUSE,
THIMOTHIYOSE STREET, KURIACHIRA P.O.,
THRISSUR DISTRICT, PIN-680006.

BY ADVS. SMT.THANUJA ROSHAN
SRI.JOHN JOSEPH
SMT.SMRUTHI SASIDHARAN

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.

2 COMMISSIONER OF EXCISE-KERALA,
EXCISE COMMISSIONERATE, VIKAS BHAVAN P.O., NANDAVANAM,
THIRUVANANTHAPURAM-695033.

3 KERALA STATE BEVERAGES CORPORATION (BEVCO),
REPRESENTED BY ITS MANAGING DIRECTOR, BEVCO TOWER,
VIKAS BHAVAN P.O., PALAYAM, THIRUVANANTHAPURAM-695033.

4 KERALA STATE CO-OPERATIVE CONSUMERS FEDERATION (CONSUMERFED)
REPRESENTED BY ITS MANAGING DIRECTOR, GANDHI NAGAR, ERNAKULAM DISTRICT, PIN-682020.

5 KERALA BAR HOTELS ASSOCIATION,
REPRESENTED BY ITS SECRETARY, SOUTH JANATHA ROAD, KATHRUKKADAVU, PALARIVATTOM, ERNAKULAM DISTRICT, PIN-682025.

R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI. SURIN GEORGE IPE
R3 BY ADV. SRI. T. NAVEEN, SC
R4 BY ADV. SRI. M. SASINDRAN, SC, CONSUMERFED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"**C.R**."

J U D G M E N T

Dated this the 17th day of August, 2020

Manikumar, CJ

Petitioners are members of the Kerala Prohibition Council, Gandhi Bhavan, Kochi, a voluntary movement, striving to thwart the menace of alcoholism in the people of Kerala, and urging the State, to implement Prohibition, in tune with Articles 37 and 47 of the Constitution of India.

2. According to the petitioners since its inception in 1978, the Kerala Prohibition Council has put in great efforts to propagate the idea of prohibition; to persuade people with drinking habits to give up that habit; to provide counselling and treatment to alcoholics; to provide consolation and relief to the suffering families of alcoholics; and to create awareness amongst students and youths about the ill effects of consumption of liquor and the use of drugs. The organization has a State Committee with district, taluk and unit committees under it.

3. The petitioners have been volunteering for the Kerala State Prohibition Council for more than two decades. They have direct knowledge about the issues relating to Alcohol Use Disorder (AUD-alcoholism) faced by alcoholics as well as the sufferings of their family members and they volunteer for the cause of emancipation of the society from the ill-effects of alcoholism and drug abuse.

4. As a matter of fact, alcoholism has grown up in Kerala, as a State sponsored gruesome menace of alarming proportion, only because of and through unconstitutional policies and practices adopted by the State in the past years.

5. The State has enticed the otherwise ignorant commons, especially, the younger generation, to the habit of drinking, by covertly projecting consumption of intoxicating liquors as a mark of decency, better standard of living, and as an inevitable requirement for filling the State Exchequer.

6. Petitioners have stated about the physiological and psychological harm, disorder of the alcoholics, sufferings of the women and children at their hands, indignity and social stigma, and thus, infringement to life guaranteed under Article 21 of the Constitution of India.

7. Petitioners have further contended that when mothers drink liquor during pregnancy, children will suffer Fetal Alcohol Spectrum Disorders (FASD) and alcoholic persons get withdrawal symptoms.

8. In Kerala, the State itself is engaged in the sale of liquor through the outlets of Kerala State Beverages Corporation (BEVCO), the bar hotels/restaurants, and beer and wine parlours, licensed by the Government, spread across the State. To the knowledge of the petitioners, Kerala has around 300 retail liquor outlets, 600 bars, and 357 beer as well as wine parlours.

9. The number of bars has gone up by at least 20 times, since the coming into power of this Government. Liquor sale shows an increase of around 10% every year. There also seems to be a substantial increase after June, 2017, when LDF Government decided to re-open bar hotels, as a part of its revised liquor policy. Around 14.5% increase in sales was recorded during 2018-19. A major development is the increase in the number of clubs licensed to sell alcohol. Around 41 clubs registered under the Charitable Societies Act, if not more, have liquor licence while their number was a mere 19, in 2009. It is strange that clubs registered under Charity Act sell liquor. The LDF Government came to power vowing steps for ensuring liquor abstinence. However, the number of bars towards end of the previous Government was only 29, which has now risen to 600.

10. Petitioners have further stated that the practices adopted by the State to increase the sale of liquor, establish that State is the first culprit, in the matter of denying fundamental rights to lakhs of women and children.

11. Petitioners have contended that State is responsible for making the wives as widows and children fatherless, and this state of affairs exist on the face of Article 47 of the Constitution, which obliges the State to “endeavour to bring, about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”. It is true that the State cannot be directed to implement the directive

policy. However, the petitioners submit that the constitutional courts are empowered to prevent the State from indulging in the practices that defeat the directive principles.

12. According to the petitioners, the exponential increase in the sale of liquor, in the State, is due to the abuse of the declared Abkari policy of the Government. The declared Abkari policy has its objective, reducing the availability and consumption of liquor. The present Government came into power in May, 2016, and it has passed orders declaring its Abkari policy from year to year. The first policy declaration of the present Government was vide G.O. (MS) No. 43/2017 dated 13.06.2017. The next declaration of policy was vide G.O. (MS) No. 21/2018 dated 15.03.2018. The third declaration of policy was vide G.O. (MS) No. 14/2019 dated 06.03.2019. The latest declaration of policy is vide G.O. (MS) No. 22/2020 dated 27.02.2020 (Exhibit P-1).

13. Petitioners have further stated that the present ministry is constituted by the Left Democratic Front (LDF), which came out successful in the general elections held in May, 2016. The LDF published an election manifesto before the general elections, which contained 600 promises under 59 heads. One of the heads is ‘Abkari Policy’ and under that heading, the following promises were incorporated, (i) the LDF Government will adopt a policy by which availability and consumption of liquor will be brought down

step by step. There will be intervention from the Government — stronger than the present kind of intervention (implying period prior to 2016) - to encourage abstinence for this purpose - a people's movement similar to the literacy movement will be developed. The Government will establish de-addiction centres. The co-operation between the Government and organizations propounding abstinence will be strengthened; (ii) the Government will adopt very stringent measures against the 'spread of Ganja and narcotics; (iii) lessons to give awareness to students will be included in the syllabus of standard 8 to standard 12 in the schools and the age for consumption of liquor will be increased to 23 years. Exhibit P-2 is copy of the relevant extract of the LDF manifesto published before the 2016 Legislative Assembly Election.

14. It is further stated that the petitioners do not propose to base the writ petition on the promises in the manifesto. The promises are brought to the attention of the Court, to enable it to better appreciate the background in which the Government have formulated and declared its Abkari policy.

15. In order to achieve the purpose of reduction in the availability and consumption of liquor, Government have to regulate sale of liquor in the State. Petitioners have stated that the sale of liquor can be regulated in three ways to achieve the purpose of the declared policy. Firstly, number of sale points of liquor can be brought down. Secondly, the timing of the sale of

liquor can be regulated. Thirdly, the quantity of liquor sold to a consumer can be regulated. On the prayers sought for, Mrs. Thanuja Roshan George, learned counsel for the petitioners, referred to the observation in **State of Kerala & Others v. Xaviers Residency represented by its Managing Director D. Rajkumar and Others** [2012 (4) KHC 196].

16. The data revealed by the Government sources, in the wake of the outbreak of COVID-19, shows that there is a minimum of 4 lakhs alcoholics in Kerala, who had come to be affected by withdrawal symptoms due to non-availability of liquor. It has come to light that the Government was unable to provide treatment to all alcoholics, who were experiencing withdrawal symptoms in its de-addiction centres.

17. To the knowledge of the petitioners, the number of beds available in the Government de-addiction centres is mere 180 as against 4 lakhs alcoholics in the State. Petitioners are convinced that the abuse by the Government of its declared Abkari policy is the first cause for violation of fundamental rights to family members of alcoholics numbering about 12 lakhs on a reasonable conservative estimation.

18. The extreme gravity of the problem persuades the petitioners to approach this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution, to safeguard the fundamental rights of suffering families, as they do not have any other efficacious alternative remedy.

19. On the above pleadings, the petitioners have sought for issuance of a writ of mandamus, compelling the respondents to regulate the sale of liquor in the State of Kerala, so as to achieve the purpose of reducing the availability and consumption of liquor as declared in its policy, and to encourage people to develop healthy and refined habits in drinking, befitting of a civilised society, by adopting three ways of bringing down the sale, viz., (i) limiting the number of points of sale of liquor; (ii) limiting the time of sale of liquor and (iii) limiting the quantity of liquor that may be sold to a person per day by adopting electronic means.

20. Referring to the grounds raised in support of the reliefs sought for, and Articles 37 and 47 of the Constitution of India, Mrs. Thanuja Roshan George, learned counsel for the petitioners, submitted that the policy and action of the Government should be in conformity with the Constitutional goals underlined in Article 47 of the Constitution of India.

21. Placing reliance on the decision of the Hon'ble Supreme Court in **A.K. Gopalan v. State of Madras** reported in **AIR 1950 SC 27**, as regards plight of the women and children, curtailment of their personal liberties, learned counsel for the petitioners submitted that a large number of family members of alcoholics, especially women and children, are denied of their fundamental right to life and liberty guaranteed in Article 21 of the Constitution of India, due to the abuse of the Government's liquor policy.

She further submitted that the Constitution guarantees to the individual, fundamental right to life under Article 21, which encompasses the right to live in freedom from fear and the right to live with dignity.

22. Petitioners, in the statement of facts, have referred to a work on jurisprudence by Prof. Holland who describes six antecedent rights in rem, the first of which is “the right to personal safety and freedom". Under the common law of England and under our law, primarily, and in the first instance, all rights belong to living human beings. In this sense, the right to personal safety and freedom is an antecedent right, and it is a right *in rem*, because it is available against everybody, or, as it is generally put, “against the world at large".

23. Inviting the attention of this Court to the decision of the Delhi High Court in **Rita v. Brh Kishore Gandhi**, (AIR 1984 Delhi 291), learned counsel for the petitioners submitted that women have to suffer cruelty due to drinking and according to the learned counsel, the above finding in the said judgment has been recorded after considering the position of law in other countries also.

24. On the aspect of right to live with dignity, learned counsel for the petitioners placed reliance on the decision of the Hon'ble Supreme Court in **Francis Coralie Mullin v. Administrator, Union Territory of Delhi**, [AIR 1981 SC 746]. She also placed reliance on **K.S. Puttaswamy & Another v.**

Union of India & Others [(2017) 10 SCC 1], and submitted that dignity and freedom are inseparably intertwined and that, due to the irrational liquor policy of the Government, women, children and family members are deprived of the above.

25. Learned counsel for the petitioners further submitted that ordinarily, framing of policy is the domain of the Government and Courts are reluctant to interfere with. But, it is not an absolute proposition. She submitted that the Hon'ble Apex Court has held that if a policy formulated by a Government is irrational and is in violation of the provisions of any law or of the Constitution, then the Courts need not remain as mute spectators. In support of the above contention, learned counsel for the petitioners placed reliance on the decision in **Ugar Sugar Works Ltd. v. Delhi Administration & Others**, [(2001) 3 SCC 635].

26. Placing reliance on a decision in **Brij Mohan Lal v. Union of India & Others**, reported in (2012) 6 SCC 502, learned counsel for the petitioners submitted that the Government should frame policies which are fair and beneficial to the public at large. In the light of what is contemplated in Article 47 of the Constitution of India, if the policy framed by the Government is not in larger public interest, the same should be struck down, by exercise of judicial review.

27. According to the learned counsel for the petitioners, LDF

Government issued an election manifesto (Exhibit-P2), wherein, under the heading 'Abkari Policy', the promises that were incorporated are,- (i) the LDF Government will adopt a policy by which, the availability and consumption of liquor will be brought down step by step. There will be intervention from the Government - stronger than the present kind of intervention (implying period prior to 2016) - to encourage abstinence for this purpose-a people's movement similar to the literacy movement will be developed; the Government will establish de-addiction centres; the co-operation between Government and organizations propounding abstinence will be strengthened; (ii) the Government will adopt very stringent measures against the 'spread of Ganja and narcotics; (iii) lessons to give awareness to students will be included in the syllabus of standards 8 to 12 in the schools and the age for consumption of liquor will be increased to 23 years. Learned counsel for the petitioners further submitted that the declared policy is stated to have the object of reducing availability and consumption of liquor and whereas, the Government have abused the policy and in such circumstances, the Court should intervene.

28. Placing reliance on the decision **Mohd. Abdul Kadir & Anr v. D.G. of Police, Assam & Others,** [(2009) 6 SCC 611], learned counsel for the petitioners submitted that, though the issue is a matter of policy having financial implications, but, if larger public interest is not taken note of, then

the Courts should not be hesitate to strike down the policy.

29. Learned counsel for the petitioners further submitted that the financial interest of the Government to raise its revenue cannot and should not be placed above public interest of protecting the fundamental rights of a large number of people.

30. The registered revenue of liquor sales from the outlets of Kerala State Beverages Corporation (BEVCO) and consumer-fed in the fiscal year 2018-19, is Rs.14,508 Crores. Incidentally, the highest sales value of BEVCO was reported in August 2018, the month when the State was hit by devastating floods when liquor sales touched Rs.1264.69 crores. The revenue of the Government from State excise during the period was Rs.2,521 Crores. The revenue estimate from State excise for the previous fiscal ending March, 2020 was Rs.2,609 Crores.

31. On the aspect of judicial review, in furtherance of public interest, learned counsel for the petitioners relied on the decision of the Hon'ble Supreme Court in **Air India Ltd. v. Cochin International Airport Ltd. & Others,** reported in AIR 2000 SC 801**.**

32. Placing reliance on the decision of the Hon'ble Supreme Court in **State of Andhra Pradesh v. Goverdhanlal Pitti** [(2003) 4 SCC 739], learned counsel for the petitioners submitted that there is malice in the action of the respondents in flouting the policy. Reliance was also placed on

the judgment in **Khoday Distilleries Ltd. v. State of Karnataka** [(1995) 1 SCC 574] to contend that State has the power to regulate and restrict the business in potable liquor, which impliedly includes the power to carry on such trade to the exclusion of others. Prohibition is not the only way to restrict and regulate consumption of intoxicating liquor. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. The State can do so also by creating in itself the monopoly of the production and supply of the liquor. When the state does so, it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so, in the interests of the general public under Article 19(6) of the Constitution.

33. Learned counsel for the petitioners further submitted that Court must always keep the larger public interest in mind, in order to decide whether its intervention is called for or not, and in the case on hand, having regard to the interest of lakhs of suffering families consisting of women and children, the prayers require to be answered.

34. Learned counsel for the petitioners further submitted that the fulfillment of this objective primarily depends upon the number of points at

which liquor is made available for sale secondarily, at the time during which it is sold and thirdly, on the quantity of liquor that is permitted to be sold to a person on a day. If the number of points where liquor is available for sale is brought down, it will definitely reduce the liquor sale. Similarly, if the time of sale of liquor is restricted, the quantity of liquor sold out will be reduced.

35. Also, if the quantity of liquor that can be sold to a person on a day is regulated, that will help to reduce consumption.

36. In accordance with the declared Abkari policy of the Government, it is duty bound to apply all these methods to reduce availability and consumption of liquor. It is also the bounden duty to bring down the points of sale, to restrict the time of sale, and also, to restrict the quantity of sale per person, per day.

37. In the light of Article 47 of the Constitution of India and the observation of this Court in **Xaviers Residency's** case (cited supra), learned counsel for the petitioners prayed for the reliefs sought for.

38. *Per contra*, inviting our attention to the prayers sought for in the writ petition, Mr. Surin George Ipe, learned Senior Government Pleader, submitted that petitioners cannot seek for such prayers, based on observations of this Court in **Xaviers Residency's** case (cited supra).

39. Referring to paragraph 27 of the judgment in **State of Kerala & Ors. v. Kandath Distilleries** [(2013) 6 SCC 573], learned Senior

Government Pleader further submitted that there can be a change in the policy and court cannot interfere with policy decision, in liquor matters.

40. Inviting our attention to an order passed by the Hon'ble Bench of the Madras High Court between **The Managing Director, Tamil Nadu State Marketing Corporation Ltd. v. B. Ramkumar Adityan & Ors.** in W.P. No.7589 of 2020 and connected writ petitions dated 8.5.2020, as regards sale of liquor, by online mode and home delivery, and the interim order of the Hon'ble Supreme Court in S.L.P.(C) Diary No.11184 of 2020 dated 12.6.2020, learned Senior Government Pleader further submitted that courts do not interfere with the decision of the Government in sale of liquor.

41. On the third relief sought for in the writ petition regarding the quantity of liquor in possession, referring to Section 13 of the Abkari Act, 1077, learned Senior Government Pleader submitted that no person not being a licensed manufacturer or vendor of liquor or intoxicating drugs, shall have in his possession any quantity of liquor or intoxicating drugs, in excess of such quantities as the Government may from time to time, prescribe by notification, either generally or specially with regard to persons, places or time in respect of any specified description or kind of liquor or intoxicating drug, unless under a licence granted by the Commissioner in that behalf .

42. He also submitted that violation of Section 13 of the Abkari Act, is an offence under Section 55 of the Act. Referring to the guidelines issued for

sale of liquor from FL-1, FL-2 and FL-3 licensees, through Virtual Queue Management System of KSBC, he submitted that sale of liquor is regulated. For the above reasons, he prayed for dismissal of the writ petition.

43. Heard Mrs. Thanuja Roshan George, learned counsel for the petitioners, Mr. Surin George Ipe, learned Senior Government Pleader, and perused the materials on record.

44. Election Manifesto of the LDF Government in the general elections 2016, which according to the petitioners, contained 600 promises under 59 heads, *inter alia*, includes a statement on the Abkari Policy by LDF Government, as stated in paragraph 16 of the statement of facts, and the same is reproduced:

> "(i) the LDF Government will adopt a policy by which availability and consumption of liquor will be brought down step by step. There will be intervention from the Government — stronger than the present kind of intervention (implying period prior to 2016) - to encourage abstinence for this purpose - a people's movement similar to the literacy movement will be developed. The Government will establish de-addiction centres. The co-operation between the Government and organizations propounding abstinence will be strengthened; (ii) the Government will adopt very stringent measures against the 'spread of Ganja and narcotics; (iii) lessons to give awareness to students will be included in the syllabus of standard 8 to standard 12 in the schools and the age for consumption of liquor will be increased to 23 years."

45. Though Mrs. Thanuja Roshan George, learned counsel for the petitioners, has contended that petitioners do not propose to base the writ petition on the premise of the election manifesto, going through the averments in the statement of facts, we could deduce that it is also the case of the petitioners that the respondents have framed a policy, which is not in conformity with the election manifesto.

46. At the same time, the petitioners have also contended that there is abuse of policy by the respondents. What is the policy of the Government on sale of liquor? The charter on liquor policy, which the petitioners claimed to have been framed by the LDF Government, is not placed before us. No Government order is annexed in the paper book. Whereas, the attack is, on the policy framed, which according to the petitioners, is abused to generate only revenue, and not in conformity with Articles 37 and 47 of the Constitution of India.

47. Decisions on judicial review, right to live with dignity, and the jurisdiction of this Court, to interfere with the policy decision of the Government, have been quoted *in extenso* by the learned counsel for the petitioners. It is the contention of the petitioners that Government have framed a policy, contrary to the election manifesto of a political party.

48. It is well settled that a writ of mandamus cannot be issued to quash a proceeding, like the case on hand, policy decision of the

Government, issued as per Government orders, which can be challenged only by way of a writ of certiorari. *De hors* the same, as contentions have been raised with respect to election manifesto, breach thereof, policy framed, and interference by exercise of judicial review, we would like to consider whether the policy of administrative action of the Government, in opening more liquor shops, bars etc., should be a reason to hold that the policy of a Government is violative of the fundamental rights, and consequently, whether the petitioners can seek for the reliefs, as prayed for.

49. Going through the materials on record, we could deduce that the instant writ petition has been filed based on the promises made in the election manifesto of the LDF Government (Exhibit-P2) and that, there is a breach, by opening more number of liquor shops, bars, parlours, and thus, generating more income, than considering the life and dignity of the people of Kerala, in particular, women and children.

50. On the issue, as to whether the promises made in the election manifesto of any political party can be a ground to enforce the same, by way of a writ petition under Article 226 of the Constitution of India, we deem it to consider a decision of the High Court of Delhi in **ANZ Grindlays Bank Pie and Ors. v. The Commissioner, MCD and Ors.** reported in 1995 (34) DRJ 492, wherein it is held thus:

> "(108) Question No 3 : Election manifesto of a political party can it give rise to promissory estoppel and legitimate

> expectations? Election manifesto of a political party howsoever boldly and widely promulgated and publicised can never constitute promissory estoppel or provide foundation for legitimate expectations. It is common knowledge that political parties hold out high promises to the voters expecting to be returned to the power but it is not necessary that they must be voted in by the electorate. The political parties may commit to the voters that they would enact or repeal certain laws but they may not succeed in doing so for reasons more than one and they know well this truth while making such promises and the electorate to which such promises are made also knows it.
>
> (109) A promise by a political party is not a promise by State. The Bjp, as alleged by the plaintiff, had promised in its election manifesto that it would permit one extra floor and additional 25% coverage in the pre-existing buildings and regularise all the illegal, colonies. Both these actions were not permitted by the laws in force on the date of the election manifesto. Thus, it was the promise to do a thing which was illegal on the date of the promise. It was also against public policy to materialise such promise. A plea of promissory estoppel cannot be founded on a promise to legislate made by a political party."

51. In **Mithilesh Kumar Pandey v. Election Commission of India & Ors.** [2014 (4) RCR (Civil) 526], petitioner therein, party in person, sought for a mandamus directing the respondents therein, to issue directions preventing political parties from violating their own manifestos when such parties enter into post-poll electoral alliances in order to form a Government and to issue directions to the competent authority to take steps to make the manifesto a legal binding document and to direct the competent authority, to take action against the Election Commission for not initiating action against political parties and persons for violating the manifesto.

52. Following the decision in **ANZ Grindlays Bank Pie's** case (cited supra) and the decision of the Hon'ble Apex Court in **S. Subramaniam Balaji v. Government of Tamil Nadu** reported in (2013) 9 SCC 659, the Hon'ble Delhi High Court, dismissed the writ petition, and at paragraphs 7 to 10, held thus:

> "7. Undoubtedly so. However, the fact remains that the sole basis in this petition for the reliefs claimed, is the election manifesto and in fact the reliefs as set out hereinabove are also on the basis of election manifesto. The petitioner, neither in the petition has referred to nor during the hearing could give any other basis, except the election manifesto, for the reliefs sought. The repeated argument of the petitioner is that the political parties, which in their election manifesto have declared that they will not form Government with the support of any other political party and/or political parties which have contested against the other political parties, cannot post elections take support of the same adversaries. On the said aspect, the judgment aforesaid of the Supreme Court laying down, i) that the provisions of the Representation of the People Act place no fetter on the power of the political parties to make promises in the election manifesto, and, ii) that it is not for the Courts to legislate what kind of promises can or cannot be made in the election manifesto, applies on all fours.
>
> 8. Reference in this regard may also be made to what Lord Denning, sitting in the House of Lords observed in Bromley London Borough Council v. Greater London Council 1982 (1) All England Law Reports 129. It was said:

> "A manifesto issued by a political party - in order to get votes - is not to be taken as gospel. It is not to be regarded as a bond, signed, sealed and delivered. It may contain - and often does contain - promises or proposals that are quite unworkable or impossible of attainment. Very few of the electorate read the manifesto in full. A goodly number only know of it from what they read in the newspapers or hear on television. Many know nothing whatever of what it contains. When they come to the polling booth, none of them vote for the manifesto. Certainly not for every promise or proposal in it. Some may by influenced by one proposal. Others by another. Many are not influenced by it at all. They vote for a party and not for a manifesto. I have no doubt that in this case many ratepayers voted for the Labour Party even though, on this one item alone, it was against their interests. And vice versa. It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh - on its merits - without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair."

The same view was followed by the High Court of Justice Queen's Bench Division Administrative Court in R (Island Farm Development Ltd.) v. Bridgend County Borough Council [2006] EWHC 2189 (Admin).

9. In view of the aforesaid legal position, post-poll alliances cannot be declared as illegal on the ground of being contrary to the manifesto of the political parties entering into the alliance and it is not within the domain of this Court to legislate or issue a direction therefor, making the manifesto a legally binding document on the political party issuing the same.

10. We may record the contention of the learned ASG that if the post-poll alliances are so prohibited, in the event of a hung

> House / Parliament, with neither party having the required majority, the only option will be to conduct a re-election and which is not a feasible or a practical solution; elections are held at huge costs and the country can ill-afford such repeated elections. It was argued that such repeated elections would thus not be in public interest and this petition rather than being in public interest is against the public interest. However in view of the judgment aforesaid of the Supreme Court and of this Court and with which we do not see any reason to disagree, we do not feel the need to deal with the said argument."

53. The said decision of the Delhi High Court in **Mithilesh Kumar Pandey** (cited supra) has been confirmed by the Hon'ble Apex Court and dismissed S.L.P.C.No.9767/2015 by order dated 28.09.2015, as hereunder:

> "Delay condoned.
> Dismissed."

54. The above decisions squarely apply to the case on hand.

55. Now, let us consider the decisions relied on by learned counsel for the petitioners.

56. In **A.K. Gopalan v. State of Madras** reported in AIR 1950 SC 27, the validity of detention order was challenged. Detenue was denied an opportunity of making representation. Giving due consideration to what Articles 13, 19, 21 and 22(5) of the Constitution of India envisaged, the Hon'ble Supreme Court observed as under:

> *"The right to safety of one's life and limbs and to enjoyment of one's personal liberty, in the sense of freedom from*

> *physical restraint and coercion of any sort, are the inherent birth rights of a man".*

57. *Ratio decidendi* in **A.K. Gopalan's** case (cited supra) is that, no person shall be arrested or detained without being at once informed of the charges against him.

58. In **Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors.** reported in (1981) 1 SCC 608, a petition was filed under Article 32 of the Constitution of India, raising a question regarding the right of the detenue under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Detenue was denied facility of interview and she could not meet her daughter except once in a month. In such circumstances, she challenged the validity of sub-clauses (i) and (ii) of clause 3(b) of the Conditions of Detention Order and praying that the Administrator of the Union Territory of Delhi and the Superintendent of Tihar Central Jail be directed to permit her to have interview with her lawyer and the members of her family without complying with the restrictions laid down in those sub-clauses.

59. On the above facts and considering deprivation of life of personal liberty guaranteed under Article 21 of the Constitution of India, the Hon'ble Supreme Court, at paragraph 8 of the judgment, observed as follows:

> "8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further

> and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings ....”

60. In **K.S. Puttaswamy & Another v. Union of India & Others** reported in (2017) 10 SCC 1, the Hon'ble Supreme Court considered several issues and observed thus:

> “298. ..... Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental fact, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other.”

61. In **State of Kerala v. Xaviers Residency represented by its MD & Others** [2012 (4) KHC 196], the facts stated therein are that:

> “Hotels and restaurants in Kerala with FL-3 licence were allowed to sell liquor in the Bar under R. 28 of the Foreign Liquor Rules (hereinafter called "the Rules") from sunrise to midnight i.e., from 6 a.m. to 12 p.m. However, an amendment was introduced to this Rule with effect from 184.2012 prescribing different working hours for FL-3 Hotels/functioning in Panchayat and Municipal areas on the one side and such Hotels/Restaurants functioning in Corporation limits on the other side. While in Municipal and Panchayat areas Bar Hotels were allowed to sell liquor from 8 'O' clock in the morning till

> 11.00 in the night, for Hotels/Restaurants in Corporation area, time fixed for business was from 9'O clock in the morning to 12.00 in the night. This Rule was challenged by the Hotels in Corporation areas contending that fixation of different time for commencement of business is discriminatory and violative of Art 14 of the Constitution. The learned Single Judge allowed the Writ Petitions holding that declassification made by the Government based on location of hotels i.e., between Panchayat/Municipal areas on the one side and the Corporation on the other side, has no rational nexus with the object of the legislation i.e., to achieve reduction of availability of liquor in the State to reduce consumption which according to the State is part of it's Abkari policy. The learned Single Judge after holding that the Rule is violative of Art. 14 of the Constitution of India, left to the Government to decide uniform working hours for Bar Hotels functioning in Panchayat/ Municipal areas and also in Corporation areas. It is against this judgment two Writ Appeals are filed by the State and another by a Hotel owner".

62. Having regard to the policy of the then Government and the statement made across the bar by the learned Senior Government Pleader, the Hon'ble Division Bench in **Xaviers Residency case** (cited supra), observed as hereunder:

> "Alcohol as an enjoyment is consumed while people relax in the evening after their work and no man in his right sense will consume alcohol while at work. However, people who are in the habit of excessive drinking turn out to be alcoholics in the course of time and they will reach a stage

when alcohol only can keep them normal without shivering. It is mainly this category of people who consume alcohol in the morning hours. Providing liquor in the morning in every Bar Hotel in the State will certainly encourage drinking during working hours, which will not only affect work, but will in the course of time lead to alcoholism in the consumer. Additional respondent impleaded produced newspaper reports showing that as many as 1200 cases for drunken driving are booked in Kochi area alone in the course of 9 months. Since there is no check on alcohol consumption except in the case of drivers, anybody can guess how many people and even students consume alcohol from Bar Hotels during working hours affecting work and studies. Abkari policy need not always be directed to total prohibition. However, the policy in our view, should be such as to encourage people to develop healthy and refined habits in drinking befitting of a civilized society which has no place for both physically and mentally degenerated alcoholics. Reports of liver cirrhosis, mental disorders and crime committed by alcoholics are very common. What we feel the Government should consider is restraint in consumption and sale of liquor in the State. Prohibition of consumption of alcohol by any one during work, whether it be in Government or private sector or in self- employment, which in the normal course is up to 5' O clock, will justify closure of Bar Hotels until 5.00 in the evening. In: order to achieve the objective of reduction in consumption, not only sale of liquor should be prohibited until 5' O clock by Bar Hotels, but consumption as well should be prohibited providing for punishment even for consumers. The respondents have apprehended that keeping open the retail outlets of Beverages Corporation during day

> time will defeat the purpose of closure of Bars during office hours. This apprehension is also answered by our above suggestion that what is to be prohibited is essentially consumption during working hours, that is up to 5 p.m. Therefore, sale of liquor in bottles during day time will not stand in the way of prohibition of loose sale in Bar Hotels for ready consumption. In any case these are all matters for detailed examination by the Government and we have only expressed our opinion. We are sure Government will keep all these in mind while deciding the matter. We once again reiterate that Government is not at all bound by our observations and views and it is for them to consider the same for whatever be it's worth, which we have expressed in the interest of the people of the State as a whole."

63. In **Rita v. Brh Kishore Gandhi** reported in AIR 1984 Delhi 291, on the facts and circumstances of the case, the Hon'ble Delhi High Court observed thus:

> "No doubt drinking is a constituent of culture all over the world and is almost a cult in certain societies. Yet, even here as elsewhere a habit of excessive drinking is a vice and cannot be considered a reasonable wear and tear of married life. No reasonable person marries to bargain to endure habitual drunkenness, a disgusting conduct. And yet, it is not an independent ground of any matrimonial relief in India. But it may constitute treatment with cruelty, if induced by a spouse and continued in spite of remonstrance's by the other. It may cause great anguish and distress to the wife who never suspected what she was

> bargaining for and may sooner or later find living together not only miserable but unbearable. If it was so, she may leave him and may, apart from cruelty, even complain of constructive desertion or willful neglect by the husband."

64. What is observed by the Hon'ble Delhi High Court, in the matter of habitual drinking or excessive drinking, is whether, it may constitute distress and wilful neglect by husband and eventually separation depend upon each case, and the observation made by the Hon'ble Delhi High Court cannot be a sole factor, to strike down a policy in liquor.

65. In **State of Kerala v. Green Seven Resorts Private Limited** [2015 (2) KLT 347], the Hon'ble Division Bench of this Court considered the grant of FL-3 licenses to hotels, under the Abkari Policy, for the year 2014-15. Earlier, while challenging a decision of the Hon'ble Division Bench, Government of Kerala appointed One Man Commission to study the liquor policy. Reference of the One Man Commission included among others:

> "1. Measures/criteria/parameters for formulating a comprehensive Abkari Policy, in the background of the decisions of the High Court in W.A. No. 470/2012 and connected cases, and the interim order in S.L.P.(C) No. 26241-26243/2012 of the Supreme Court, with the ultimate objective of achieving the target of "Liquor- free Kerala".
>
> 2. Suggest measures/means for reducing the consumption and availability of liquor, such as stipulating distance limits for opening liquor outlets in the vicinity of educational institutions, playgrounds, etc., between bar hotels, timing of operation of bar hotels;

3. Review of licenses already issued under FL Rules, and suggest measures for legal remedies to overcome the difficulties in achieving the objectives in reducing the availability and consumption of liquor including the crucial "date for consideration of application".

4. Review the yardstick/criteria for issue of FL-3 license for the promotion of tourism, in the context of the guidelines issued by the Government of India, and the present 'structure of classification of hotels.

5. Review of the FL-3 licenses currently in operation without 2 star classifications, and suggest measures for streamlining the procedures for renewal/transfer of licenses/reconstitution of partnership and shifting of these bars.

6. Review of the current Abkari Act/Rules to make it in tune with the objectives of the Abkari Policy.

7.....

8. Suggest measures to introduce liquor with low alcohol content, with the objective of mitigating health hazards.

9. …

10. ...."

66. The One Man Commission considered among others, increase in drinking, crime rate, suicidal death, offences against women and children, control required in the State etc. The One Man Commission also heard, those who pleaded for prohibition, especially the Women's sector, how money of the breadwinners is spent, how liquor affected the rights of others, relationships, general health of the family members etc. On various issues,

the One Man Commission, at paragraph 67, as extracted in the Full Bench judgment, opined thus:

> "67. Issue No. 6: Review of the Abkari Act and Rules to make it in tune with the objectives of the abkari policy. The Abkari Policy to be adopted in future years has to be designed With the idea of reducing the level of consumption of intoxicating liquor progressively, and simultaneously encouraging tourism by providing enhanced comfort levels to the tourists who happen to visit Kerala State. The Government is to ensure that good quality of liquor is served through FL-1 and FL-3 outlets and the alcoholic content of the beverages served is substantially reduced in acceptable levels to minimize the ill-effects that may be caused by liquor intake...."

67. Government of Kerala issued the Abkari Policy for the year 2014-15, subject to the following criteria:

> "1. Hereinafter Bar licenses will be issued only to 5 star hotels. The licenses of existing bar hotels which are functioning on the basis of provisional renewal of licenses except the licenses of 5 star hotels will be cancelled. The Government has decided not to renew the licenses of 418 non-standard bar hotels mentioned in the Judgment of the Supreme Court.
>
> 2. 10% of outlets out of 338 FL-1 outlets of Kerala State Beverages Corporation and 46 outlets of Consumer Fed will be closed each year from 2nd October, 2014 onwards.
>
> 3. The sale of high strength alcoholic liquor through Beverages Corporation will be gradually reduced.
>
> 4. In order to rehabilitate the employees who lose their job due to the closing of bar and to rehabilitate the persons who are alcoholically addicted a special plan namely "Punarjani 2030" will be commenced. For that purpose, 5% Cess will be imposed on the liquor which selling through the K.S.B.C.

> 5. The Liquor-Free propaganda program will be strengthen in the society at large and especially in educational institutions.
>
> 6. All Sundays will be declared as dry-day. This will implement from the Sunday of 5th October, 2014.
>
> 7. The traditional toddy tapping business will be protected and job security will be ensured for toddy tappers.
>
> 8. In order to rehabilitate the employees of closing bars and employees engaged in the job of affixing stickers, measures will be adopted. Kerala Alcohol Education Research, Rehabilitation & Compensation Fund (KAERCF) Fund will be formed in order to protect the retrenched employees. The said fund will be utilized for the following purposes such as making propaganda against drinking of alcohol, for collection of data regarding this matter, to protect those who destroyed themselves by alcohol consumption, rehabilitation of the persons who lost job. The fund for this purpose will also be found out from public.
>
> 9. To implement the order urgently, the Excise Commissioner, K.S.B.C. Managing Director have to take measures to submit the recommendations urgently to the Government."

68. After considering several decisions on policy matters, and the submissions of the parties therein, the Hon'ble Division Bench, at paragraph 58, held as under:

> “It cannot be said that four star and five star as well as heritage categories form a single class by themselves. Different yardsticks are provided for categorization of four star, five star and heritage hotels. In fact, the Abkari Act adopts the guidelines made by the Ministry of Tourism, Government of India with respect to the four star and five star classifications. Specific provisions have been made in the guidelines to classify four star, five star and heritage hotels. We are unable to subscribe to the view taken by the learned Single Judge on this aspect. Four star hotels and heritage hotels cannot be equated with five star hotels. The learned Single Judge held that in the case of hotels with four star and heritage

> classification, there is no material to justify a conclusion that there were any complaints with respect to their functioning. That there was no complaint is not a relevant factor at all. The object that is sought to be achieved is the relevant criterion. The object being reduction of consumption of alcoholic drinks in public places and protection of youth from the adverse consequences of consumption of alcohol, absence of any complaint does not become relevant at all. The learned Single Judge also held that the Government should have at least stated that the recommendations of the One Man Commission were being rejected. We also do not agree with this conclusion. That the report of the One Man Commission was considered by the Government is crystal clear from the various terms in the policy. It is not at all necessary for the Government to state that it was inclined to reject the One Man Commission report. When the Government accepted much of the materials supplied and recommendations made by the One Man Commission, it was not proper at all for the Government to reject the One Man Commission report. Simply because the Government thought it fit not to accept the recommendations in entirety, it does not mean that the Government was rejecting the One Man Commission report. For the same reasoning and conclusion as made by the learned Single Judge with respect to three star hotels, the contentions put forward by the four star bar hotel owners also are liable to be rejected."

69. Reading of the above judgment indicates that the issue raised was in respect of grant of bar licenses and though a contention has been made that the entire report ought to have been accepted by the Government, the Hon'ble Division Bench declined to accept the same. In our

considered view, the abovesaid decision can, at best, be said to be a judgment, in respect of the Abkari Policy, for the year 2014-2015, and that too, in respect of bar licenses alone.

70. In **Ugar Sugar Works Ltd.** (cited supra), the Hon'ble Apex Court considered the short question raised in the writ petition, filed under Article 32, as to whether, impugned notification therein, issued by respondent No. 2 therein, laying down the terms and conditions for registration of different brands of Indian Made Foreign Liquor (IMFL) for supply, within the territory of Delhi during 2000-2001, and laying down Minimum Sales Figures (MSF), as a criteria of eligibility for grant of licence in Form L-1, is violative of Articles 14, 16 and 19(1)(g) of the Constitution of India,.

71. After considering the statutory provisions and the decisions in **State of A.P. & Ors. v. Mc Dowell & Co. & Ors**. reported in (1996) 3 SCC 709, as well as **Har Shankar & Ors. v. The Deputy Excise and Taxation Commissioner & Ors.** reported in (1975) 1 SCC 737, the Hon'ble Apex Court in ***Ugar Sugar Works Ltd.*** (cited supra), held thus:

> "15. In view of this settled position of law, any argument impugning the policy decision of the State Government, as reflected in the impugned notification, based upon Article 19(1)(g) is totally out of place and merits outright rejection and we have no hesitation in doing so most emphatically.
>
> 16. Faced with the settled legal position that there is no fundamental right to trade in liquor, learned counsel for the

petitioner did not pursue the argument based on Article 19(1)(g) to question the competence of Delhi Administration to take a policy decision with regard to regulating trade in liquor and laying down various regulatory measures and in our opinion rightly so. Learned counsel, however, mounted his challenge to the impugned notification based on Article 14 principally on the ground that the policy as reflected in the impugned notification was irrational and that raising of MSF requirements over the previous years' figures with a view to regulate the "quality of liquor" being sold in Delhi was arbitrary and has no nexus with the object sought to be achieved viz., to provide liquor of good quality to the consumers in the National Capital Territory of Delhi. It was also urged that the policy is discriminatory and as a result of the policy, small scale manufactures with good quality of liquor, were likely to be deprived of their marketing brand within the potential market of Delhi, in case they do not achieve the prescribed MSF outside Delhi and that would result in leaving the field wide open only for big business houses who would retain their monopoly in Delhi market.

17. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are

good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

….....

20. In the present case the executive policy regulating the sale of liquor in the territory of Delhi is sought to be challenged by the petitioner on the ground that it is 'unfair' and 'unreasonable' besides being 'arbitrary' and has no nexus with the object sought to be achieved. We are unable to agree.

21. The State has every right to regulate the supply of liquor within its territorial jurisdiction to ensure that what is supplied is 'liquor of good quality' in the interest of health, morals and welfare of the people. One of the modes for determining that the quality of liquor is 'good' is to ascertain whether that particular brand of liquor has been tested and tried extensively elsewhere and has found its acceptability in other States. The manner in which the Government chooses to ascertain the factor of higher acceptability, must in the very nature of things, fall within the discretion of the Government so long as the discretion is not exercised mala fide, unreasonably or arbitrarily. The allegations of mala fide made in the writ petition are totally bereft of any factual matrix and we, therefore, do not detain ourselves at all to consider challenge on that ground. In fairness to learned counsel for the petitioner we may record that challenge to notification on grounds of mala fide was not pressed during arguments. Laying down requirement of achieving minimum sale figures of a particular brand of liquor in other States, as a mode for determination of the

"acceptability" of that brand of liquor, is neither irrelevant, nor irrational or unreasonable. It appears that prescription of MSF requirement is aimed at allowing sale of only such brands of liquor which have been tested, tried and found acceptable at large in other parts of the country.

22. The policy objective as reflected in the impugned notification is to provide liquor of good quality in Delhi. The executive policy to determine whether a particular brand of liquor is of good quality or not, on the basis of larger acceptability of the particular brand in other parts of the country, appears to us to be a fair and relevant mode. The manner for determining whether a particular brand of liquor has acquired larger acceptability or not so as to qualify for it being "liquor of good quality" has to be decided by the State in its discretion so long as the manner adopted by the State is "just, fair and reasonable". It is not in dispute that the criteria of MSF is being uniformly applied and no pick and choose policy has been adopted by the State in that behalf. Learned counsel for the petitioners has been unable to convince us that fixation of MSF requirements as a criteria for such determination is in any manner "unfair, irrational or unreasonable".

23. The argument that since MSF laid down for the year 1994-1995 were not changed till 1998-99, there was no need to increase MSF requirements in 1999-2000 or to further increase the same in the year 2000-2001 for the lowest price tag brand of liquor from 60,000 cases (7.2 lac bottles) to 75,000 cases (9 lac bottles) for the current year, suffers from the basic infirmity that it invites the court to enter into an area of testing the executive policy, not on grounds whether it is "just, fair and reasonable", but whether the object could not have been

achieved by fixing a lower MSF requirement. In other words Court is being invited to prescribe MSF requirements in exercise of its power of judicial review. That is not permissible and we must decline the invitation to enter that area. It is not within the province of this Court to lay down that the executive policy must always remain static, even if its revision is "just, fair and reasonable". What is relevant is to find out whether the executive action is mala fide, unreasonable or irrational as a criterion. As already observed the Court, in exercise of its power of judicial review, cannot sit in judgment over the policy of Administration except on the limited grounds already noted. Each State is empowered to formulate its own liquor policy keeping in view the interest of its citizens. Determination of wide scale acceptability of a particular brand of liquor, on the basis of national sales figures, does not strike us as being unreasonable, much less irrational. The basis for determination is not only relevant but also fair. No direction can be given or expected from the Court regarding the 'correctness' of an executive policy unless while implementing such policies, there is infringement or violation of any constitutional or statutory provision. In the present case, not only there is no such violation but on other hand, the State in formulating its policy has exercised its statutory powers and applied them uniformly.

24. Though, we are not required to test the correctness of the 'reason' for increase of MSF over the previous years' figures, but it is relevant to point out that increase of sale from 60,000 cases to 75,000 cases in respect of 'lowest price tag' brand of liquor does not appear to be arbitrary and on the other hand it appears to have a rational basis. Economic mechanism is a highly sensitive and a complex matter. With inflation every

> year, it goes without saying, that the brand which has the "lowest price tag" this year, was perhaps not the brand which had the "lowest price tag last year". It is possible that the brand 'with lowest price tag' this year may not be of that good quality as the brand with identical price tag last year, even though it may conform to ISI standards. It was, therefore, reasonable for the State to find out whether that particular brand with the lowest price tag this year, had been tested and tried elsewhere and had been accepted largely by the public in other parts of India to determine if that particular brand of liquor can be considered to be liquor of good quality keeping the health and welfare of the public in view. The impugned notification in our opinion furthers the object of providing good liquor having larger acceptability. The policy is made in the interest of health, welfare and morals to benefit all citizens of Delhi and not the big industrial houses as alleged. Determination of wide scale acceptability on the basis of revised national sales figures (MSF) does not strike us as being unreasonable let alone irrational, arbitrary or unfair. Under these circumstances there is no justifiable reason warranting interference with the impugned notification. The Writ Petition accordingly fails and is dismissed but without any order as to costs."

72. In **Brij Mohan Lal v. Union of India (UOI) and Ors.** reported in (2012) 6 SCC 502, the Hon'ble Supreme Court, dealing with a case relating to Fast Track Court Judges, appointed temporarily, observed thus:

> "26. Civil Appeal No. 1276 of 2005 titled Smt. G.V.N. Bharatha Laxmi and Ors. v. State of Andhra Pradesh and Ors. is an application questioning the correctness of the judgment of the

High Court of Andhra Pradesh dated 13th July, 2004, passed in Writ Petition (C) No. 11273 of 2004, wherein the High Court declined to grant the prayer of the Petitioners, who were appointed as the Presiding Officers in the FTC under the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments, 2001, that they be granted absorption in the regular cadre of District and Sessions Judges created in the State of Andhra Pradesh. The plea of the Petitioners was that they had been appointed under the Rules and have gained sufficient experience as ad hoc Judges under the FTC Scheme and are liable to be regularized in that scale.

27. It is appropriate for us to refer to the Rules before we venture to discuss the merits of various cases. It is undisputed that there are Rules in place in all the States, with which we are concerned, for appointment to the Superior Judicial Services, as for example, the Punjab Superior Judicial Services Rules, 2007 in the State of Punjab. Besides these Rules, some of the States like, Andhra Pradesh, Gujarat, Orissa and Jharkhand had enacted separate sets of Rules for appointment as ad hoc Judges under the FTC Scheme or otherwise. The State of Andhra Pradesh framed the Rules which were called as The Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments, 2011 (Andhra Rules). Orissa enacted Orissa Judicial Service (Special Scheme) Rules, 2001 (Orissa Rules), Jharkhand enacted Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules 2001 (Jharkhand Rules) and Gujarat framed Gujarat State Judicial Service Rules, 2005 (Gujarat Rules) which were applicable only to the officers in service".

70. …….....It is a settled principle of law that matters relating to

framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the Government should frame policies which are fair and beneficial to the public at large. The Government enjoys freedom in relation to framing of policies. It is for the Government to adopt any particular policy as it may deem fit and proper and the law gives it liberty and freedom in framing the same. Normally, the Courts would decline to exercise the power of judicial review in relation to such matters. But this general rule is not free from exceptions. The Courts have repeatedly taken the view that they would not refuse to adjudicate upon policy matters if the policy decisions are arbitrary, capricious or mala fide. In bringing out the distinction between policy matters amenable to judicial review and those where the Courts would decline to exercise their jurisdiction, this Court, in Bennett Coleman and Company and Ors. v. Union of India and Ors. (1972) 2 SCC 788, held as under:

> "100. The argument of the Petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietors to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of Government policy."

72. It is also a settled cannon of law that the Government has the authority and power to not only frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic Constitutional limitations and is not so absolute in its terms

that it would permit even arbitrary actions. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.

(II) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention.

(III) The policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.

(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is dehors the provisions of the Act or Legislations.

(VI) If the delegate has acted beyond its power of delegation.

73. Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the Courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the Courts will step in to interfere with government policy." (emphasis supplied)

73. It could be seen from paragraph 73 of the decision in **Brij Mohan Lal** (cited supra), the Hon'ble Apex Court has observed that in the case of fiscal policies of the State, the scope of judicial review is far narrower with the exceptions stated above.

74. In **Mohammed Abdul Kadir and Another v. Director General of Police, Assam and Ors.** reported in (2009) 6 SCC 611, the issue was regarding regularization of persons engaged under the PIF Additional Scheme, and whether the procedure introduced by a circular was valid or not. On the facts and circumstances of the case, context of the issue raised in the writ petition was answered. Decision in ***Md. Abdul Kadir's*** *case (cited supra),* to the facts of this case, is wholly misplaced.

75. The Hon'ble Apex Court in **Mohammed Abdul Kadir**'s case (cited supra), commented upon the scope of interference in the policy relating to Prevention of Infiltration of Foreigners Additional Scheme, 1987 and considered it appropriate to draw the attention of the authorities to the issues involved in the case, by directing as under:

> "9.1. ..... We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the authorities concerned to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy."

76. In **Air India Ltd. v. Cochin International Airport Ltd. And Ors**. reported in (2000) 2 SCC 617, the issue was regarding award of contract for

ground handling service at the Cochin Airport. Considering the law relating to the award of contract by State, at paragraph 7, it was held thus:

> "7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R.D. Shetty v. International Airport Authority, (1979) 3 SCC 488; Fertilizer Corporation Kamgar Union v. Union of India, (1981)ILLJ 193 SC; Asstt. Collector, Central Excise v. Dunlop India Ltd, 1985 ECR 4 (SC), Tata Cellular v. Union of India, AIR 1996 SC 11; Ramniklal N. Bhutta v. State of Maharashtra, AIR 1997 SC 1236 and Raunaq International Ltd. v. I.V.R. Construction Ltd., AIR 1999 SC 393. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations,

> instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene".

77. In **Kandath Distilleries**'s case (cited supra), relied on by Mr. Surin George Ipe, learned Senior Government Pleader, the Hon'ble Supreme Court, while testing the correctness of a decision of a Hon'ble Division Bench of this Court, directing grant of Distillery licence to the respondent therein, and while considering Article 47 of the Constitution of India, at paragraphs 21 and 22, held thus:

> "21. Article 47 is one of the Directive Principles of State Policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to the human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. State has, therefore, the exclusive right or privilege in respect of portable liquor. A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are res extra commercium, cannot be carried

on by any citizen and the State can prohibit completely trade or business in portable liquor and the State can also create a monopoly in itself for the trade or business in such liquor. This legal position is well settled. State can also impose restrictions and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles which are res commercium. Reference may be made to the judgments of this Court in Vithal Dattatraya Kulkarni and Ors. v. Shamrao Tukaram Power SMT and Ors. (1979) 3 SCC 212, P.N. Kaushal and Ors. v. Union of India and Ors. (1978) 3 SCC 558, Krishna Kumar Narula etc. v. State of Jammu and Kashmir and Ors. AIR 1967 SC 1368, Nashirwar and Ors. v. State of Madhya Pradesh and Ors. (1975) 1 SCC 29, State of A.P. and Ors. v. McDowell and Co. and Ors. (1996) 3 SCC 709 and Khoday Distilleries Ltd. and Ors. v. State of Karnataka and Ors. (1995) 1 SCC 574.

22. Legislature, in its wisdom, has given considerable amount of freedom to the decision makers, the Commissioner and the State Government since they are conferred with the power to deal with an article which is inherently injurious to human health." (emphasis supplied)

78. On the change of policy and power of the State, in **Kandath Distilleries** case (cited supra), the Hon'ble Apex Court, at paragraph 27, held as under:

"27. Liquor policy of State is synonymous or always closely associated with the policy of the Statute dealing with liquor or such obnoxious subjects. Monopoly in the trade of liquor is with the State and it is only a privilege that a licensee has in the

> matter of manufacturing and vending in liquor, so held, by this Court in State of Maharashtra v. Nagpur Distilleries (2006) 5 SCC 112. Courts are also not expected to express their opinion as to whether at a particular point of time or in a particular situation, any such policy should have been adopted or not. 1998 Policy has life only in that year and if any rights have accrued to any party, that have to be adjudicated then and there. Writ Petition was moved only in the year 2000, by then, policy had been changed because 1999 liquor policy was total ban, so also subsequent liquor policies. It is trite law that a Court of Law is not expected to propel into "the unchartered ocean" of State's Policies. State has the power to frame and reframe, change and re-change, adjust and readjust policy, which cannot be declared as illegal or arbitrary on the ground that the earlier policy was a better and suited to the prevailing situations. Situation which exited in the year 1998 had its natural death and cannot be revised in the year 2013, when there is total ban". (emphasis supplied)

79. Petitioners have further contended that the number of liquor shops/bars etc. were less, before the commencement of LDF Government, but the same has increased and, therefore, the contention is that there is a breach. From **Kandath Distillery's** case (cited supra), it could be gathered that the Hon'ble Apex Court has made it clear that there could be a change in liquor policy, which is purely the domain of the State Government.

80. On the aspect of malice, learned counsel for the petitioners placed reliance on **State of Andhra Pradesh and Ors. v. Goverdhanlal Pitti**

reported in (2003) 4 SCC 739. In the reported case, on the basis of the facts and circumstances, the High Court came to the conclusion that the acquisition of the school building with its appurtenant land by the State was an action liable to be quashed being 'malicious in law.'.

81. Explaining the legal meaning of 'malice' and how the action of the State is not *bona fide*, the Hon'ble Supreme Court explained thus:

> “11. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact".
>
> "Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others'. [See Words and Phrases legally defined in Third Edition, London Butterworths 1989].
>
> 12. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with a oblique or indirect object.
>
> Prof. Wade in its authoritative work on Administrative Law [Eighth Edition at pg. 414] based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seek to 'acquire land' 'for a purpose not authorised by the Act'. The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other'.

> 13. The legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings".

82. Now, on the facts and circumstances of the case before us, let us consider a few decisions on policy matters.

(i) In **State of M.P. and Ors. v. Nandlal Jaiswal and Ors.** [(1986) 4 SCC 566], while considering the applicability of Article 14 of the Constitution of India in liquor policy and dealing with laws relating to economic activities, which require consideration, the Hon'ble Apex Court held as under:

> "34. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. **The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide.**
>
> We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg etc. v. Union of India and Ors. etc. [1982] 1 SCR 947*. **We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We**

observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition give by Frankfurter, J. in Morey v. Dond, 354 US 457:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events-self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestial as legislative judgment in so far as judicial deference is concerned.

We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial and error method' and, therefore, its validity cannot be tested on any rigid a 'priori' considerations or on the application of any straight-jacket formula. **The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or play in the 'joints' to the executive. "The problem of Government" as pointed out by the Supreme Court of the United States in Metropolis Theatre Company v. State of Chicago, 57 L Ed 730 "are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom**

> **of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review.** It is only its palpably arbitrary exercises which can be declared void." The Government, as was said in Permian Basin Area Rate cases 20 L Ed 2d 312, is entitled to make pragmatic adjustments which may be called for by particular circumstances. **The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.** It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution."
>
> (emphasis supplied)

(ii) In **P.H. Ashwathanarayana v. State of Karnataka** [(1989) 1 (Supp) SCC 696 : AIR 1989 SC 100], the Hon'ble Apex Court, while deciding the fixation of court fee, made the following observations in the context of economic viz-a-viz social policy. After a review of the earlier decisions, it was stated therein as under: (para 30 of AIR)

> "30. The problem is indeed a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside Article 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interest. **It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the Legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways."**
>
> (emphasis supplied)

(iii) In **Asif Hameed and Ors. v. State of Jammu and Kashmir and Ors.** (AIR 1989 SC 1899), the Hon'ble Supreme Court, as regards judicial review on policy, observed thus;

> "19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

It is also a settled cannon of law that the Government have the authority and power not only to frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic constitutional limitations and is not so absolute in its terms that it would permit even arbitrary actions.

Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

> (I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.
>
> (II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.

> (III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.
> (IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.
>
> (V) It is de hors the provisions of the Act or legislations.
> (VI) If the delegate has acted beyond its power of delegation.

Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with Government policy.

The correct approach in relation to the scope of judicial review of policy decisions of the State can hardly be stated in absolute terms. It will always depend upon the facts and circumstances of a given case. Furthermore, the court would have to examine any elements of arbitrariness, unreasonableness and other constitutional facets in the policy decision of the State before it can step in to interfere and pass effective orders in such cases.

A challenge to the formation of a State policy or its subsequent alterations may be raised on very limited grounds. Again, the scope of judicial review in such matters is a very limited one. One of the most important aspects in adjudicating such a matter is that the State policy should not be opposed to basic rule of law or the statutory law in force. This is what has been termed by

the courts as the philosophy of law, which must be adhered to by valid policy decisions."

(iv) In **Anukul Chandra Pradhan v. State of Orissa** (Original Jurisdiction Case No. 1114 of 1992, dated 27-01-1995), the High Court of Orissa, on the corrections of the policy decision in liquor trade, observed thus:

> "5. **It is an accepted position that the correctness of a policy decision or wisdom of the State Government in formulating the same cannot be the subject matter of judicial scrutiny. It is to be presumed that before a policy is formulated by the State Government, all relevant aspects and the prevailing fact situation, attending circumstances and the public interest are taken into account**. **Unless a policy decision ex facie conflicts with a constitutional or statutory provision, or is apparently against public interest it cannot be struck down merely on the ground that the decision is not a prudent and wise one.** As noted earlier, the main ground raised by the petitioners is that the out still system of manufacture of country liquor is harmful for health of consumers. No specific material or data is places before us in support of the contention. **All that the petitioners state is that this system was given up in the excise policy for the year 1991-92 as it was considered to be harmful for the consumers and therefore it should not have been re-introduced in the policy decision for the succeeding year. This ground in our considered view, is not sufficient to quash the policy decision as illegal or unconstitutional.** Further, in the meantime the excise policy of the State Government for the year 1994-95 has been notified in which it has been decided that no manufacture or sale of country liquor would be allowed in the State with effect from 1-4-1994. Therefore the challenge raised in the cases has been rendered infructuous. Viewed from any angle, no interference in the matter is called for."
>
> (emphasis supplied)

(v) In **R. v. Secy of State for Transport, ex p Richmond upon Thames London Borough Council,** (1994) 1 WLR 74, while laying

down that the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223] reasonableness test alone is applicable to find out if the change from one policy to another was justified, Laws, J. stated : (Secy. of State case, WLR p.94 B-C)

> ". The Court is not the judge of the merits of the decision-maker's policy." the public authority in question is the judge of the issue whether 'the overriding public interest' justifies a change in policy.... But this is no more than to assert that a change in policy, like any discretionary decision by a public authority, must not transgress Wednesbury principles."

(vi) In **Tilak Textile Mills Ltd. v. Union of India** [(1995) 1 GLR 498], the High Court of Gujarat held thus:

> "21. **It must be note at this juncture that the State enjoys widest latitude where measures of economic regulations are concerned. It cannot be disputed that the measures for fiscal and economic regulation and evaluation of deferred and quite often conflicting economic criteria and adjustment and balance of rival interest and pecuniary aspect ought to be considered. It is for the State to decide as to which economic and social policy if has to follow and adopt within the statutory boundaries. In fact, it is incumbent for the State, which is wedded to the doctrine of "Welfare State", to examine all the relevant aspects and conflicting criteria for balancing and seeking the aim and object of its policy in light of the relevant provisions of law.** The following observations of the Apex Court in the case of P.M. Ashwathanarayan Shetty v. State of Karnataka AIR 1989 SC 100 are very relevant.
>
> > "It is well recognised that the State enjoys the widest latitude where measures of economic regulations are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of values and interests. It is for the State of decide what economic and social policy it should pursue and what discriminations advance those social and economic policy."

(vii) In **M.P. Oil Extraction and Another v. State of M.P. and Others,** (1997) 7 SCC 592, the Hon'ble Supreme Court held that unless a policy decision is absolutely capricious, unreasonable and arbitrary and based on mere *ipse dixit* of the executive authority or is violative of any constitutional or statutory mandate, court's interference is not called for. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Policy decision is in the domain of the executive authority of the State and the court should not embark on the adequacy of public policy and should not question the efficacy or otherwise of such policy so long it falls within the constitutional limitations and does not offend any provision of the statute. (emphasis supplied)

(viii) In **Zippers Karamchari Union v. Union of India (UOI) and Ors.** ((2000)10SCC619, the Hon'ble Supreme court held thus:

> "32. In matters of trade and commerce or economic policy, the wisdom of the Government must be respected and courts cannot lightly interfere with the same unless such policy is contrary to the provisions of the Constitution or any law or such policy itself is wholly arbitrary."
>
> (emphasis supplied)

(ix) In **Ugar Sugar Works Ltd. v. Delhi Administration and Others,** [(2001) 3 SCC 635], a challenge was made to the executive policy regulating trade in liquor in Delhi. The Hon'ble Supreme Court held that it is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions unless such policy framed could be faulted on the grounds of malafide, unreasonableness, arbitrariness, unfairness, etc. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. **The courts are not expected to express their opinion as to whether at a particular point of time or in a**

particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

(emphasis supplied)

(x) In **Dharmpur Sugar (Kashipur) Ltd. v. State of Uttaranchal and Others,** [(2007) 8 SCC 418], the petitioner company owned a factory in the State of Uttaranchal. The company was engaged in the manufacture, sale and supply of sugar. One IGL submitted an application for grant of a licence for power-driven crusher for manufacturing rab from sugarcane. The application was rejected as per the licensing policy of the Government whereunder a new licence to khandsari unit could not be granted in the reserved area of the existing sugar mills. However, the State Government modified its earlier sugar policy and the Government was empowered to relax the limitation in certain cases. When new policy came into force, the IGL unit submitted a fresh application for grant of licence. The said application was allowed by the licensing authority observing that the new unit would not adversely affect adequate and sufficient surplus of sugarcane to the sugar mills in the reserved area and thus relaxation under the policy can be given. **While considering the policy decision, the Hon'ble Supreme Court observed that - a court of law is not expected to propel into 'the unchartered ocean' of government policies. Once it is held that the Government has power to frame and reframe, change and rechange, adjust and readjust policy, the said action cannot be declared illegal, arbitrary or ultra vires the provisions of the Constitution only on the ground that the earlier policy had been given up, changed or not adhered to. It also cannot be attacked on the plea that the earlier policy was better and suited to the prevailing situation."** (emphasis supplied)

(xi) In **Ajmani Leasing and Finance Ltd. v. U.O.I. and Ors.** [2020 (2) ALJ 554], the High court of Allahabad observed thus:

> 28. Hon'ble Supreme Court in Villianur Iyarkkai Padukappu Maiyam vs. Union of India reported in (2009) 7 SCC 561 **held that in the matter of policy decision and economic tests, the scope of judicial review is very limited. Unless the decision is shown to be contrary to any statutory provision or the Constitution, the Court would not interfere with an economic decision taken by the State. The Court cannot examine the relative merits of different economic policies and cannot strike down the same merely on the ground that another policy would have been fairer and better. It was further held that it is neither within the domain of the Courts, nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved, nor are the Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has,** while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the Courts."

83. Though the petitioners have primarily attacked the policy of the Government, giving due consideration to the statutory provisions, it could be deduced that power has been conferred on the Government to determine the number of liquor shops, area, etc., Therefore, we are of the view that administrative decision of the Government to open liquor shops / bars / parlours etc. is the issue, which is incidentally, under challenge.

84. On the aspect of judicial review on administrative decisions, it is worthwhile to consider the few decisions.

(i) In **Council of Civil Service Unions v. Minister for the Civil Service**, [(1984) 3 All ER 935], Lord Diplock enunciated three grounds upon which an administrative action is subject to control by judicial review, viz. (i) illegality (ii) irrationality and (iii) procedural impropriety, as follows:

> “By "illegality" he means that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it, and whether he has or has not, is a justiciable question; by "irrationality" he means "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it; and by "procedural impropriety" he means not only failure to observe the basic rules of natural justice or failure to act with procedural fairness, but also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the tribunal's jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

(ii) The principle of "Wednesbury unreasonableness" or irrationality, classified by Lord Diplock as one of the grounds for intervention in judicial review, was lucidly summarised by Lord Greene M.R. in **Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn**., reported in (1948) 1 KB 223 = (1947) 2 All ER 680, as follows:

> "...the court is entitled to investigate the action of the local authority with a view of seeing whether it has taken into account matters which it ought not to take into account, or conversely, has refused to take into account or neglected to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to a conclusion so unreasonable

> that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere."

(iii) In **Tata Cellular v. Union of India** [(1994) 6 SCC 651], a three-Judge Bench of the Hon'ble Supreme Court dealt with a case relating to tender, as well as Government contract, and considered the decisions in the matter of judicial review on administrative action, which can be made applicable to the case on hand. The Hon'ble Apex Court held as under:-

> "71. Judicial quest in administrative matters has been to find that right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.
>
> 72. Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment [1986] AC 240* proclaimed thus:
>
> > Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficent power.
>
> 73. Commenting upon this, Michael Supperstone and James Goudie, in their work on "Judicial Review" (1992 Edition), at page, 16 say:
>
> > "If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it he as received the endorsement of the law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in Butcher v. Petrocorp, exploration Ltd. 18 March 1991."

75. In *Chief Constable of the North Wales Police v. Evans [1992] 3 All ER 141*, Lord Brightman said :

> "Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.
>
> Judicial Review is concerned, not with the decision, with the decision-making process. Unless that restriction on the power of the court is observed, the court will, in may view, under the guise of preventing the abuse of power, be itself guilty of usurping power.
>
> In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC Ord 53 in the following terms;
>
> "This remedy, vastly increased in the extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial quasi-judicial, and, as would originally have been though when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities are their powers in a proper manner, (p. 1160)

R v. Panel take-overs and Mergers, ex p Datafin plc, Sir John Donaldson MR commented : 'an application for judicial review is not an appeal'. In lonrho plc v. Secretary of State for Trade and Industry, Lord Keith said; 'Judicial review is a protection and not a weapon. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In Re Amin, Lord Fraser observed that :

> "Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made (1)

> Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing an administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes is own decision on the merits for that of the administrative officer."

76. In *R v. Penal on Take overs and Mergers, ex p Guinness plc* [1990] 1 QB 146, Lord Donaldson MR. referred to the Judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the courts is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. whether a decision-making authority exceeded its powers?
2. committed an error of law
3. committed a breach of the rules of natural justice.
4. reached a decision which no reasonable tribunal would have reached. or;
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case, shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;

(ii) Irrationality, namely, Wednesbury unreasonableness;

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out additional of further grounds in courts of time.

As a matter of fact, in *R v. Secretary of State for the Home Department ex parte Blind [1991] 1 AC 696*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of nature and degree which requires its intervention".

78. What is this charming principle of Wednesbury unreasonableness? Is it is a magical formula? In Re: v. Askew [1768] 4 2168, Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later :

> It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physician: and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, can did and unprejudiced; not arbitrary, capiricious, or biassed; much less, warped by resentment, or personal dislike."

79. To quote again, Michael Supperstone and James Goudie; in their work 'judicial Review (1992 Edition) it is observed at pages 119 to 121 as under:

> "The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in which the court should intervene. These difference of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In Kruse v. Johnson a specially constituted divisional court had to consider the validity of a byelaw made by a local authority. In the leading judgment of Lord Russell of Killowen CJ the approach to he adopted by the court was set out. Such byelaws ought to be 'benevolently' interpreted, and credit ought to be given to those who have to

administer them that they would be reasonably administered. they could be held invalid if unreasonable: where for instance byelaws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell emphasised that a byelaws is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation. This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to licence performances on Sunday only subject to a condition that 'no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or not'. In an extempore judgment, Lord Greene M.R. drew attention to the fact that the word 'unreasonable' had often been used in a sense which comprehended different grounds of review. (At page 229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington LJ in Short v. Poole Corporation [1926] Ch 66 as an example of a 'frivolous and foolish reason') was, in another sense, taking into consideration extraneous matters, and might be so unreasonable that it could almost be described a being done in bad faith; see also R v. Tower Hamlets London Borough council, exp Chetnik Developments Ltd. [1988] AC 858, supra, He summarised the principles as follows :

> “The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matter which they ought not to have taken into account, or, conversely, have refused to take into account 01 neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may

still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, as concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them."

This summary by Lord Greene has been applied in countless subsequent cases.

The modern statement of the principle is found in a passage in the speech of lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service:

> "By "irrationality" I mean that can now be succinctly referred to as "Wednesbury unreasonableness" Associated Provincial Picture Houses v. Wednesbury Corporation [1948] 1 KB 233. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at."

80. At this stage, The Supreme Court Practice 1993 Volume 1 Pages 849-850, may be quoted:

> "4. Wednesbury principle - A decision of a Public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it (Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 K.B. 223; [1947] 2 All E.R. 680, per Lord Green M.R.)"

81.Two other facts of irrationality may be mentioned.

> "(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. Secretary of the State of Environment [1980] 41 P & CR 255, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not in incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson LJ said that he could not see on what basis the Secretary of State had reached his conclusion.
>
> (2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R v. Barnet London Borough Council, exp Johnson [1989] 88 LGR 73 the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down."

82. Bernard Schwartz in Administrative Law Second Edition page 584 has this to say:

> "If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope

of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. "It makes judicial review of administrative orders a hopeless formality for the litigant.... It reduces the judicial process in such cases to a mere feint.

Two overriding considerations have combined to narrow the scope of review. The first is that of deference to the administrative expert. In Chief Justice Neely's words,

"I have very few illusions about my own limitations as a judge and from those limitations I generalize to the inherent limitations of all appellate courts reviewing rate cases. It must be remembered that this Court sees approximately 1, 262 cases a year with five judges. I am not an accountant electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect judges intelligently to review a 5,000 page record addressing the intricacies of public utility operation."

It is not the function of a judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinized by the non-expert judge. The alternative is for the court to overrule the agency on technical matters where all the advantages of expertise lie with the agencies. If a Court were to review fully the decision of a body such a state board of medical examiners "it would find itself wandering amid the mazes of therapeutics of boggling at the mysteries of the pharmacopoeia." Such a situation as a state court expressed it many years ago "is not a

> case of the blind leading the blind but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question."
>
> The second consideration leading to narrow review that of calendar pressure. In practical terms it may be the more important consideration. More than any theory of limited review it is the pressure of the judicial calendar combined with the elephantine bulk of the record in so many review proceedings which leads to perfunctory affirmance of the vest majority of agency decision."

83. A modern comprehensive statement about judicial review by Lord Denning is very apposite; it is perhaps worthwhile noting that he stresses the supervisory nature of the jurisdiction :

> "Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says it decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing of the matter: See Healey v. Minister of Health [1955] 1 QB 221. But nevertheless, the courts will, if called upon act in a supervisory capacity. They will see that the decision-making body acts fairly: see in re H.K. (an Infant) [1967] 2 QB 617 and Reg. v. Gaining Board for Great Britain; Ex parte Benaim and Khaida [1970] 2 QB 417. The courts will ensure that the body acts in accordance with the law. If a question arises on the interpretation of words, the courts will decide it by declaring what is the correct interpretation: see Punton v. Minister of Pensions and National Insurance [1963] 1

> W.L.R. 186. And if the decision-making body has gone wrong in its interpretation they can set its order aside: see Ashbridge Investments Ltd. v. Minister of House and Local Government [1965] 1 W.L.R. 1320. (I know of some expressions to the contrary but they are not correct. If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere: See Padfield v. Minister of Agriculture, Fisheries and Food [1968] A.C. 997. If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding - so unreasonable that a reasonable person would not have come to it - then again the courts will interfere: see Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223. If the decision-making body goes outside its powers or misconstrues the extent of its powers, then, too the courts can interfere: see Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 A.C. 147. And, of course, if the body acts in bad faith or for an ulterior object, which is not authorised by law, its decision object, which is not authorised by law, its decision will be set aside: see Sydney Municipal Council v. Campbell [1925] A.C. 228. In exercising these powers, the courts will take into account any reason which the body may given for its decisions. If it gives no reasons - in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act according: see Padfield's case (A.C. 997, 1007 and 1061).”

84. We may usefully refer to Administrative Law Rethinking Judicial Control of Bureaucracy by Christopher F. Edley, JR (1990) Edn.) At page 96 it is stated thus :

> “A great deal of administrative law boils down to the scope of review problem; defining what degree of deference a court will accord an agency's findings,

> conclusions, and choices, including choice of procedures. It is misleading to speak of a "doctrine", or "the law", of scope of review. It is instead just a big problem, that is addressed piecemeal by a large collection of doctrines. Kenneth Culp Davis has offered a condensed summary of the subject : "Courts usually substitute (their own) judgment on the kind of questions of law that are within their special competence, but on other question they limit themselves to deciding reasonableness; they do not clarify the meaning of reasonableness but retain full discretion in each case to stretch it in either direction."

85. In Universal Camera Corporation v. NLRB 340 US 474 at 488, Justice Frankfurter stated :

> "A formula for judicial review of administrative action may afford grounds for certitude but cannot assure certainty of application. Some scope for judicial discretion in applying the formula can be avoided only by falsifying the actual process of judging or by using the formula as an instrument of futile casuistry. It cannot be too often repeated that judges are not automata. The ultimate reliance for the fair operation of any standard is a judiciary of high competence and character and the constant play of an informed professional critique upon its work. Since the precise way in which courts interfere with agency findings cannot be imprisoned within any form of words, new formulas attempting to rephrase the old are not likely to be more helpful than the old. there are no talismanic words that can avoid the process of judgment. The difficulty is that we cannot escape, in relation to this problem the use of undefined defining terms."

86. An innovative approach is made by Clive Lewis as to why the courts should be slow in quashing

administrative (in his Judicial Remedies in Public Law 1992 Edition at pages 294-95). The illuminating passage reads as under :

> "The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards re-opening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the court' remedial discretion and any prove decisive. This is particularly the case when the challenge is procedural rather then substantive, or if the courts can be certain that the administrator would not reach a different decision even if the original decision were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause. They may also be influenced by the extent to which the illegality arises from the conduct of the administrative body itself, and their view of that conduct.
>
> The current approach is best exemplified by *R. v. Monopolies and Mergers Commission, ex p. Argyll Group* [1986] 1 W.L.R. 763."

87. ***Sir John Donaldson M.R. in R. v. Monopolies Commission, Ex p. Argyll Plc***. (C.A.) [1986] 1 WLR 736, observed thus :

> "We are sitting as a public law court concerned to review an administrative decision, albeit one which has to be reached by the application of judicial or quasi-judicial principles. We have to approach our duties with a proper awareness of the needs of public administration. I cannot catalogue then-all, but, in the present context, would draw attention to a few which are relevant.
>
> Good public administration is concerned with substance rather than form.

> ...Good public administration is concerned with speed of decision, particular in the final field.
>
> ...Good public administration requires a proper consideration of the public interest. In this context, the Secretary of State is the guardian of the public interest.
> ...Good public administration requires a proper consideration of the legitimate interests of individual citizens, however rich and powerful they may be and whether they are natural or judicial persons. But in judging the relevance of an interest, however legitimate , regard has to be had to the purpose of the administrative process concerned.
>
> ...Lastly, good public administration requires decisiveness and finality, unless there dare compelling reasons to the contrary.

88. We may now look at some of the pronouncements of this Court including the authorities cited by ***Mr. Ashok Sen Fasih Chaudhary v. Director General, Doordarshan*** (AIR1989 SC 157) was a case in which the Court was concerned with the award of a contract for show of sponsored TV serial. At page 92 in paragraphs 5 and 6 it was held thus :

> "It is well settled that there should be fair play in action in a situation like the present one, as was observed by this Court in Ram & Shyam Co. v. State of Haryana MANU/SC/0017/1985 : AIR1985SC1147 , 268-69. It is also well settled that the authorities like the Doordarshan should act fairly and their action should be legitimate and fair and transaction should be without any aversion, malice or affection. Nothing should be done which gives the impression of favouritism or nepotism. See the observations of this Court in Haji T.M. Hassan Rawther v. Kerala Financial Corporation[1988]1SCR1079.
>
> While, as mentioned hereinbefore, fairplay in action in matters like the present one is an essential requirement, similarly, however, 'free play in the joints', is also a necessary concomitant for an administrative body

> functioning in an administrative sphere or quasi-administrative sphere as the present one. Judged from that standpoint of view, though all the proposals might not have been considered strictly in accordance with order of precedence, it appears that these were considered fairly, reasonably, objectively and without any malice or ill-will."

89. In ***G.B. Mahajan v. Jalgaon Municipal Council*** [AIR 1991 SC 1153], the concept of reasonableness in administrative law came to be dealt with elaborately by one of us, Venkatachaliah, J. (as he then was). In paragraphs 37 to 46 the Court observed thus :

> "It was urged that the basic concept of the manner of the development of the real estate and disposal of occupancy right were visited by unreasonableness. It is a truism, doctrinally, that powers must be exercised reasonably. But as Prof. Wade points out :
>
> > "The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority'...."

In the arguments there is some general misapprehension of the scope of the "reasonableness" test in administrative law. By whose standards of reasonableness that a matter is to be decided? Some phrases which pass from one branch of law to another - as did the expressions 'void' and 'voidable' from private law areas to public law situations - carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the word "reasonable", "reasonableness" etc. In Tiller v. Atlantic Coast Line Rail Road Company justice frankfurter said :

> “A phrase begins life as a literary expression; its felicity leads to its lazy repetition; and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas.”

Different contexts in which the operation of "reasonableness" as test of validity operates must be kept distinguished. For instance as the arguments in the present case invoke, the administrative law test of 'reasonableness' as the touchstone of validity of the impugned resolutions is different from the test of the 'reasonable man' familiar to the law of torts, whom English law figuratively identifies as the "man on the Clapham omnibus". In the latter case the standards of the 'reasonable man', to the extent a reasonable man' is court's creation, is in a manner of saying, a mere transferred epithet Lord Radcliffe observed: (All ER p.160)

> “By this time, it might seem that the parties themselves have become so far disembodied spirits that their actual persons should be allowed to rest in peace. In there place there rises the figure of the fair and reasonable man. And the spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is, and must be, the court itself....”

See Davis Contractors Ltd. v. Fareham U.D.C. [1956] 2 All ER 145.

"Yet another area of reasonableness which must be distinguished is the constitutional standards of reasonableness; of the restrictions on the fundamental rights of which the court of judicial review is the arbiter.

The administrative law test of reasonableness is not by the standards of the "reasonable man" of the torts law. Prof. Wade says:

"This is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called 'Wednesbury unreasonableness' after the new famous case in what Lord Greene, M.R. expounded it."

90. Referring to the doctrine of unreasonableness, Prof. Wade says in Administration Law (supra):

"The point to not is that a thing is not unreasonable in the legal sense merely because the Court thinks it is unwise."

91. In F.C.I. v. Kamdhenu Cattle Feed Industries (AIR 1993 SC 1601), it was observed thus:

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to

> use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'.

(iv) In **Narmada Bachao Andolan v. Union of India,** reported in (2000) 10 SCC 664, the Hon'ble Supreme Court, in a public interest litigation, dealt with a case of construction of Sardar Sarovar Dam, and considered the principles laid down on judicial review of administrative decisions. The Hon'ble Supreme Court held thus:

> "229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.
>
> 230. Public interest litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licences, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to becoming publicity interest litigation or private inquisitiveness litigation.

> 231. While exercising jurisdiction in PIL cases the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions.
>
> 232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.
>
> 233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law."

(v) In **State of U.P. & Anr. v. Johri Mal**, reported in (2004) 4 SCC 714, the Hon'ble Supreme Court observed thus:

> "The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution

> of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law or do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court."

(vi) In **Rameshwar Prasad & Ors. (VI) v. Union of India & Anr.,** reported in (2006) 2 SCC 1, the Hon'ble Apex Court observed thus:

> "A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.
>
> It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to be subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

(vii) In **Jayrajbhai Jayantibhai Patel v. Anilbhai Jayanitbhai Patel and Ors.,** reported in (2006) 8 SCC 200*,* the Hon'ble Supreme Court, in para 18, observed as under:-

> "18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral

> standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision- making process and not the decision."
>
> The following passage from Professor Bernard Schwartz's book Administrative Law (Third Edition) aptly echo's our thoughts on the scope of judicial review:
>
> "Reviewing courts, the cases are now insisting, may not simply renounce their responsibility by mumbling an indiscriminate litany of deference to expertise. Due deference to the agency does not mean abdication of the duty of judicial review and rubber-stamping of agency action: We must accord the agency considerable, but not too much deference; it is entitled to exercise its discretion, but only so far and no further."

Quoting Judge Leventhal from ***Greater Boston Television Corp. v. FCC, 444 F. 2d 841 (D.C.Cir. 1970)***, he further says:

> "...the reviewing court must intervene if it "becomes aware...that the agency has not really taken a 'hard look' at the salient problems, and has not genuinely engaged in reasoned decision-making..."

(viii) In **Ganesh Bank of Kurundwad Ltd. and others v. Union of India and others,** reported in (2006) 10 SCC 645, the Hon'ble Supreme Court, at paragraphs 50 and 51, observed as under:-

> "50. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:
>
> (i) Illegality.- This means the decision-maker must understand correctly the law that regulates his decision- making power and must give effect to it.
>
> (ii) Irrationality, namely, Wednesbury unreasonableness.
>
> (iii) Procedural impropriety.
>
> ….....Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the

> letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.
>
> The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety."

(ix) In **Bank of India v. T.Jogram** reported in (2007) 7 SCC 236**,** the Hon'ble Supreme Court has held that it is well settled principle of law that Judicial review is not against the decision, but is against the decision making process.

(x) In **State of Maharashtra v. Prakash Prahland Patil** reported in (2009) 12 SCC 159, the Hon'ble Apex Court, at Paragraphs 5 and 6, held as follows:

> “5. The scope for judicial review has been examined by this court in several cases. It has been consistently held that the power of judicial review is not intended to assume a supervisory role or don the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the supreme lex to other organs of the State. A mere wrong decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.

> 6. The courts cannot be called upon to undertake governmental duties and functions. Courts should not ordinarily interfere with a policy decision of the State. While exercising power of judicial review the court is more concerned with the decision making process than the merit of the decision itself."

(xi) In **All India Railway Recruitment Board v. K.Shyam Kumar** [(2010) 6 SCC 614], the Hon'ble Supreme Court, held as follows:

> "22. Judicial review conventionally is concerned with the question of jurisdiction and natural justice and the Court is not much concerned with the merits of the decision but how the decision was reached. In **Council of Civil Service Unions v. Minister of State for Civil Service** (1984) 3 All ER 935 the (GCHQ Case) the House of Lords rationalized the grounds of judicial review and ruled that the basis of judicial review could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc.
>
> 23. Ground of irrationality takes in Wednesbury unreasonableness propounded in Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1947)2 All ER 680, Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an `umbrella concept' which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable

decision maker would in law come to it. In GCHQ Case (supra) Lord Diplock fashioned the principle of unreasonableness and preferred to use the term irrationality as follows:

> "By `irrationality' I mean what can now be succinctly referred to as "Wednesbury's unreasonableness", ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

24. In ***R. v. Secretary of State for the Home Department ex parte Brind*** (1991) 1 All ER 720, the House of Lords re-examined the reasonableness of the exercise of the Home Secretary's discretion to issue a notice banning the transmission of speech by representatives of the Irish Republican Army and its political party, Sinn Fein. Court ruled that the exercise of the Home Secretary's power did not amount to an unreasonable exercise of discretion despite the issue involving a denial of freedom of expression. House of Lords however, stressed that in all cases raising a human rights issue proportionality is the appropriate standard of review.

25. The House of Lords in *R (Daly) v. Secretary of State for the Home Department* (2001) 2 AC 532 demonstrated how the traditional test of Wednesbury unreasonableness has moved towards the doctrine of necessity and proportionality. Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than traditional grounds of review and went on to outline three concrete differences between the two:-

> (1) Proportionality may require the reviewing Court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions.
>
> (2) Proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.

(3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights.

Lord Steyn also felt most cases would be decided in the same way whatever approach is adopted, though conceded for human right cases proportionality is the appropriate test.

26. The question arose as to whether doctrine of proportionality applies only where fundamental human rights are in issue or whether it will come to provide all aspects of judicial review. Lord Steyn in **R. (Alconbury Development Limited) v. Secretary of State for the Environment, Transport and the Regions** (2001) 2 All ER 929 stated as follows:-

> "I consider that even without reference to the Human Rights Act, 1998 the time has come to recognize that this principle (proportionality) is part of English administrative law not only when Judges are dealing with Community acts but also when they are dealing with acts subject to domestic law. Trying to keep the Wednesbury principle and proportionality in separate compartments seems to me to be unnecessary and confusing".

Lord Steyn was of the opinion that the difference between both the principles was in practice much less than it was sometimes suggested and whatever principle was applied the result in the case was the same.

27. Whether the proportionality will ultimately supersede the concept of reasonableness or rationality was also considered by Dyson Lord Justice in R. (**Association of British Civilian Internees: Far East Region) v Secretary of State for Defence** [2003] QB 1397 and stated as follows:-

> "We have difficulty in seeing what justification there now is for retaining Wednesbury test ..... but we consider that it is not for this Court to perform burial rights. The continuing existence of the Wednesbury test has been acknowledged by House of Lords on

> more than one occasion. A survey of the various judgments of House of Lords, Court of Appeals, etc. would reveal for the time being both the tests continued to co-exist."

28. Position in English Administrative Law is that both the tests that is. Wednesbury and proportionality continue to co-exist and the proportionality test is more and more applied, when there is violation of human rights, and fundamental freedom and the Wednesbury finds its presence more on the domestic law when there is violations of citizens ordinary rights. Proportionality principle has not so far replaced the Wednesbury principle and the time has not reached to say good bye to Wednesbury much less its burial.

29. In Huang case (2007) 4 All ER 15 (HL), the House of Lords was concerned with the question whether denial of asylum infringes Article 8 (Right to Respect Family Life) of the Human Rights Act, 1998. House of Lords ruled that it was the duty of the authorities when faced with individuals who did not qualify under the rules to consider whether the refusal of asylum status was unlawful on the ground that it violated the individual's right to family life. A structured proportionality test has emerged from that decision in the context of the violation of human rights. In R (Daly) (supra) the House of Lords considered both common law and Article 8 of the convention and ruled that the policy of excluding prisoners from their cells while prison officers conducted searches, which included scrutinizing privileged legal correspondence was unlawful.

30. Both the above-mentioned cases, mainly concerned with the violation of human rights under the Human Rights Act, 1998 but demonstrated the movement away from the traditional test of Wednesbury unreasonableness towards the test of proportionality. But it is not safe to conclude that the principle of Wednesbury unreasonableness has been replaced by the doctrine of proportionality.

31. Justice S.B. Sinha, as His Lordship then was, speaking for the Bench in ***State of U.P., v. Sheo Shanker Lal***

Srivastava and Ors. *(2006) 3 SCC 276* after referring to the judgment of the Court of appeal in Huang v. Secretary of State for the Home Department (2005) 3 All ER 435, **R. v. Secretary of State of the Home Department, ex parte Daly** (2001) 3 All ER 433 (HL) opined that Wednesbury principle may not now be held to be applicable in view of the development in constitutional law and held as follows:-

> "24. While saying so, we are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality.
>
> 25. It is interesting to note that the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. See, for example, Huang v. Secy. of State for the Home Deptt. wherein referring to R. v. Secretary of State of the Home Department, ex parte Daly, it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merit judgment, which is yet more than ex p. Daly, requires on a judicial review where the court has to decide a proportionality issue."

32. *Sheo Shanker Lal Srivastava case* was later followed in ***Indian Airlines Ltd., v. Prabha D.Kanan*** *[(2006) 11 SCC 67]*. Following the above mentioned two judgments in ***Jitendra Kumar and Others v. State of Haryana and Another*** *(2008) 2 SCC 161*, the Bench has referred to a passage in HWR Wade and CF Forsyth on Administrative Law, 9th Edition. (2004), pages 371- 372 with the caption "Goodbye to Wednesbury" and quoted from the book which reads as follows:-

> "The Wednesbury doctrine is now in terminal decline but the coup de grace has not yet fallen, despite calls for it from very high authorities" and opined that in some jurisdictions the doctrine of unreasonableness is giving way to doctrine of proportionality."

33. *Indian Airlines Ltd.'s case and Sheo Shanker Lal Srivastava's* case (supra) were again followed in **State of Madhya Pradesh and Others v. Hazarilal**, (2008) 3 SCC 273 and the Bench opined as follows:-

> "Furthermore the legal parameters of judicial review have undergone a change. Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality.".

34. With due respect, we are unable to subscribe to that view, which is an overstatement of the English Administrative Law.

35. Wednesbury principle of unreasonableness as such has not been replaced by the doctrine of proportionality though that test is being applied more and more when violation of human rights is alleged. H.W.R. Wade & C.F. Forsyth in the 10th Edition of Administrative Law (2009), has omitted the passage quoted by this court in Jitender Kumar case and stated as follows:

> "Notwithstanding the apparent persuasiveness of these views the coup de grace has not yet fallen on Wednesbury unreasonableness. Where a matter falls outside the ambit of 1998 Act, the doctrine is regularly relied upon by the courts. Reports of its imminent demise are perhaps exaggerated." (emphasis applied).

36. Wednesbury and Proportionality - Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to `assess the balance or equation' struck by the decision maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental

rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

37. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision- maker has achieved more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

38. Leyland and Anthony on Textbook on Administrative Law (5th edn. OUP, 2005) at p.331 has amply put as follows:

> "Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in every day terms, that you should not use a sledgehammer to crack a nut) and in contrast to irrationality is often understood to bring the courts much closer to reviewing the merits of a decision".

39. Courts have to develop an indefeasible and principled approach to proportionality till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would

> continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the Court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision maker."

(xii) In **Union of India v. Rajasthan High Court** reported in (2017) 2 SCC 599, the Hon'ble Supreme Court, on the scope of judicial review, at Paragraph 13, held as follows:

> "13. .....The powers under Article 226 are wide – wide enough to reach out to injustice wherever it may originate. These powers have been construed liberally and have been applied expansively where human rights have been violated. But, the notion of injustice is relatable to justice under the law. Justice should not be made to depend upon the individual perception of a decision maker on where a balance or solution should lie. Judges are expected to apply standards which are objective and well defined by law and founded upon constitutional principle. When they do so, judges walk the path on a road well-travelled. When judicial creativity leads judges to roads less travelled, in search of justice, they have yet to remain firmly rooted in law and the Constitution. The distinction between what lies within and what lies outside the power of judicial review is necessary to preserve the sanctity of judicial power. Judicial power is respected and adhered to in a system based on the rule of law precisely for its nuanced and restrained exercise. If these restraints are not maintained the court as an institution would invite a justifiable criticism of encroaching upon a terrain on which it singularly lacks expertise and which is entrusted for governance to the legislative and executive arms of government. Judgments are enforced, above all, because of the belief which society and arms of governance of a democratic society hold in the sanctity of the judicial process. This sanctity is based on institutional prestige. Institutional authority is established over long years, by a steadfast commitment to a calibrated

> exercise of judicial power. Fear of consequences is one reason why citizens obey the law as well as judicial decisions. But there are far stronger reasons why they do so and the foundation for that must be carefully preserved. That is the rationale for the principle that judicial review is confined to cases where there is a breach of law or of the Constitution."

(xiii) In **Royal Medical Trust v. Union of India** reported in (2017) 16 SCC 605], the Hon'ble Apex Court, on the scope of judicial review, held as follows:

> "The principle of judicial review by the constitutional courts have been lucidly stated in many an authority of this Court. In *Tata Cellular v. Union of India* (1994) 6 SCC 651, dealing with the concept of Judicial Review, the Court held:-
>
> "*Lord Scarman in Nottinghamshire County Council v. Secretary of State for the Environment* proclaimed:
>
> 'Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power." Commenting upon this Michael Supperstone and James Goudie in their work Judicial Review (1992 Edn.) at p. 16 say:
>
> "If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in *Butcher v. Petrocorp Exploration Ltd.* 18-3-1991." Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself."

After so stating, reference was made to the law enunciated in Chief Constable of the ***North Wales Police v. Evans*** (1982) 3 All ER 141 wherein, it has been ruled:-

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

* * * Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

45. In the said case, the Court also referred to R. v. Panel on Take-overs and Mergers, ex. P. Datafin plc (1987) 1 All ER 564 wherein Sir John Donaldson, M.R. Commented:-

"An application for judicial review is not an appeal."

46. The three Judge Bench further held:-

"The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. Reached a decision which no reasonable tribunal would have reached or,
5. abused its powers."

47. The Court further opined that in the process of judicial review, it is only concerned with the manner in which the decisions have been taken. The extent of the duty is to act fairly. It will vary from case to case. Explicating further, it ruled:-

"Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

48. Thereafter, the Court referred to the authorities in R. v. Askew 20 and Council of Civil Service Unions v. Minister for Civil Service21 and further expressed:-

"At this stage, The Supreme Court Practice, 1993, Vol. 1, pp. 849-850, may be quoted:

"4. Wednesbury principle.— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (**Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.**, per Lord Greene, M.R.)" We may hasten to add, though the decision was rendered in the context of justification of grant of contract but the principles set out as regards the judicial review are of extreme significance.

49. Discussing at length, the principle of judicial review in many a decision, the two Judge Bench in **Reliance Telecom Ltd. & Another v. Union of India & Another**, has held:-

20 (1768) 4 Burr 2186 : 98 ER 139 21 (1985) 1 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 22 (2017) 4 SCC 269 "As we find, the decision taken by the Central Government is based upon certain norms and parameters. Though criticism has been advanced that it is perverse and irrational, yet we are disposed to think that it is a policy decision which subserves the consumers'

> interest. It is extremely difficult to say that the decision to conduct the auction in such a manner can be considered to be mala fide or based on extraneous considerations."
>
> 50. Thus analysed, it is evincible that the exercise of power of judicial review and the extent to which it has to be done will vary from case to case. It is necessary to state with emphasis that it has its own complexity and would depend upon the factual projection. The broad principles have been laid down in Tata Cellular (supra) and other decisions make it absolutely clear that judicial review, by no stretch of imagination, can be equated with the power of appeal, for while exercising the power under Article 226 or 32 of the Constitution, the constitutional courts do not exercise such power. The process of adjudication on merit by re-appreciation of the materials brought on record which is the duty of the appellate court is not permissible.
>
> 51. The duty of the Court in exercise of the power of judicial review to zealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds. (See : Union of India and Anr. v S.B. Vohra 23)"

85. Most of the contentions raised in the instant writ petition have been dealt with by Hon'ble Division Benches of the Jharkhand and Calcutta High Courts and, having regard to the principles of law on judicial precedents, persuasive value, applicability of the issue, on some set of pleadings, and decisions rendered by other Hon'ble High Courts, we deem it fit to apply the same to the case on hand:

> "(i) In **Smt. Mala Banerjee v. The State Of West Bengal And Ors.** reported in 2008 (1) CHN 979, in the High Court of Calcutta, the petitioner therein contended that the Government of West Bengal have adopted a policy to grant and/or issue liquor licence indiscriminately for establishing new liquor-shops throughout the State of West Bengal, in order to augment revenue. According to the writ

petitioner, Government of West Bengal had adopted the said policy by totally violating, flouting and ignoring the Constitutional mandate enshrined in Article 47 of the Constitution of India without looking into the health, socio-economic condition, culture and welfare, particularly, of the poorer section of the inhabitants and citizens of the State of West Bengal. She contended that the intention of issuing more licences for opening new liquor-shop, with the object of raising revenue, would enormously damage the public health and individual economy, causing irreparable loss to the society whereby, instead of pursuing a policy of regulated drinks-habit, it is going to spread the bad habit to younger generation.

Further contentions were raised as under:

(I) Under the influence of liquor several families are ruined particularly in the poor and lower middle class group and the workmen and labourers in the factory and workshop, upon receiving their weekly or monthly remuneration, spend substantial amount on the same day in purchasing and consuming liquor with their friends and associates at the cost of their family.

(ii) By liberalizing the issue of excise licence, particularly, based on population-parameter, the Government of West Bengal is provoking the people to be addicted to drinking liquor.

(iii) The right to health is part of the rights of the Citizens of India has enshrined in Article 21 of the Constitution of India and the Rule of 2003, if given effect to, would severely prejudice the health of the individuals in the State leading to more expenditure on account of medical expenses and starvation of the poor people.

Defence in the counter affidavit filed by the State is that the writ petitioner seeks to espouse her purported grievance with regard to Government policy and as engagement in liquor trade is not a fundamental right and is subject to Government control, so long as

there is no violation of the fundamental rights guaranteed under Part III of the Constitution and the principles of natural justice are not offended, the writ-petitioner cannot have any cause of action or locus standi. The State policy with regard to grant of liquor-licences is for the State to determine depending upon its own overall assessment of the requirement of the situation and the legislature and/or the subordinate regulation making body have an affirmative responsibility of evolving policy.

There is no lack of legislative competence in the matter nor is there any legal infirmity in the sense of its being beyond the scope of the powers conferred by the Statute or its being inconsistent with any of the provisions of the parent enactment or in violation of the limitations imposed by the Constitution. There being no fundamental right to carry on trade or business in liquor, the State formulates its policy for grant of privilege for manufacture and sale of liquor and the trade in liquor is no longer *res extra commercium*. Accordingly, the dispute also involves the economic policy of the State and the legislation, particularly in economic matters, is essentially empiric.

After considering the rival submissions, the Hon'ble Division Bench framed the following issue for considering:

> "6. Therefore, the principal question that arises for determination in this Public Interest Litigation is whether the provisions contained in Rules of 2003 affects any of the legal or fundamental rights of the citizens of this State whom the writ-petitioner is representing."

Adverting to the the rival submissions, the Hon'ble Division Bench held as under:

> "8. First, the Rules of 2003 are in conflict with the directive principles of the policy of the State as provided in Article 47 of the Constitution of India and secondly, the guiding principle

adopted by the State Government to raise the amount of revenue by indiscriminate issue of liquor-licences based on population and demand of consumption in a particular area is pernicious to the public health in general and thus, violates Article 21 of the Constitution of India."

9. It is true that Article 47 of the Constitution aims at total prohibition of consumption of intoxicating drinks except for medicinal purposes and it is expected that the legislature, at the time of making any law relating to sale and consumption of intoxicating drinks, will bear in mind the abovementioned principles mentioned in Article 47. However, it is rightly contended by Mr. Kar, the learned Advocate appearing on behalf of the State that the Article 37 of the Constitution has specifically declared that the provisions contained in Part-IV of the Constitution (Articles 36-51) shall not be enforceable by any Court. Therefore, a writ-application, just complaining violation of Article 47, is not maintainable for striking down a law. We, thus, find no force in the first branch of submission of Mr. Bandopadhyay, the learned senior advocate appearing on behalf of the writ-petitioner that simply because the Rules of 2003 negate the spirit of Article 47, those should be quashed as unconstitutional. In this connection, reference may be made to the Five-Judges-Bench decision of the Supreme Court in the case of Deep Chand v. State of U.P. where the Apex Court specifically held that the legislative power of a State is merely guided by the Directive Principles of State Policy and the directions, even if disobeyed by the State, cannot affect the legislative power of the State, as they are only directory in scope and operation. Even in a subsequent decision in the case of B. Krishna Bhatt v. Union of India , a Public Interest Litigation under Article 32 of the Constitution of India was filed praying for a direction upon the Union of India and the State Governments to enforce the policy of

total prohibition as enjoined by Article 47. In that context, the Apex Court held that, as Article 47 is part of Directive Principles of State policy, in view of Article 37, such nature of things could not be enforced in a court of law. According to the Apex Court, to make the State accept a particular policy, howsoever desirable and necessary the policy might be, is not the function of the Article 32.

10. Even in the recent case of **Lily Thomas and Ors. v. Union of India and Ors.** [AIR 2000 SC 1650], the Hon'ble Supreme Court has reiterated that it has no power to give direction for enforcement of the Directive Principles of State Policy and those do not create any judiciable right and are, thus, not enforceable by the courts.

11. The next question is whether the Rules of 2003 violate any of the legal or fundamental rights of a citizen of this State so as to maintain a writ-application under Article 226 of the Constitution of India.

13. By taking aid of Article 21, a citizen or even a non-citizen has the right to approach a Court complaining that for the action or inaction on the part of a State within the meaning of Article 12, he is facing health-hazards. Similarly, it is now a settled law that the right to life enshrined in Article 21 means something more than mere existence or animal existence. Therefore, a person has the right to complain against the action or inaction of a government alleging that such act or failure has made his life miserable to such extent that it amounts to live beneath dignity.

15. By merely granting more licences, the State is not compelling a teetotaller or a moderate consumer either to be addicted to a vicious habit or to excess, if they stick to their own convention and are not tempted. It is not a case where a person is forced to drink impure quality of water or inhale polluted air for the imprudent decision or

failure of a State nor is it a case where a substance scientifically found to be harmful to health is permitted to be used as one of the components of a drug sold in a trade name endangering the life of ignorant people; on the other hand, we find substance in the contention of the State that to save the citizens from the peril of illicit liquor, which at times proves to be fatal, the Government has decided to grant more licences keeping in view the actual demand of liquor and the number of the existing licences in a particular area. According to the State, for want of adequate number of licensed retail shops, the peoples are forced to purchase illicit liquor at the risk of their life and in the process, the State suffers huge amount of loss of the revenue.

17. The law imposes a total ban on the sale of liquor to a minor and therefore, the adequate protection is there to put a stop to the minors from the trap of inducement. Liquor is a substance whose ill effects are well known. A writ-petitioner, in our view, cannot approach a Court complaining that the policy taken by the State is alluring him to a ruinous habit with a prayer that for that reason alone, the policy of the Government should be declared illegal being violative of Article 21 for protecting the citizens from the attraction to the evil lifestyle. Use of tobacco is equally, if not, more harmful and the State sponsored lottery is nothing but a sort of gambling as held by the Apex Court (B.R. Enterprises v. State of U.P.); nevertheless, a writcourt cannot pass direction upon the State to stop the cultivation or sale of tobacco or running of such lottery being violative of Article 21. Position, however, would have been different if the State compelled a citizen to consume any injurious elements or to undergo a disastrous practice.

19. We find that the State in clear terms has disclosed the reason for taking new policy. According to the State, the new Rules have been framed based on the study of the demand of the liquor throughout the State after taking into consideration the number of existing licensed shop, the population and the demand in a particular area. It is asserted that in view of paucity of the licensed shop, the consumers are compelled to depend upon the illicit liquor and consequently, the business of illicit liquor has flourished by leaps and bounds resulting in not only serious risk of the life of the public in general but at the same time, there is huge loss of revenue. From the Annexure R-3 to the affidavit-in-opposition filed by the State, we find substance in its contention that there is reasonable basis for increase of licensed shop and therefore, we are unable to hold that the policy of the State behind the enactment of the new Rules is unreasonable. Mr. Bandopadhyay could not place any of the provisions of the Bengal Excise Act, which is inconsistent with the Rules of 2003 nor could he produce any other law for the time being in force, which is in conflict with the Rules impugned.

This factual distinction apart, we have to keep in mind that the right to trade in liquor is only a privilege farmed out by the State. Article 47 of the Constitution of India clearly casts a duty on the State at least to reduce the consumption of liquor in the State gradually leading to prohibition itself. It appears to be right to point out that the time has come for the States and the Union Government to seriously think of taking steps to achieve the goal set by Article 47 of the Constitution of India. It is a notorious fact, of which we can take judicial notice, that more and more of the younger generation in this country is getting addicted to liquor. It has not only become a fashion to consume it but it has also become an obsession with very many. Surely, we do not need an indolent nation. Why the State in the face

of Article 47 of the Constitution of India should encourage, that too practically unrestrictedly, the trade in liquor is something that it is difficult to appreciate. The only excuse for the State for not following the mandate of Article 47 of the Constitution is that huge revenue is generated by this trade and such revenue is being used for meeting the financial needs of the State. What is more relevant here is to notice that the monopoly in the trade is with the State and it is only a privilege that a licensee has in the matter of manufacturing and vending liquor.

22. The aforesaid observations of the Supreme Court cannot be, in our opinion, construed to be a direction upon the State nor can those observations be cited as a precedent for the purpose of declaring the Rules of 2003 as ultra vires Article 47 in view of the earlier decisions of the Supreme Court referred to above by us while dealing with the first branch of arguments of the writ-petitioner. By making those observations, the Supreme Court merely reminded the State of the duties mentioned in Article 47.

23. In the case of **State of Maharashtra v. Manubhai Pragaji Vasi and Anr. [1996 AIR 1: 1995 SCC (5) 730]**, a Bench consisting of two Judges of Hon'ble Supreme court at paragraph 13 made the following observations:

> "A plea was taken in the High Court that the petitioner has no right to seek a writ of mandamus under Article 226 of the Constitution basing his relief on a directive principle contained in the Constitution. The High Court, rightly in our opinion, repelled this plea relying on the decision of this Court in State of *Himachal Pradesh v. Umed Ram Sharma*. The High Court referred to the dictum laid down in the aforesaid decision to the effect (a) the Court can in a fit case direct the executive to carry out the directive principles of the Constitution and (b) when there is inaction or slow action by the executive

> the judiciary must intervene. We have no doubt that the above conclusion of the Court below is also justified."

24. In making the aforesaid observations, the Supreme Court solely relied upon its earlier decision in the case of ***Umed Ram Sharma*** (supra). However, after going through the decision in the case of Umed Ram Sharma (supra), we find that the in the said case, the Public Interest Litigation was filed complaining violation of Articles 19(1)(d) and 21 of the Constitution and in such a case, the Hon'ble Supreme Court made the following remarks:

> "It appears to us that in the facts of this case, the controversy lies within a short compass. It is well-settled that the persons who have applied to the High Court by the letter are persons affected by the absence of usable road because they are poor Harijan residents of the area, their access by communication, indeed to life outside is obstructed and/or prevented by the absence of road. The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication."

26. In the case of **U.P. State Electricity Board v. Hari Shankar Jain and Ors.** reported in AIR 1979 SC 65, while considering the scope of

Article 37 of the Constitution of India, a Three-Judges-Bench in paragraph 4A made the following observations:

> "Before examining the rival contentions, we remind ourselves that the Constitution has expressed a deep concern for the welfare of workers and has provided in Article 42 that the State shall make provision for securing just and humane conditions of work and in Article 43 that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure etc. These are among the "Directive Principles of State Policy. The mandate of Article 37 of the Constitution is that while the directive Principles of State Policy shall not be enforceable by any Court, the principles 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'. Addressed to Courts, what the injunction means is that while Courts are not free to direct the making of legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy."

27. The aforesaid observations make it clear that this Court cannot direct the State to legislate law in tune with Article 47 nor can it invalidate a law on the ground that the same is in conflict with the said Article. The Courts should, according to the Supreme Court, while interpreting Statutes, bear in mind that their interpretation of Statute should not frustrate the goals set out in the Directive Principles of the Policy of the States. The above-mentioned decision, therefore, does not help the writ-petitioner in any way.

According to Section 30 of the Bengal Excise Act, the State Government may subject to such conditions and restrictions as may be prescribed, determine, from time to time, the number of licences which may be granted at new sites or in the vicinity thereof in any local area for the retail sale of spirit having due regard to public demand. Section 2(a) of the Bengal Excise Act defines the word prescribed as prescribed by the Rules made under the Act. The Rules of 2003 have been enacted by virtue of the powers conferred under Sections 85 and 86 of the Act and in Sub-rules (iii), (vii) and (viii) respectively, the terms existing sites, local area and new sites are defined. Therefore, the new definitions of existing site, local area and new site are in no way conflict with Section 30 of the Act which itself recommends that the grant should be subject to such conditions and restrictions as may be prescribed by the Rules framed under the Act."

(ii) In **Shree Krishna Pandey v. The State of Jharkhand** reported in 2014 (3) J.L.J.R. 84, a public interest litigation was filed by a lawyer seeking for a direction upon the respondents to implement the provisions of Article 47 read with Article 21 of the Constitution of India for bringing prohibition in the State of Jharkhand and/or for bringing about gradual prohibition of the consumption of liquor, which is injurious to health except for medical purposes.

The Brief facts therein were as follows:

(A) The petitioner is a social activist and is deeply concerned with the evils of alcoholism in the Society, which, according to the petitioner, is not only increasing number of crimes but is also injurious to health of the common people. The State has been encouraging and freely and liberally giving licence for having wine shops on highways, which is completely against the directives of Ministry of Road,

Transport and Highways, Government of India, whereby the State has been asked to review the licence and not to allow any liquor vans abreast the highways. Due to the liberal attitude of the State, tremendous increase of accidents on the highways was found and during the year 2011, total number of 24655 road accidents were reported due to intake of alcohol and drugs and similar alarming increase has been reported in the year 2012. In the State of Gujarat, there is complete prohibition on the consumption of liquor and then least number of road accidents is reported.

(B) It is the further case of the petitioner therein that drinking also gives rise to other crimes, like molestation and abuses and the petitioner also referred to an incident of molestation of girls by boys aged between 17 and 22 years reported in May, 2013. According to the petitioner, number of wine shops is increasing day by day and the information supplied from the year 2001-02 to the year 2011-12 indicates that the State Government has been increasing the target of collection of revenue from the sale of both country and foreign liquor, The target of revenue has been increased to Seventy Thousand lakhs for the year 2011-12 and in the year 2011, the State had also fixed the target of number of wine shops as 1720, According to the petitioner, in spite of constitutional provisions in Articles 47 and 21 of the Constitution of India, the State of Jharkhand has not taken steps to bring prohibition. The petitioner therein has, therefore, filed present Public Interest Litigation seeking for a direction upon the State of Jharkhand to strictly follow and implement the provisions of Articles 47 and 21 of the Constitution of India for bringing prohibition in the State.

It was submitted therein by the state, that in view of Article 47 of the Constitution of India, which is one of the directive principles of the State Policy, the State should achieve the constitutional goal of prohibition in the State. Drawing our attention to the various statistics

and newspaper clippings, the learned Senior Counsel submitted that the State should adopt a policy for prevention of trade and business of alcohol in public places, such as school, bus stand, religious places etc. but the State is aiming at revenue by fixing higher target of liquor sale and prays for issuance of direction to the State to implement the provisions of Article 47 read with Article 21 of the Constitution of India for bringing prohibition in the State of Jharkhand.

Referring to Article 47 of the Constitution of India, the Hon'ble Division Bench of the Jharkhand High Court observed thus:

Prohibition is incorporated in the Constitution of India in the directive principles of State policy, that is, Part IV. Article 47 says, "The State shall regard the raising of the level of nutrition and 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". Alcohol policy is under the legislative power of individual States. It shall be the duty of the State to follow the directive principles contained in Part IV of the Constitution both in the matter of administration as well as in making laws. The provisions in Part IV of the Constitution embodies the aims and objects of the State, i.e. a welfare State. But the provisions contained in Part IV of the Constitution shall not be enforceable by any court.

After considering the rival submissions, the relevant statutory provisions, and the decision in **Ugar Sugar Works Ltd. v. Delhi Administration & Ors.** [(2001) 3 SCC 635], at para 9 & 10, a Division Bench of the Jharkhand High Court held thus:

> “8. Demands for prohibition slowly gave way to temperance as the negative effects of prohibition Included wide-scale sale of spurious and cheap liquor which can cause health problems and deaths, the rise of organized crime and

> bootlegging due to the growth of a blackmarket for alcohol. Apart from this, the resultant loss of jobs to people working in breweries and vineyards was another stumbling block.
>
> 9. Counter affidavit refers to various regulatory measures taken by the State of Jharkhand in imposing restriction on the sale of liquor in public places and also steps taken to dissuade people from drinking liquor. The habit of drinking is purely personal and should be solved only at the personal level. What is required is to kill the desire to drink, which involves change in the habits of men. This is a difficult task, which could be created only by promoting awareness. Each State is empowered to formulate its opinion regarding prohibition policy, keeping in view the interest of its citizens. In the case of Ugar Sugar Works Ltd. vs. Delhi Administration & Ors. [(2001) 3 SCC 635], the Hon'ble Supreme Court held that "Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional." Since the implementation of prohibition is the policy of the State, the Court cannot issue any direction for implementation of prohibition. More so, when Article 37 enjoins that the directives contained in Part-IV of the Constitution of India shall not be enforceable by any court of law, no direction could be issued to the State respondents to implement Article 47 of the Constitution of India."
>
> In the result, this Public Interest Litigation is dismissed."

86. As the learned counsel for the petitioners made emphasis that the policy should be in furtherance of the directive principles of the State policy, enshrined under Articles 37 and 47 of the Constitution of India, we deem it appropriate to consider the above Articles, along with few decisions of the Hon'ble Supreme Court, on the enforceability of the directive principles of State Policy.

87. Part IV of the Constitution of India deals with Directive Principles of State Policy and Article 37 of the Constitution states about the application of the principles contained in this Part. Article 37 reads thus:

> "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."

88. Article 47 of the Constitution of India states about the duty of the State to raise the level of nutrition and the standard of living, and to improve public health. Article 47 reads thus:

> "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."

(i) In **B. Krishna Bhat v. Union of India (UOI)** [(1990) 3 SCC 65], the Hon'ble Supreme Court held thus:

> "4……..Article 47 of the Constitution, which is part of our Directive Principles of State Policy enjoins that 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. **Article 47 is in Part IV of the Constitution which contains Directive Principles of State Policy. Article 37 enjoins that the provisions of 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.** It has to be borne in mind that Article 32 of the Constitution gives the Supreme

> Court the power to enforce rights which are fundamental rights. Fundamental rights are justiciable, Directive Principles are not. Directive Principles are aimed at securing certain values or enforce certain attitudes in the law making and in the administration of law. **Directive Principles cannot in the very nature of things be enforced in a court of law.** See in this connection the observations of this Court in Akhil Bharatiya Soshit Karamchari Sangh v. Union of India (1981)ILLJ209SC . **Whether a law should be made embodying the principles of Directive Principles depends on the legislative will of the legislation. What the petitioner seeks to achieve by this application is to inject a sense of priority and urgency in that legislative will. Determining the choice of priorities and formulating perspective thereof, is a matter of policy.** Article 32 is not the machinery through which policy preferences or priorities are determined and this **Court is not the forum where the conflicting claims of policies or priorities should be debated.** See the observations of this Court in Rustom Cavasjee Cooper v. Union of India [1970] 3 SCR 530."

(ii) In **Khoday Distilleries Ltd. v. State of Karnataka** [(1995) SCC 1 574], while summarising the law on trading liquor vis-a-via, Article 47 of the Constitution, the Hon'ble Apex Court held thus:

> "(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.
>
> (b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., res extra commercium, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commerce being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

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

(e) **For the same reason, State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage** and also sell the licence to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens, who are qualified to carry on the trade or business.

(h) **The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.**

(i) **The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption.** When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor, which is also an aspect of reasonable restriction in the interest of general public. **The state cannot on that account be said to be carrying on an illegitimate business. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19(6).**"

(iii) In the case of **U.P. State Electricity Board v. Hari Shankar Jain and Ors.** reported in AIR 1979 SC 65, while considering the scope of Article 37 of the Constitution of India, a Three-Judges-Bench of the Hon'ble Apex Court, at para 4A, made the following observations:

"Before examining the rival contentions, we remind ourselves that the Constitution has expressed a deep concern for the welfare of workers and has provided in Article 42 that the State shall make provision for securing just and humane conditions of work and in Article 43 that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure etc. **These are among the "Directive Principles of State Policy. The mandate of Article 37 of the Constitution is that while the directive Principles of State Policy shall not be enforceable by any Court, the principles 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'. Addressed to Courts, what the injunction means is that while Courts are not free to direct the making of**

> **legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy**."

(iv) In the case of **State of Maharashtra v. Manubhai Pragaji Vasi and Anr.** [(1995) 5 SCC 730], a Bench consisting of two Judges of Hon'ble Apex Court, at para 13, observed thus:

> 13. A plea was taken in the High Court that the petitioner has no right to seek a writ of mandamus under Article 226 of the Constitution basing his relief on a directive principle contained in the Constitution. The High Court, rightly in our opinion, repelled this plea relying on the decision of this Court in *State of Himachal Pradesh v. Umed Ram Sharma*. The High Court referred to the dictum laid down in the aforesaid decision to the effect (a) the Court can in a fit case direct the executive to carry out the directive principles of the Constitution and (b) when there is inaction or slow action by the executive the judiciary must intervene. We have no doubt that the above conclusion of the Court below is also justified."

(v) In **Lily Thomas and Ors. v. Union of India and Ors.** reported in AIR 2000 SC 1650, the Hon'ble Supreme Court has reiterated that it has no power to give direction for enforcement of the Directive Principles of State Policy and those do not create any judiciable right and are, thus, not enforceable by the courts."

89. Let us have a cursory look at the statutory provisions in the Kerala Abkari Act, 1077, amended from time-to-time, the rules framed therein for disposal of abkari shops, and the notification issued.

90. Kerala Abkari Act, 1077 was passed by His Highness the Maharaja of Cochin on the 5th day of August, 1902, corresponding to the 31st

day of Karkadagom 1077. The preamble reads thus:

91. Whereas, it is expedient to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs in the State of Kerala.

92. Sections 5, 13, 13A, 15A & B, 29, 55, 66 of the Kerala Abkari Act, 1077 read as under:

> **"5. The Government may, from time to time, make rules.** - (1) Prescribing the powers and duties under this Act to be exercised and performed by Abkari Officers of the several classes; and
>
> (2) regulating the delegation by the Government or by the Commissioner of Excise of any powers conferred by this Act or exercised in respect of Abkari Revenue under any law for the time being in force."

> **"13. Possession of liquor or intoxicating drugs in excess of the quantity prescribed by the Government prohibited**. - No person not being a licensed manufacturer or vendor of liquor or intoxicating drugs shall have in his possession any quantity of liquor or intoxicating drugs in excess of such quantities as the Government may from time to time, prescribe by notification, either generally [or specially with regard to persons, places or time] in respect of any specified description or kind of liquor or intoxicating drug, unless under a licence granted by the [Commissioner] in that behalf :
>
> Provided that-
>
> (1) **No fee to be charged for license for possession for private consumption**. - No fee shall be charged for any such license granted for the possession of such liquor or intoxicating drugs for bona-fide private consumption or use.

(2) **Proviso as regards foreign liquor**. - Nothing in this section extends to any foreign liquor [other than denatured spirit] in the possession of any warehouse man as such [***]."

"**13A. Power to prohibit possession of liquor or drug**.- The Government may, by notification, prohibit the possession by any person or class or persons, either throughout the whole State or in any local area, of any liquor or intoxicating drug either absolutely or subject to such conditions as the Government may prescribe.

"**15A. Consumption or use of liquor by persons under the age of 21 years prohibited.** - No person under the age of 21 years shall consume or use any liquor.

15B. Sale of liquor to person under 21 years of age prohibited. - No person licensed to sell liquor and no person in the employee of such licensed person or acting with the express or implied permission of such licensed person on his behalf shall sell or deliver any liquor to any person under the age of twenty one years."

"**29. Power to make rules**.- (1) The Government may, by notification in the Gazette either prospectively or retrospectively, make rules for the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the Government may make rules:-

(a) regulating the mode in which toddy may be supplied to licensed vendors of the same, or to persons who distinct spirits from it or who use it in the manufacture of bread;

(b) for determining the number of licenses of each description to be granted in any local area;

(c) for regulating the number, size and description of stills, utensils, implements and apparatus to be used in any distillery, brewery, winery or other manufactory in which liquor is manufactured;

(d) prescribing the instruments to be used in the testing of liquor and the tables of corrections according to temperature to be used therewith;

(e) prescribing the weights to be used for the sale of intoxicating drugs and measures to be used for the sale of liquor;

(f) fixing for any local area the maximum and minimum prices above and below which any liquor or intoxicating drug shall not be sold;

(g) for the warehousing of liquor and intoxicating drugs and for the removal of the same from any warehouse in which they are deposited for deposit in any other warehouse or for local consumption or for export;

(h) for the inspection and supervision of stills, distilleries, [breweries, wineries, or other manufactories in which liquor is manufactured and warehouses];

(i) for the management of any public [distillery, brewery or winery] or public warehouse established under Section 14;

(j) for placing the storage, import, export, [possession, transit or transport] of liquor or intoxicating drugs under such supervision; and control as may be deemed necessary for the purposes of this Act;

(k) prohibiting the use of any article which the Government shall deem to be noxious or otherwise objectionable in the manufacture of liquor or of any intoxicating drug;

(l) (1) declaring the process by which spirit manufactured in or imported into [the State] shall be denatured;

(2) for causing such spirit to be denatured through the agency or under the supervision of Excise Officers;

(3) for ascertaining whether such spirit has been denatured;

(m) regulating the bottling of liquor for purposes of sale;

(n) declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act or under any rule made thereunder, or by what authorities such orders may be revised and prescribing the time and manner of presenting appeals and the procedure for dealing therewith;

(o) [***]

(p) regulating the power of Abkari Officers to summon witnesses from a distance under Section 44;

(q) for the disposal of articles confiscated and of the proceeds thereof.

[(r) for the forfeiture notwithstanding provisions to the contrary contained in the [Indian Contract Act,1872] or in any other law, of the whole or any portion of the kists deposited by persons who purchase the right to sell toddy, arrack, foreign liquors or ganja, in addition to damages recoverable by Government on account of the breach of conditions of sale laid down by the Government from time to time.]"

"**55. For illegal import, etc**. - Whoever in contravention of this Act or of any rule or order made under this Act [***]

(a) imports, exports, [transports, transits or possesses] liquor or any intoxicating drug; or

(b) Manufactures liquor or any intoxicating drug;

[(c) x x x]

(d) [taps or causes to be tapped] any toddy-producing tree, or

(e) [draws or causes to be drawn] toddy from any tree; or

(f) constructs or works any [distillery, brewery, winery or other manufactory in which liquor is manufactured]; or

(g) uses, keeps, or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor other than toddy or any intoxicating drug; or

[(h) bottles any liquor for purposes of sale; or]

[(i) [Sells or stores for sales liquor] or any intoxicating drug;] [shall be punished.-]

[(1) for any offence other than an offence falling clause (d) or clause (e), with imprisonment for a term which may extend to [ten years and with fine which shall not be less than rupees one lakh and]

(2) for an offence falling under clause (d) or clause (e), with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both.

Explanation - For the purpose of this section and section 64A, "intoxicating drug" means an intoxicating substance, other than a narcotic drug or psychotropic substance regulated by the Narcotic Drugs and Psychotropic Substance Act, 1985 (Central Act 61 of 1985), which the Government may by notification declare to be an intoxicating drug.]"

93. In exercise of the powers conferred by Sections 18A and 29 of Abkari Act, 1 of 1077 and of all other powers hereunto enabling and in supersession of the rules issued in G.O.(P) No.26/2001/TD dated 17.3.2001 and published as S.R.O No.280/2001 in Kerala Gazette, Extraordinary No.408 dated 17-3-2001, the Government of Kerala haves framed the Kerala Abkari Shops Disposal Rules, 2002.

94. As per Section 2(a) of the Act, “Abkari Shop” or “shop” means a Toddy Shop or a Foreign Liquor I Shop. Section 2(k) defines “Foreign Liquor 1 Shop” means a shop where the privilege of possession of Foreign Liquor for sale to the public in sealed bottles without the privilege of consumption on the premises is allowed.

95. Chapter II of Kerala Abkari Shops Disposal Rules, 2002 deals with Disposal of Shops. Rule 3(2) of Chapter II of the Rules reads thus:

> “(2) The privilege of vending foreign liquor for any period in any or all of the independent Foreign Liquor 1 shops as may be decided by the Government from time to time, within the Range or taluk as may be notified in the gazette, shall be given only to the Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd., and the Kerala State Co-operative Consumer Federation Ltd., for a fixed annual annual rental as may be fixed by the Commissioner of Excise with the approval of Government.”

96. As per Rule 3(3) of Chapter II of the Rules - disposal of shops, the Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd., shall have in addition to the privilege granted under sub-rule (2) above, the exclusive privilege to run one Foreign liquor I Shop at Thodupuzha in Idukki district and one each at the headquarters in other districts on payment of such rental as may be fixed by the Government.

97. As per Rule 3(4) of the Rules, the Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd., shall have the exclusive privilege to have FL.9 licence for the purpose of distribution of Foreign

Liquor to Foreign Liquor 1 licensees, Foreign Liquor 3 (Hotel & Restaurant) licensees, Foreign Liquor 4 (Seamen & marine Officer's Club) licensees, Foreign Liquor 4A (Club) licensees, foreign Liquor 6 (special) Licensees, Foreign liquor 11 (Beer/Wine Parlour) licensees and Foreign Liquor 12 (Beer Retail Sale Outlet) licenses in the State.

98. As per Rule 3(5) of the Rules, Beer/Wine Parlour license in Form 11 under the Foreign Liquor Rules may be granted to the Kerala Tourism Development Corporation Ltd., wherever applied for and to other eligible categories in such of the Tourist Centres as may be notified by the Government.

99. As per Rule 3(6) of the Rules, the Kerala Co-operative Consumer's Federation Ltd., shall have the exclusive privilege to obtain FL 12 licenses for the purpose of running beer retail sale outlets.

100. As per Rule 3(7) of the Rules, the Kerala State Beverages (Manufacturing & Marketing) Corporation Limited and the Kerala Tourism Development Corporation Ltd., shall have the exclusive privilege for running Foreign Liquor 13 Pub Beer Parlour in selected centres, to be specified by Government. However, this license shall also be issued to joint sector hotels involving the Kerala Tourism Development Corporation Limited.

101. As per Rule 3(9) of the Rules, the Government shall reserve the right to dispose of the privilege of vending toddy or foreign liquor in any

other manner as they deem fit if they consider that there is no proper applicant for any shop or shops or if any applicant after being granted with the privilege fails to comply with the requirements contained in these rules and the shop granted to him could not be disposed of.

102. Chapter VI of the Kerala Abkari Shops Disposal Rules, 2002 deals with General Conditions applicable to the licensees of toddy or Foreign Liquor I shops. Rule 7 of Chapter VI of the Rules, prescribes that the licensees of Toddy or Foreign Liquor 1 shops shall be subject to the following General Conditions, namely:

> "(1) No Licensee of any Toddy or Foreign Liquor 1 shop shall be permitted to sell or possess toddy or foreign liquor outside the local limit, specified in his license.
>
> (2) No Toddy or Foreign Liquor -1 shop notified in the Gazette under rule 4 shall be located outside the notified limits, but with the previous sanction of the Deputy commissioner of Excise, it may be removed from one place to another within such limits. However, no such shop shall be located in or removed to a place within an area declared as a project area. No toddy shops shall be located within 4009 metres and no Foreign Liquor-1 shops shall be located <u>within 200 metres from an Educational Institution, Temple, Church, Mosque, Burial ground and Scheduled Caste/Scheduled tribes Colonies</u>. In calculating distance the basis will be the shortest pathway/lane/street/road generally used by the public and the same shall be measured from gate to gate:
>
> Provided that if any Educational Institution, Temple, Church, Mosque, Burial ground or Scheduled Caste/ Scheduled Tribe Colonies come in to existence subsequent to the grant of license,

it shall not disentitle such shops for continuance.

Provided further that the restrictions regarding distance from an Educational Institution, Temple, Church, Mosque, Burial ground and Scheduled Caste/Scheduled Tribes Colonies for locating toddy ships shall not apply to those shops which remained unlicensed for want of objectionable site and which are for that reason sought to be located in the same place where they were licensed in previous years availing of the exemptions given to them by notifications/ Government orders in this regard.

Provided also that the toddy shops which could not be licenced at the same place where they were located previously and subsequently became objectionable due to the demolition of walls or construction of new pathways subsequent to the grant of license, shall be allowed to function in the same location without the restriction regarding distance.

Provided also that the toddy shops functioning in objectionable sites as per Government Order, the building of which requires repair will be allowed to be relocated to a new location provided such new location is within 50 metres radius of the previous one."

103. As per Rule 7(3) of Chapter VI of the Kerala Abkari Shops Disposal Rules, 2002, it shall be competent to the Commissioner of Excise to order the transfer of shops from one site or locality to another site or locality or to alter the specified limits of any shop even during the currency of the contract or to order any shops to be closed in the interest of public peace or morality or on grounds of expediency and in such an event of transfer, alteration or closure, the contractor shall have no claim for compensation.

104. As per Rule 7(9) of Chapter VI of Kerala Abkari Shops Disposal Rules, 2002, no liquor, in excess of the quantity notified by Government under Sections 10 and 13 of the Act, shall be allowed to be removed by any

person at any one time from any licensed premises, without a valid permit obtained from the officer-in-charge of the Excise Circle or Division within the Circle or Division respectively.

105. In exercise of the powers conferred by Sections 10, 24 and 29 of the Cochin Abkari Act,1 of 1077, as subsequently amended and as continued in force by the Travancore-Cochin State Administration and Application of laws Act VI of 1125, the Government are hereby pleased to prescribe in supersession of Government Notification No.155 dated 2nd June, 1949 (20th Edavam 1124) as subsequently amended the Foreign Liquor Rules, for the issue of licenses for the possession, use or sale of foreign liquor.

106. Rules 11 & 11A of the Foreign Liquor Rules read thus:

> "**11. Transport**. - No quantity of foreign liquor in excess of quantity notified by the Government under Sections 10 and 13 of the Act shall be transported from one place to another within the State unless the same is covered by transport permit issued by the Excise Inspector in charge of the Range of origin. A copy of such permit shall be forwarded by the Excise Inspector concerned to the Excise Inspector in charge of the Range which the consignment is destined. The Excise Inspector at the destination shall verify the consignment on arrival and see that the quantity is duly credited in the accounts in case the transport is by a licensee.
>
> Provided that rum provisioned and moved for consumption by Defence Service Personnel may, during the

period of emergency due to war be transported without obtaining permits from the Excise Authorities. But the same shall be covered by a written permit (authorisation) as laid down in the second proviso to Rule 9.

Provided further that for the convenience of Foreign Passport Holders each person can possess 3.5 litres of beer and wine and keep the same in the lodging houses or hotels where they stay for personal consumption.

Provided also that a person can Transport a quantity of foreign liquor not exceeding the quantity notified by the Government under Section 10 and 13 of the Act without a Transport permit issued by the authority concerned."

"**11A.** No quantity of the foreign liquor exceeding the quantity as notified by Government under section 10 and 13 shall be possessed or stored by any person within the State unless the same is covered by a permit issued by an officer to do so."

107. Letter dated 26.06.2020 sent by the Additional Chief Secretary to Government, Taxes (A) Department, Thiruvananthapuram to the Commissioner of Excise, Thiruvananthapuram is reproduced:

"**GOVERNMENT OF KERALA**

Taxes (A) Department
26/06/2020, Thiruvananthapuram

No.TAXES-A3/51/2020-TAXES

From
Additional Chief Secretary to Government

To
The Commissioner of Excise,
Thiruvananthapuram.

The Managing Director,
Kerala State Beverages Corporation,
Thiruvananthapuram

Sir,

Sub:- Taxes Department - Review of the sale of Foreign Liquor with help of app. developed by Faircode - Reg.

Ref: ----------

I inform you that, in view of the fact that the expected surge in the sale and rush at counters on reopening has been managed and sale stabilized, it is decided to allow purchase of liquor after 3 days instead of 4 days.

Yours Faithfully,
SATYAJEET RAJAN
ADDITIONAL CHIEF SECRETARY
For Additional Chief Secretary to Government"

108. Let us also consider the recent guidelines issued for sale of liquor from FL1, FL3 and FL11 licensees through virtual online Queue Management System of KSBC, regarding the number of persons permitted at the sales counter, time of sale, duration between the purchases etc., which is reproduced.

GUIDELINES ISSUED FOR SALE OF LIQUOR FROM FL1, FL3 AND FL11 LICENSEES THROUGH VIRTUAL ONLINE QUEUE MANAGEMENT SYSTEM OF KSBC

1. Instructions for compliance of Covid-19 Standards.

Government as per G.O(Rt.) No.293/2020/ID dated 18/4/2020 issued by Industries Department of Government of Kerala has prescribed standard operating procedure/conditions which are to be followed by Industrial units and other commercial activities in the State, while resuming operations, the following shal be strictly complied with:

i) xxxxxxxxxxxxxxx
ii) xxxxxxxxxx
xxxxxxxxxxxxxxxxx

vi) Not more than 5 customers at a time are to be allowed to be present at the sales counter.

Xxxxxxxxxx

II) Instructions for functioning of Liquor Sales Counters at FL1/FL3/FL11 licenses and operation of queue management system

Government as per GO(MS) No.41/2020/TD dated 18/5/2020 has issued directions regarding sale of liquor in the State through the FL1, FL3 and FL11 licensed premises during the lock down, till such time as may be prescribed by Government. In the said order, the following are prescribed:

- xxxxxxxxxxxxxxxxx
- Sale of liquor shall be made by FL1/FL3/FL11 licensees between 9.00 AM to 5 PM only.

Accordingly, the following instructions are hereby issued for compliance by all FL1/FL3/FL11 licensees participating in the Virtual Queue Management system for sale of liquor in the State during till such time as prescribed by the Government:

1. xx xxx xxxx
2. xx xxx xxxxx
3. xx xxx xxxxx

xxxxxxxx

5. Liquor shall be sold by the FL1/FL3/FL11 licensees only between 9.00AM and 5 PM.

6. Once the customer purchases liquor, he will not be eligible for further purchase of liquor through VQM system for the next 4 days, ie, he will be eligible for purchase of liquor only on the 5th day.

7. In no case, more than 5 persons shall stand before the counter for purchase of liquor. For this, the participating licensees shall make necessary arrangement for deployment of security guards to manage the same.

Xxxx xxxxx xxxxxxxx

The above guidelines are to be strictly adhered to by all the participating licensees without fail.

Sd/-
G.SPARJAN KUAMR IPS
MANAGING DIRECTOR”

109. As per Section 5 of Act 1 of 1077, the Government may, from time to time, make rules, viz., (1) prescribing the powers and duties under this Act to be exercised and performed by Abkari Officers of the several classes; and (2) regulating the delegation by the Government or by the Commissioner of Excise of any powers conferred by this Act or exercised in respect of Abkari Revenue under any law for the time being in force.

110. As per Section 13 of Kerala Abkari Act, 1077, no person not being a licensed manufacturer or vendor of liquor or intoxicating drugs shall have in his possession any quantity of liquor or intoxicating drugs in excess of such quantities as the Government may from time to time, prescribe by notification.

111. As per Section 15A of the Act, which deals with consumption or use of liquor by persons under the age of 21 years prohibited, no person under the age of 21 years shall consume or use any liquor.

112. Section 29 of the Kerala Abkari Act, 1077, confers power on the Government to make rules. It states that the Government may, by notification in the Gazette, either prospectively or retrospectively, make rules for the purposes of this Act.

113. As per Section 29(2)(b) of the Abkari Act, the Government may make the rules for determining the number of licenses of each description to be granted in any local area. Statute enables the Government to determine

the number of licenses to each description to be granted in any local area, and whereas in the case on hand, the sole licensee is Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd.

114. As per Section 29(2)(f) of the Abkari Act, the Government may make rules fixing for any local area the maximum and minimum prices above and below which any liquor or intoxicating drug shall not be sold.

115. In terms of Section 55(a) of the Kerala Abkari Act, 1077, whoever, in contravention of this Act or of any rule or order made under this Act, imports, exports, transports, transits or possesses liquor or any intoxicating drug, is an offence under this Act.

116. Chapter II of the Kerala Abkari Shops Disposal Rules, 2002, extracted above, deals with the disposal of licenses to liquor shops, bars, parlours etc. Rule 3(2) of the Rules, empowers the Government to decide the privilege of vending liquor for any period in any or all of the independent Foreign liquor shops, as may be decided by the Government from time-to-time, meaning thereby, the Government is empowered to decide the number of shops also.

117. While Rule 3(3) of the Kerala Abkari Shops Disposal Rules, 2002 speaks about one Foreign liquor 1 Shop at Thodupuzha in Idukki district and one each at the headquarters in other districts on payment of such rental as may be fixed by the Government, there is no restriction in the number of

shops in Rule 3(2) of the Rules. As per Rule 3(4) of the Rules, the Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd., shall have the exclusive privilege to distribute foreign liquor to FL-1, FL-3 (Hotel and Restaurants), FL-4 (Seamen and Marine Officer's Club), FL-4A (Clubs), FL-6 (Special), FL-11 (Beer/Wine Parlour) and FL-12 (Beer Retail Sale Outlet) licensees in the State. Rule does not restrict the number of licensees in the above categories. In terms of Rule 3(5) of the Rules, Beer/Wine Parlour licence in Form II under the Foreign Liquor Rules, may be granted to Kerala Tourism Development Corporation Ltd., wherever applied for and to other eligible categories, in such of the tourist centres, as may be notified by the Government.

118. Reading of the statutory provisions, Section 29(2) of the Kerala Abkari Act and the Rules referred to above, make it clear that there is no legal embargo on the Government to regulate the trade in liquor and grant licenses in the above categories. On the other hand, rules indicate that it is always open to the Government to regulate the trade in any area and also determine the number, except as specified in Rule 3(3) of the Rules.

119. It is trite law that an administrative decision can be tested on illegality, irrationality, and procedural impropriety. At more than one places, petitioners have contended that decision of the Government, in opening more liquor shops/bars/parlours etc., is irrational. What is irrational, is explained in

Associated Provincial Picture Houses Ltd. v. Wednesbury Corp. [(1948) 1 KB 223]. Though the reported decision has been quoted in several decisions, at the risk of repetition, relevant portions are reproduced:

> "Facts in Nutshell are :-
>
> The plaintiff company, the owners and licensees of the Gaumont Cinema, Wednesbury, Staffordshire, were granted by the defendants who were the licensing authority for that borough under the Cinematograph Act, 1909, a licence to give performances on Sunday under s. 1, sub-s. 1, of the Sunday Entertainments Act, 1932 (1); but the licence was granted subject to a condition that " no children under the age of fifteen years shall be admitted to any entertainment whether accompanied by an adult or not.' In these circumstances the plaintiffs brought an action for a declaration that the condition was ultra vires and unreasonable.
>
> Henn Collins J. dismissed the action, following Harman v. Buit (1944) K.B. 491 and holding that the decision in Theatre de Luxe (Halifax), Ld. v. Gledhill (1915) 2 K.B. 49 was not in pari materia. The plaintiffs appealed.
>
> Relevant Portions observed by Lord Greene M.R. Somervell L.J are as under:-
>
> - The courts must always, I think, remember this first, we are dealing with not a judicial act, but an executive act;
> - What, then, is the power of the courts? They can only interfere with an act of executive authority if it be shown that the authority has contravened the law. It is for those who assert that the local authority has contravened the law to establish that proposition.
> - When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the

courts in a strictly limited class of case. As I have said, it must always be remembered that the court is not a court of appeal. When discretion of this kind is granted the law recognizes certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law. What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject- matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.

- There have been in the cases expressions used relating to the sort of things that authorities must not do, not merely in cases under the Cinematograph Act but, generally speaking, uncer other cases where the powers of local authorities came to be; considered. I am not sure myself whether the permissible grounds of attack cannot be defined under a single head. It has been perhaps a little bit confusing to find a series of grounds set out, Bad faith, dishonesty—those of course, stand by themselves unreasonableness, attention given to extraneous circumstances, disregard of public policy and things like that have all been referred to, according to the facts of individual cases, a being matters which are relevant to the question. If they cannot all be confined under one head, they at any rate, I think, overlap to a very great extent. For instance, we have heard in this case a great deal about the meaning of the word ‘ unreasonable.”

- It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word “unreasonable” in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude

from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting " unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short v. Poole Corporation ([19261 Ch. 66, 90, 91.) gave the example of the red- haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.

- In the present case, it is said by Mr. Gallop that the authority acted unreasonably in imposing this condition. It appears to me quite clear that the matter dealt with by this condition was a matter which a reasonable authority would be justified in considering when they were making up their mind what condition should be attached to the grant of this licence. Nobody, at this time of day, could say that the well-being and the physical and moral health of children is not a matter which a local authority, in exercising their powers, can properly have in mind when those questions are germane to what they have to consider. Here Mr. Gallop did not, I think, suggest that the council were directing their mind toa purely extraneous and irrelevant matter, but he based his argument on the word " unreasonable," which he treated as an independent ground for attacking the decision of the authority ; but once it is conceded, as it must be conceded in this case, that the particular subject-matter dealt with by this condition was one which it was competent for the authority to consider, there, in my opinion, is an end of the case. Once that is granted, Mr. Gallop is bound to say that the decision of the authority is wrong because it is unreasonable, and in saying that he is really saying that the ultimate arbiter of what is and is not reasonable is the court and not the local authority. It is just there, it seems to me, that the argument breaks down. It is clear that the local authority are entrusted by Parliament with the decision on a matter which the knowledge and experience of that authority can best be trusted to deal with. The subject-matter with which the condition deals is one relevant for its consideration. They have considered it and come toa decision upon it. It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that

> kind would require something over-whelming, and, in this case, the facts do not come anywhere near anything of that kind. I think Mr. Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether. If it is what the court considers unreasonable, the court may very well have different views to that of a loca) authority on matters of high public policy of this kind. Some courts might think that no children ought to be admitted on Sundays at all, some courts might think the reverse, and all over the country I have no doubt on a thing of that sort honest and sincere people hold different views. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another, It is the local authority that are set in that position and, provided they act, as they have acted, within the four corners of their jurisdiction, this court, in my opinion, cannot interfere."

120. When can a court declare a decision of an authority as irrational? Points culled out from ***Wednesbury Corp.'s*** case (cited supra) are worth consideration and are extracted hereunder:

1. Courts can interfere with an act of authority, if it is shown that the authority has contravened the law.
2. It is for those who assert that the authority has contravened the law.
3. When an executive discretion is entrusted on a body or an authority, exercise of that discretion can be challenged in court.
4. When discretion is confered, law recognises certain principles upon which, the discretion be exercised.
5. Exercise of discretion should be real exercise.
6. If, the statute confers discretion on an authority then, it is for the Courts to find out as to whether, by express or by implication, the authority has exercised the discretion, which ought to have exercised, the discretion.
7. Conversely, if in the nature of the subject matter and the general interpretation of the Act makes it clear that certain matters would

not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.

8. To be precise, the Court is enjoined with a duty to consider as to whether, the authority has considered the relevant facts, in particular to the relief sought for.
9. Whether the discretion exercised by the authority is, in disregard of public policy?
10. Discretion by the authority, should not take into consideration irrelevant or extraneous matters.
11. Discretion exercised by the authority should be relevant to law, matter dealt with therein, and bound to consider.
12. If an authority conferred with the discretion, does not act or consider the above, then the courts can hold that the action of the authority is unreasonable.

121. When *Wednesbury's* principle, extracted above, speak of discretion and reasonableness, we deem it fit to consider a few decisions on discretion and how the same has to be exercised.

(i) In **Suman Gupta and Others v. State of Jammu and Kashmir and Others** reported in AIR 1983 SC 1235 : (1983) 4 SCC 339 : LNIND 1983 SC 257, the Hon'ble Supreme Court, while explaining as to how administrative discretion should be exercised, at paragraph No. 6, held as follows:

> "The exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason -relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting is valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India (1978) 1 SCC 248 has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and

> arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.
>
> In the above reported judgement, the Hon'ble Apex Court further held that,
>
> > "We do not doubt that in the realm of administrative power the element of discretion may properly find place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether."

(ii) Reiterating as to how the discretionary power has to be exercised, the Hon'ble Supreme Court in **Sant Raj and Another v. O.P. Singla and Others** [AIR 1984 SC 1595 : (1985) 2 SCC 349] held that, "whenever, it is said that something has to be done, within the discretion of the authority, then that something has to be done, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful."

(iii) In **Fasih Chaudhary v. Director General, Doordarshan and Others** [AIR 1989 SC 157 : (1989) 1 SCC 89], the Hon'ble Supreme Court held that, exercise of discretion should be legitimate, fair and without any aversion, malice or affection. Nothing should be done which may give the impression of favouritism or nepotism. While fair

play in action in such matters is an essential requirement, 'free play in the joints' is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere as the present one.

(iv) While considering, a litigation arising out of Bangalore Development Authority Act, 1976, the Hon'ble Supreme Court in **Bangalore Medical Trust v. B.S. Muddappa and Others** [AIR 1991 SCC 1902], held that, "discretion is an effective tool in administration. It provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authority to abuse the law or use it unfairly. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. In a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality,

lacks objective and purposive approach. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra virus and bad in law."

(v) In **Shiv Sagar Tiwari v. Union of India and Others** [AIR 1997 SC 1483 : (1997) 1 SCC 444], the Hon'ble Supreme Court held that the discretionary power has to be exercised to advance the performance, to sub-serve for which the power exists.

(vi) In **Rakesh Kumar v. Sunil Kumar** [AIR 1999 SC 935 : (1999) 2 SCC 489], the Hon'ble Supreme Court has held that administrative action/quasi-judicial function is the duty of the authority to give reasons/record reasons/and it should be a speaking order.

(vii) In **A.P. Aggarwal v. Govt. of NCT of Delhi** [AIR 2000 SC 205 : (2000) 1 SCC 600], the Hon'ble Supreme Court held as under:

> "The conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual."

(viii) In **State of NCT of Delhi v. Sanjeev,** [AIR 2005 SC 2080 : (2005) 5 SCC 181], the Hon'ble Supreme Court explaining the scope of judicial review of executive action, held as under:

> "15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside, if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (see State of U.P. v. Renusagar Power Co.). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor de Smith in his classical work Judicial Review of Administrative Action, 4th Edn. at pp. 285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarised as follows:
>
> The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because

> irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires."

(ix) In **Indian Railway Construction Co. Ltd. v. Ajay Kumar** [AIR 2003 SC 1843 : (2003) 4 SCC 579], after considering Wednesbury's case (cited Supra), at paragraphs No. 13 to 15, the Hon'ble Supreme Court explained the manner in which discretionary power has to be exercised, while discharging an administrative function. In the above judgment, the Supreme Court held that in matters relating to administrative functions, if a decision is tainted by any vulnerability as such illegality, irrationality and procedural impropriety, Courts should not hesitate to interfere, if the action falls within any of the categories stated supra.

> "14. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review.
>
> The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See CIT v. Mahindra and Mahindra Ltd.) The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous

and John Alder in their book Applications for Judicial Review, Law and Practice thus:

> "There is a general presumption against ousting the jurisdiction of the courts so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non- justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service this is doubtful. LORDS Diplock, Scarman and ROSKILL appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non- justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney-General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

(Also see *Padfield v. Minister of Agriculture, Fisheries and Food*)

15. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above: like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient."

(x) In **Union of India v. Kuldeep Singh** [AIR 2004 SC 827], the Hon'ble Supreme Court, while testing the correctness of the judgment rendered under the Narcotic Drugs and Psychotropic Substances Act, 1985, and discretion to be exercised by the High Court, explained the principles governing the mode of exercise of the discretionary power by the public functionaries as under:

> "20. When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law.
>
> 21. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons.
>
> 22. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the

> legislature concedes discretion it also imposes a heavy responsibility. "The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper and passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said Lord Camden, L.C.J., in Hindson and Kersey (1680) 8 HOW St Tr 57.
>
> 23. If a certain latitude or liberty is accorded by a statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion."

122. Even taking it for granted that the State has a duty to consider Article 47 of the Constitution of India, to regulate trading in liquor, in the sense that, consumption should be reduced, by giving weightage to medicinal purposes, vis-a-vis, the power conferred in the statute and the rules, as regards determination of number of shops, area etc, testing the action of the discretionary power of the Government, with reference to the decisions cited, as to how the discretion has to be exercised, we are of the considered view that the action of the State cannot be set to be contrary to statutory provisions.

123. In **Wharton's Law Lexicon** 13th edition, Policy is defined as:

> "Policy, the general principles by which a government is guided in its management of public affairs, or the legislature in its measures."

124. In **Words and Phrases** permanent edition, Volume 32 A, Policy is defined as:

> "A "policy" is a settled or definite course or method adopted and followed by a government, institution, body or individual. *Lockheed Aircraft Corp. v. Superior*

> *Court in and for Los Angeles County, Cal.App., 153 P.2d 966, 973*."
>
> "The term "policy", as applied to rule of law, refers to its probable effect, tendency or object, considered with reference to social or political well-being of state. *Dille v. St.Luke's Hospital, 196 S.W.2d 615, 620, 355 Mo. 436*."
>
> "The word "policy" is defined as a settled or definite course or method adopted and followed by a government, institution, body, or individual. *Lockheed Aircraft Corp. v. Superior Court of Los Angeles County, 171 P.2d 21, 24, 28 Cal.2d 481, 166 A.L.R. 701*."
>
> "Ordinarily, Legislature's distinct statement of its design in act declaring state's policy with reference thereto leaves no place for construction. "Policy" is settled or definite course or method adopted or followed by government. *Williamson v. City of High Point, 195 S.E. 90, 97, 213 N.C. 96*."

125. In **Advanced Law Lexicon** 4th edition, the word "Policy" is defined as under**:**

> "The word 'policy' means a settled or definite course/method adopted by a Government in the course of management of Public affairs. [*Gujarat State Petroleum Corpn. Ltd. v. Union of India, AIR 2008 (NOC) 2761 (Guj){B)*]"
>
> **"Policy decision.** 'Policy decision' means a conscious decision taken by Government for the management of public affairs. It has applicability in rem. [*Gujarat State Petroleum Corpn. Ltd. v. Union of India, AIR 2008 (NOC) 2761 (Guj)*]."

126. According to the Oxford dictionary, the word "Policy" means, countable, uncountable, a plan of action agreed or chosen by a political party, a business, etc.

- policy on something - the present government's policy on education
- The company has adopted a firm policy on shoplifting.
- The new managers are expected to implement new policies.
- policy of something - We have tried to pursue a policy of neutrality.
- policy of doing something - We have a policy of refusing to comment on such matters.
- policy towards somebody/something - This marked the beginning of a more open policy towards the rest of the world.
- US foreign/economic policy
- The document does not represent government policy.
- He implemented an aggressive monetary policy to stimulate the economy.
- They have had a significant change in policy on paternity leave.
- This would be a radical shift in policy.
- a policy adviser/decision
- a policy statement/objective/initiative/document

127. Social Policy is a policy of the Government or a political party, with specific social objectives on the subjects like education, health care, criminal justice, eradication of social inequalities, reduction in poverty, social security, so on so forth; in nutshell, as to what a welfare State has to do by evolving policies in consonance with the directive principles of State Policy, which are declared by the Hon'ble Supreme Court as fundamental to the governance.

128. Policies of the Government, framed under the directive principles of State Policy, can be a combination of both, Economic and Social Policy. At times, on scrutiny, it is impossible to separately address the policy, looking at only from the angle of Economic Policy, which may also address generation of resources, to achieve a Social Policy, welfare measures to be taken. Economic Policy also encapsulates Social Policy.

129. Certainly, there is a difference between a Social Policy and Economic Policy. Close scrutiny of the fundamental rights vis-a-vis, the directive principles of State policy, would also make it clear that the former is mandatory and enforceable, while the latter is held to be fundamental in the governance.

130. In a catena of decisions, the Hon'ble Supreme Court has held that trading in liquor is *res extra commercium*, which means that the State has the exclusive privilege in liquor, i.e., to carry on trade or commerce in liquor. In **Khoday Distilleries Ltd.** (cited supra), the Hon'ble Apex Court held that, the State can create a monopoly of, either in itself or in the agency created by it, for the manufacture, possession, sale, distribution of liquor as beverage, and sell licence to the citizens for the said purpose, by charging fees; the State can adopt any mode of selling the licenses for trade or business with a view to maximise its revenue so long as the method adopted by it is not discriminatory, the State can carry on trade or business in liquor, notwithstanding that it is an intoxicating drink, and Article 47 of the Constitution of India, even though enjoins it to prohibit consumption of liquor. Thus, from the above, we deem it fit to state that when the State can adopt any mode of selling licenses for trade or business, with a view to maximize its revenue, and in the case on hand, when the State has granted exclusive licence to Kerala State Beverages (Manufacturing & Marketing)

Corporation Ltd., there is no prohibition for the Government to open more liquor shops/bars/parlours etc., to raise the maximum revenue to the State, subject to the determination of shops by the Government.

131. Contention of the petitioners is that there is malice, in the action of the Government in opening more liquor shops/bars/parlours etc. Let us consider few decisions on malice in fact and law:-

(i) In **State of Bihar v. P.P. Sharma** [1992 Supp. (1) SCC 222], the Hon'ble Supreme Court summed up the law on the subject in the following words:

> "50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.
>
> 51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand."
>
> (Emphasis supplied)

(ii) In **State of AP and Ors. v. Goverdhanlal Pitti** [(2003) 4 SCC 739], where the difference between malice in fact and malice in law was summed up in the following words:

> “11. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others'. [See Words and Phrases legally defined in Third Edition, London Butterworths 1989].
>
> Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with a oblique or indirect object...”
>
> (Emphasis supplied)

(iii) In **Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors.** [AIR 2010 SC 3745], the Hon'ble Supreme Court observed thus:

> “25. The State is under obligation to act fairly without ill will or malice-- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.
>
> 26. Passing an order for an unauthorised purpose constitutes malice in law.”

(iv) In **S.R. Venkataraman v. Union of India (UOI) and Ors.** [AIR 1979 SC 49], the Hon'ble Supreme Court explained the concept of legal malice observing that malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause, Relevant paras are as follows:

> "5.....It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is, however, quite different. Viscount Haldane described it as follows in Shearer and Anr. v. Shield [1914] A.C. 808:
>
> > "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense -innocently."
>
> Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.
>
> 6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in Pilling v. Abergele Urban District Council [1950] 1 K.B. 636, where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter."

(v) In **Ravi Yashwant Bhoir v. District Collector, Raigad and Ors.** [AIR 2012 SC 1339], the Hon'ble Supreme Court has reiterated the view in **Kalabharati Advertising** case (cited supra).

(vi) In **Mutha Associates and Ors. v. State of Maharashtra and Ors.** [(2013) 14 SCC 304], the Hon'ble Apex Court observed thus:

> "39. The law regarding pleading and proof of **'malice in fact' or malafides as it is in common parlance described is in**deed settled by a long line of decisions of this Court. The decisions broadly recognise the requirement of allegations suggesting **"malice in fact" to be sp**ecific and supported by necessary particulars. Vague and general averments to the effect that the action under review was taken malafide would not therefore suffice. Equally well settled is the principle that the burden to establish that the action under challenge was indeed malafide rests heavily upon the person making the charge; which is taken as quasi criminal in nature and can lead to adverse consequence for the person who is proved to have acted malafide. **There is in fact a presumption that the public authority acted bonafide and in good faith. That presumption can no doubt be rebutted by the person making the change but only on cogent and satisfactory proof whether direct or circumstantial or on admitted facts that may support an inference that the action lacked bonafides and was for that reason vitiated. The third principle equally sanctified by judicial pronouncements is that the person against whom the charge is made must be impleaded as a party to the proceedings and given an opportunity to refute the charge against hi**m.
>
> 46.....Failure to abide by the principles of natural justice are consideration of material not disclose to a **party or non-application of mind, to the material available on record may vitiate the decision taken by the authority concerned and may even constitute malice in law but the action may still remain bonafide and in good faith. It is trite that every action taken by a public authority even found untenable cannot be dubbed as malafide simply because it has fallen short of the legal standards**

> **and requirements for an action may continue to be bonafide and in good faith no matter the public authority passing the order has committed mistakes or irregularities in procedures or even breached the minimal requirements of the principles of natural justice**."
>
> (emphasis supplied)

(vii) In **Ratnagiri Gas and Power Pvt. Ltd. v. RDS Projects Ltd. and Ors.** [(2013) 1 SCC 524], the Hon'ble Supreme Court held thus:

> "30.....we need hardly mention that in cases involving malice in law the administrative action is unsupportable on the touchstone of an acknowledged or acceptable principle and can be avoided even when the decision maker may have had no real or actual malice at work in his mind. The conceptual difference between the two has been succinctly stated in the following paragraph by Lord Haldane in Shearer v. Shields [(1914) A.C. 808] quoted with approval by this Court Additional District Magistrate, Jabalpur v. Shivkant Shukla [(1976) 2 SCC 521]:
>
> > "410. Between 'malice in fact' and 'malice in law' there is a broad distinction which is not peculiar to any system of jurisprudence. The person who inflicts a wrong or an injury upon any person in contravention of the law is not allowed to say that he did so with an innocent mind. He is taken to know the flaw and can only act within the law. He may, therefore, be guilty of 'malice in law', although., so far as the state of ins mind was concerned he acted ignorantly, and in that sense innocently. 'Malice in fact' is a different thing. It means an actual malicious intention on the part of the person who has done the wrongful act."
>
> 32. To the same effect is the recent decision of this Court in ***Ravi Yashwant Bhoir v. District Collector, Raigad and Ors***. [(2012) 2 SCC 407], wherein this Court observed:
>
> > "37. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice-in fact or in law. Where malice is attributed to the State, it can never be a case of

> personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: *Addl. Distt. Magistrate, Jabalpur v. Shivkant Shukla AIR 1976 SC 1207; Union of India thr. Govt. of Pondicherry and Anr. v. V. Ramakrishnan and Ors. 2005 8 SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors. AIR 2010 SC 3745*)."

132. Action of the State, in opening more liquor shops/bars/parlours etc, in the light of the statutory provisions and the rules framed under the Kerala Abkari Act, 1077, and the decision in **Khoday Distilleries Ltd.** case (cited supra), cannot be said to be with an oblique motive or indirect object. Exercise of the statutory powers, by the authorities concerned, cannot be said to be alien or for the purposes foreign to those for which, the law is intended, nor it can be termed as a *mala fide* act, without any just cause. Statute and the rules framed thereunder empower the Government to determine the number of liquor shops, areas etc., grant of licenses to the eligible categories, in tourism sector.

133. Several decisions have been quoted by the learned counsel for the petitioners. However, we deem it fit to consider, a few decisions of the Hon'ble Supreme Court and other High Courts, as to what ***precedent*** means and how observations of the Court should be considered. It is also worthwhile to consider as to what, *obiter dictum* and *ratio decidendi*, mean.

(i) A Full Bench of the Gujarat High Court in **State of Gujarat v. Gordhandas Keshavji Gandhi** reported in AIR 1962 Guj. 128, has considered the question as to binding nature of judicial precedents. K.T. Desai, CJ., in his judgment, observed thus:

> "Judicial precedents are divisible into two classes, those which are authoritative and those which are persuasive. An authoritative precedents is one which judges must follow whether they approve of it or not. It is binding upon them. A persuasive precedent is one which the Judges are under no obligation to follow, but which they will take into consideration and to which they will attach such weight as they consider proper. A persuasive precedent depends for its influence upon its own merits..."

(ii) In **State of Orissa v. Sudhansu Sekar Misra,** reported in AIR 1968 SC 647, the Hon'ble Supreme Court explained as to when a decision can be considered as a precedent, and held as follows:-

> "A decision is only an authority for what it actually decides. What is of the essence of a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic, this is what Earl of Halsbury LC said in Quinn v. Leathem, reported in 901 AC 495.
>
> "Now before discussing the case of Allen v. Flood, reported in 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to

> be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.
>
> It is not profitable task to extract a sentence here and there from a judgment and to build upon it ..... "

(iii) In **Union of India v. Dhanwanti Devi,** reported in (1996) 6 SCC 44, the Hon'ble Supreme Court has explained, what constitutes a precedent, and held as follows:-

> "..... It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi According to the well-settled theory of precedents, every decision contains three basic postulates--(i) findings of material facts, direct and inferential. A inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not

> every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi. ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.
>
> Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents."

(iv) In **State of Punjab v. Devans Modern Breweries Ltd.,** reported in (2004) 11 SCC 26, the Hon'ble Supreme Court explained the doctrine of precedents as thus:

> "334. The doctrine of precedent is a well-accepted principle. A ruling is generally considered to be binding on lower courts and courts having a smaller bench structure:
>
> > "A precedent influences future decisions. Every decision is pronounced on a specific set of past facts and from the decision on those facts a rule has to be extracted and projected into the future. No one can foresee the precise situation that will arise, so the rule has to be capable of applying to a range of broadly similar situations against a background

> of changing conditions. It has therefore to be in general terms and 'malleable'... No word has one proper meaning, nor can anyone seek to fix the meaning of words for others, so the interpretation of the rule remains flexible and open-ended. (See Dias Jurisprudence, 5th Edn., p. 136.)"

134. Let us consider what, "***obiter dicta***" means.

(i) In Precedent in English Law (4th Edition - page 41), Rupert Cross and J. W. Harris say thus:-

> "There are undoubtedly good grounds for the importance attached to the distinction between ratio decidendi and obiter dictum. In this context an obiter dictum means a statement by the way, and the probabilities are that such a statement has received less serious consideration than that devoted to a proposition of law put forward as a reason for the decision. It is not even every proposition of this nature that forms part of the ratio decidendi."

(ii) Distinction between an *obiter dictum* and *ratio decidendi* has been explained by the Hon'ble Supreme Court in **Director of Settlements, A.P. v. M.R.Apparao** [AIR 2002 SC 1598], as under:

> "8.....Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a

> decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight.....”
>
> [Emphasis supplied]

(iii) In **Arun Kumar Aggarwal v. State of Madhya Pradesh** [AIR 2011 SC 3056], the Hon'ble Supreme Court explained "obiter dicta", as follows:

> "21. .....The expression *obiter dicta* or *dicta* has been discussed in American Jurisprudence 2d, Vol. 20, at pg. 437 as under:
>
> > "74. Dicta Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decided all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum.
> >
> > "Dictum" or "obiter dictum: is distinguished from the "holding of the court in that the so- called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis, As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere

> dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court."

Further at pg. 525 and 526, the effect of dictum has been discussed:

> "190. Decision on legal point; effect of dictum ... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."

22.....

23. The Wharton's Law Lexicon (14th Ed. 1993) defines term "obiter dictum" as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, ; a remark by the way.

24. The Blacks Law Dictionary, (9th ed, 2009) defines term "obiter dictum' as a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). -- Often shortened to dictum or, less commonly, obiter. "Strictly speaking an "obiter dictum" is

a remark made or opinion expressed by a judge, in his decision upon a cause, `by the way' -- that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as `dicta,' or `obiter dicta,' these two terms being used interchangeably."

25. The Word and Phrases, Permanent Edition, Vol. 29 defines the expression "obiter dicta" or "dicta" thus:

> "Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; It is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; "Obiter dictum" is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; Discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is "obiter dictum".

26. The concept of "Dicta" has also been considered in Corpus Juris Secundum, Vol. 21, at pg. 309-12 as thus:

> "190. Dicta a. In General A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not

> responsive to any issue and not necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term "dictum" is generally used as an abbreviation of "obiter dictum" which means a remark or opinion uttered by the way.
>
> Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would producean inequitable result. It has also been held that a dictum is not the "law of the case," nor res judicata."

27. The concept of "Dicta" has been discussed in Halsbury's Laws of England, Fourth Edition (Reissue), Vol. 26, para. 574 as thus:

> "574. Dicta. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed "dicta". They have no binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as "obiter dicta", whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "judicial dicta". A third type of dictum may consist in a statement by a judge as to

> what has been done in other cases which have not been reported.
>
> ... Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

28. In ***Municipal Corporation of Delhi v. Gurnam Kaur***, [(1989) 1 SCC 101] and ***Divisional Controller, KSRTC v. Mahadeva Shetty***, [(2003) 7 SCC 197], the Hon'ble Apex Court observed that, "Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

29. In ***State of Haryana v. Ranbir***, [(2006) 5 SCC 167], this Court has discussed the concept of the *obiter dictum* thus:

> "A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See ADM, Jabalpur v. Shivakant Shukla. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. [See *Divisional Controller, KSRTC v. Mahadeva Shetty (supra)*]"

30. In ***Girnar Traders v. State of Maharashtra***, [(2007) 7 SCC 555], this Court has held:

> "Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the

> reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."
>
> 31. In view of above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment."

(iv) In **Odisha Power Generation Corporation Ltd. v. State of Odisha and Ors.** reported in AIR 2015 Ori.128, the High Court of Orissa held that:

> “34. At this juncture, it would be appropriate to note as to what is "obiter dicta". The expression "obiter" means "by the way"; "in passing"; "incidentally".
>
> Obiter dictum is the expression of opinion stated in the judgment by a judge which is unnecessary of a particular case. Obiter dicta is an observation which is either not necessary for the decision of the case or does not relate to the material facts in issue.”

(v) In **Laxmi Devi v. State of Bihar and Ors.** [(2015) 10 SCC 241], the Hon'ble Supreme Court observed thus:

> “16.....In G.W. Patons' Jurisprudence, ratio decidendi has been conceptualised in a novel manner, in that these words are "almost always used in contradistinction to obiter dictum. An obiter dictum, of course, is always something said by a Judge. It is frequently easier to show that something said in a judgment is obiter and has no binding authority. Clearly something said by a Judge about the law in his judgment, which is not part of the course of reasoning leading to the decision of some question or issue

> presented to him for resolution, has no binding authority however persuasive it may be, and it will be described as an obiter dictum." 'Precedents in English Law' by Rupert Cross and JW Harris states -"First, it is necessary to determine all the facts of the case as seen by the Judge; secondly, it is necessary to discover which of those facts were treated as material by the Judge." Black's Law Dictionary, in somewhat similar vein to the aforegoing, bisects this concept, firstly, as the principle or rule of law on which a Court's decision is founded and secondly, the rule of law on which a latter Court thinks that a previous Court founded its decision; a general rule without which a case must have been decided otherwise."

(vi) In **Shan Zahoor v. Vijayawada Municipal Corporation** [2004 (4) ALT 781], the High Court of Andhra Pradesh observed thus:

> "50. I am conscious of the limitations, in departing from a judgment rendered by another learned Single Judge, on the same set of facts. Concept of Stare Decisis is one of the hallmarks of Indian Jurisprudence, which in turn is inherited mostly from English Law. Adherence to the same ensures uniformity and consistency. At the same time, when it is noticed that the ratio decidendi laid down by superior Courts or Benches is not reflected in a precedent emerging from a Bench of the same strength, a delicate situation arises, namely whether to follow the precedent and ensure consistency in approach, without going beyond what is stated in it; or to follow-the principles enunciated by the superior Courts, on the matter, I am of the view that in such situations, howsoever advisable it may be, to ensure consistency or to follow the precedents in question, a Judge would be failing in his duty, if the benefit of a principle laid down by a superior Court is not extended to the litigant before it.
>
> 51. A judgment of a Court operates as a precedent only for what it decides, known as ratio decidendi and not for its general or casual observations, called obiter dicta. However, discerning or culling out the ratio decidendi of judgment is by no means a simple or easy task. Many a time, it would be difficult to state, with a semblance precision as to which portion of the judgment represents

the ratio decidendi and which, the obiter dicta. The angle from which a precedent is examined makes a substantial difference. In the process of answering the main issue or dealing with the core of the dispute, passing observations are bound to be made by the Court, here and there. Once the central issue involved in the case is identified, the view expressed by the Court on that issue deserves to be treated as the ratio decidendi. The observations in the process of reasoning, or disposal of inconsequential and subsidiary issues, fall into the category of obiter dicta. Where, the ultimate conclusions are summed up at the end of the precedent; the Court before, which it is cited, is relieved of the difficulty in this regard. It is beneficial to refer to the view of some jurists, in this context.

52. Sir John Salmond, in his treatise on jurisprudence, aptly explained the difficulties in identifying the ratio decidendi in a precedent. He wrote as under:

> "While it is fairly simple to describe what is meant by the term ratio decidendi, it is far less easy to explain how to determine the ratio of any particular case. Though we know that it is the rule the Judge acted on, we cannot always tell for certain, what that rule was. In some cases all we are presented with is an order or judgment unsupported by reasons "of any sort. In others we are furnished with lengthy judgments in which may be embedded several different propositions, all of which support the decision. Another difficulty is that any general rule of law must ex hypothesi relate to a whole class of facts similar to those involved in the case itself: but just what this class is will depend on how widely we abstract the facts in question."

53. Edgar Bodenheimer, in his book on jurisprudence, described the significance, and method of identification of ratio decidendi as under:

> "(A) case is not controlling as a precedent for the sole reason that similarities and parallels between the facts of the earlier and later cases can be discerned. The ratio decidendi must be discovered by relating the facts of the two cases to a principle of legal policy which reasonably

> covers both situations. In many instances, this principle of policy will not spring into existence as a finished creature the first time it is expressed by a Court. It will often have been stated by the Court in a tentative and groping fashion, and its true import and scope will not be capable of being ascertained until other Courts have had a chance to correct the inadequacies of the first formulation and to graft exceptions, qualifications, and caveats upon the principle. In this way the ratio decidendi of a case often develops its true and full meaning slowly and haltingly, and it may take a whole series of decisions involving variations of the situation presented in the first case until a full-blown rule of law, surrounded perhaps by a cluster of exceptions, replaces the tentatively and inadequately formulated generalization found in the initial decision. In short, a whole course of decisions will gradually mark out the outer limits of a legal principle left indeterminate by the first decision attempting to give form to it."

54. The difficulty in distinguishing ratio decidendi from obiter dicta is explained by C.K. Alien, in his celebrated work "Law in the Making", in the following terms:

> "One of the greatest difficulties in its conception is the distinction which is constantly drawn between ratio and dictum, the essential and the inessential. In the course of the argument and decision of a case, many incidental considerations arise which are (or should be) all part of the logical process, but which necessarily have different degrees of relevance to the central issue. Judicial opinions upon such matters, whether they be merely casual, or wholly gratuitous, or (as is far more usual) of what may be called collateral relevance, are known as obiter dicta, or simply dicta, and it is extremely difficult to establish any standard of their relative weight."

55. Even where a ratio decidendi is identified in a precedent, it is not as if it is to be imported in its entirety to the case on hand. An effort needs to be made to fit the ratio decidendi into the facts of the case under

adjudication. An amount of elasticity exists in this regard, which, in turn, would depend on the variation as to facts and circumstances. Dias, an acknowledged English Jurist compared the ratio in a precedent to a pellet of clay, and observed as under:

> "The ratio of a case may be likened to a pellet of clay, which a potter can stretch and shape within limits. If he wants to stretch it, he can; or he can press it back into a pellet. A ratio cannot be stretched indefinitely any more than clay, for there is a limit beyond which the generalization of the statement of specific facts cannot go."

56. This however, is a very delicate and difficult task. Neither the Judge can interpret the ratio as he likes nor can he blindly apply it unmindful of the variation of the facts and circumstances. If the ratio can be equated to a druggor medicine, the Judge can be compared to a physician. He is vested with the discretion, to decide as to whether it is the proper drug at all to be administered at all, and if so, to decide its dosage. The situation cannot be circumscribed by any hard and fast rules of principles.

57. Examined from this angle, the judgment in Himayatnagar Rate Payers Association (supra) has to be treated as authority for proposition that the liability of payment of tax is contingent upon the authenticity of the Assessment Book or its amendment and that it is only when the entire procedure set out in Sections 218 to 223 is complied with, that the assessment book assumes finality. This is evident from the paragraphs of the judgment extracted in the earlier part of this judgment. This constitutes the ratio decidendi. The stray observation that the non-publication of notification under Section 218through placards is not fatal to the process, that too in the context of compliance with two other modes of publication, cannot be treated as a declaration of law to the effect that the Sections 218, 219 and 220(1), need not be complied with in any manner whatsoever. The said observation is nothing, but an obiter dicta. Even if there existed any doubt in this regard, it stood clarified by a subsequent Division Bench in SBH Co-operative Bank Officers Welfare Association (supra). It was held therein that the Corporation is under obligation to follow the provisions of Sections 214 to

> 225, scrupulously. But for the mistaking of obiter for ratio, the judgment in CMSA No. 47 of 2003 and batch would certainly have been different."

(vii) In **Philip Jeyasingh v. The Jt. Regr. of Co-op. Societies** [1992 (2) MLJ 309], a Hon'ble Full Bench of the Madras High Court, held as follows:

> "49. The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the ratio decidendi which the judges who decided the case would themselves have chosen may be even different from the one which has been approved by subsequent judges. This is because Judges, while deciding a case will give their own reasons but may not distinguish their remarks in a right way between what they thought to be the ratio decidendi and what were their obiter dicta, things said in passing having no binding force, though of some persuasive power. It is said that "a judicial decision is the abstraction of the principle from the facts and arguments of the case". A subsequent judge may extend it to a broader principle of wider application or narrow it down for a narrower application."

135. Giving due consideration to the decisions extracted above, the observations made in **Xaviers Residency**'s case (cited supra), cannot be construed as a precedent. Reference to the decisions relating to Articles 37 and 47 of the Constitution of India, also make it clear that the *ratio decidendi* is that the directive principles of State Policy are not enforceable, but fundamental to the governance, which the State has to take note of.

136. Petitioners have sought for a writ of mandamus, compelling the respondents to regulate sale of liquor in the State of Kerala, so as to achieve the purpose of reducing the availability and consumption of liquor, as declared in its policy, and to encourage people, to develop healthy and

refined habits in drinking befitting of a civilized society, by adopting three ways of bringing down the sale, viz., (i) limiting the number of points of sale of liquor; (ii) limiting the time of sale of liquor; and (iii) limiting the quantity of liquor that may be sold to a person per day by adopting electronic means. Petitioners appear to have projected the case based on Articles 37 and 47 of the Constitution of India, menace and evil of liquor, and infringement of fundamental rights to women and children, and other family members.

137. Let us consider a few decisions as to when mandamus can be issued, as hereunder.

> (i) In **State of Kerala v. A. Lakshmi Kutty** reported in (1986) 4 SCC 632, the Hon'ble Supreme Court held that, a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.
>
> (ii) In **Comptroller and Auditor General of India v. K.S.Jegannathan**, reported in AIR 1987 SC 537, a Three-Judge Bench of the Hon'ble Apex Court referred to Halsbury's Laws of England 4th Edition, Vol. I, Paragraph 89, about the efficacy of mandamus, as under:

> "89. Nature of Mandamus.-- .... is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy, for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

(iii) In **Raisa Begum v. State of U.P.**, reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iv) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In **State of U.P. and Ors. v. Harish Chandra and** Ors., reported in (1996) 9 SCC 309, at paragraph 10, the Hon'ble Apex Court held as follows:

> “10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....”

(b) In **Union of India v. S.B. Vohra** reported in (2004) 2 SCC 150, the Hon'ble Apex Court considered the said issue and held that,- 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so."

(c) In **Oriental Bank of Commerce v. Sunder Lal Jain** reported in (2008) 2 SCC 280, at paragraphs 11 and 12, the Hon'ble Apex Court held as follows:-

"11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

> "Note 187.- Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.
>
> Note 192.- Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising

public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.- Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.--.....The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action."

12. These very principles have been adopted in our country. In **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh and others**, AIR 1977 SC 2149, after referring to the earlier decisions in *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer, AIR 1966 SC 334; Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College, AIR 1962 SC 1210 and Dr. Umakant Saran v. State of Bihar, AIR 1973 SC 964*, this Court observed as follows in paragraph 15 of the reports:

> "15. ..... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. .... In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

(v) When a Writ of Mandamus can be issued, has been summarised in *Corpus Juris Secundum*, as follows:

> "Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion

> reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective."
>
> *(emphasis supplied)*

138. In the light of the statutory provisions under the Abkari Act, 1 of 1077, the rules framed thereunder, and keeping in mind the *Wednesbury's* principles, we are of the view that the action of the respondents, in opening more liquor shops/bars/parlours etc., cannot be said to be characterised as outrageous or in total defiance of the statutory provisions.

139. Merely because, more number of shops / bars / parlours etc. are opened, it cannot be said that the fundamental rights of the women and children are affected. While considering the scope of interference by Courts in economic matters, public interest cannot be circumscribed only to the rights of women and children. Decision of the Government in opening more liquor shops, bars/parlours, cannot be said to be violative of Constitution of India or the statutory provisions. Decision does not suffer from the vice of irrationality.

140. The wisdom of policy underlying a Statute is a matter for the Government. If the Statute is reasonably designed to achieve the purposes of the Act and, in the case on hand, where Sections 10, 24 and 29 of the Cochin Abkari Act,1 of 1077 as amended from time-to-time, and the provisions of the Kerala Abkari Shops Disposal Rules, 2002, enable the Government to deal with disposal of licenses to liquor shops, bars, parlours etc., action of the Government in opening more liquor shops, bars etc., cannot be said to be unconstitutional or contrary to the statutory provisions.

141. Having considered the decisions of the Hon'ble Supreme Court and other High Courts, we summarise the same, as hereunder:

a) The State under its regulatory power conferred under Article 47 of the Constitution of India, has the power to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession.

b) Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc., and the legislature should be allowed, greater play in the case of legislation dealing with economic matters.

c) The courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions unless such policy framed could be faulted on the grounds of malafide, unreasonableness, arbitrariness, unfairness, etc. If the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy.

d) The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

e) It is to be presumed that before a policy is formulated by a State Government, all relevant aspects and the prevailing fact situation, attending circumstances and the public interest are taken into account. Unless a policy decision *ex facie* conflicts with a constitutional or statutory provision, or is apparently against public interest it cannot be struck down merely on the ground that the decision is not a prudent and wise one.

f) It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the Legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways.

g) The Court cannot examine the relative merits of different economic policies and cannot strike down the same merely on the ground that another policy would have been fairer and better.

h) It is neither within the domain of the Courts, nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved, nor are the Courts inclined to strike down a policy at the behest of a petitioners merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

i) In matters of trade and commerce or economic policy, the wisdom of the Government must be respected and courts cannot lightly interfere with the same unless such policy is contrary to the provisions of the Constitution or any law or such policy itself is wholly arbitrary.

j) Unless a policy decision is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is violative of any constitutional or statutory mandate, court's interference is not called for. Policy decision is in the domain of the executive authority of the State and the court should not embark on the adequacy of public policy and should not question the efficacy or otherwise of such policy so long it falls within the constitutional limitations and does not offend any provision of the statute.

k) Government have the power to frame and re-frame, change and re-change, adjust and readjust policy, the said action

cannot be declared illegal, arbitrary or ultra vires the provisions of the Constitution only on the ground that the earlier policy had been given up, changed or not adhered to. It also cannot be attacked on the plea that the earlier policy was better and suited to the prevailing situation.

l) Court does not sit as a court of appeal, but merely review the manner in which, a policy decision was taken. A fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness, but must be free from arbitrariness not affected by bias or actuated by mala fides.

142. Giving due consideration to the rival submissions, with reference to the statutory provisions, and the law declared by the Hon'ble Supreme Court, we are of the considered view that the petitioners have not made out a case for issuing any writ, in the nature of mandamus, on the prayers sought for.

In the result, writ petition is dismissed. No costs.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

krj

APPENDIX

PETITIONER'S EXHIBITS:-

P1:- COPY OF G.O(MS) NO. 22/2020/TAXATION DEPARTMENT DATED 27.02.2020 (WITH ENGLISH TRANSLATION).

P2:- COPY OF THE RELEVANT EXTRACT OF LDF MANIFESTO PUBLISHED BEFORE 2016 LEGISLATIVE ASSEMBLY ELECTION (WITH ENGLISH TRANSLATION).

RESPONDENTS' EXHIBITS:- 'NIL'

//TRUE COPY//

P.A. TO C.J.