

# LEGALFOXES LAW TIMES

## BAN ON ALCOHOL DURING COVID-19: A SOCIO LEGAL STUDY

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### 1. INTRODUCTION

COVID-19 has become a global health crisis which is also a socio-economic crisis worldwide. It is believed to be the greatest challenge after World War II. This virus emerged in Asia during the end of 2019 and eventually spread to every continent but Antarctica.<sup>3</sup> Due to this pandemic, people around the world are losing their jobs and income with no certainty as to when the situation will come back to normal. Few small countries which were majorly dependent on tourism have lost a lot of revenue as the hotels are empty due to travel restrictions. The International Labour Organisation has estimated that 195 million jobs could be lost during this period. Around 800 million people might not be able to fulfil their daily needs during this period as per the World Bank. Developing countries may lose at least US\$220 billion in income.<sup>4</sup> Each country is required to act efficiently to contain the spread of the virus.

India went under a nationwide lockdown since 25<sup>th</sup> March 2020. This was done by invoking the National Disaster Management Act which came into force after the 2004 Tsunami in India. The National Disaster Management Authority has issued the lockdown under sections 6 & 10 of the Act<sup>5</sup> which gives them the power to prepare a national plan for dealing with the disaster and they can ensure the enforcement of the plan through State disaster management authorities. This step of invoking the National Disaster Management Act will facilitate better coordination between centre and state and bring out a uniform plan to cope with this situation.

One of the measures taken during this lockdown period was to ban the sale of liquor. Guidelines were issued on 14<sup>th</sup> April by the Union Ministry of Home Affairs to selectively

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<sup>3</sup>COVID-19 pandemic: Humanity needs leadership and solidarity to defeat the coronavirus,<https://www.undp.org/content/undp/en/home/coronavirus.html>.

<sup>4</sup>Id.

<sup>5</sup>See section 6&10 of Disaster Management Act, 2005, <https://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act,%202005.pdf>.

ease the lockdown but the ban on the sale of liquor continued in the Nation. As per a report of the WHO (World Health Organisation), published in 2018, around 2.6 lakh people die in India due to excessive alcohol consumption.<sup>6</sup>

Alcohol is generally considered to have harmful effects on the health of an individual and it is estimated to cause 3 million deaths worldwide in a year.<sup>7</sup> The people were misinformed and had a belief that consuming high strength alcohol would help kill the COVID-19 virus, to which WHO had prepared a factsheet and warned people that consuming alcohol will not be beneficial to fight the virus rather it would take down the immunity. Moreover consuming ethanol which may be adulterated with methanol can cause grave health issues and in some cases can even lead to death. Alcohol is responsible for breaking the immune system of the individual and making them more susceptible to the COVID-19 virus.

With the implementation of the nationwide lockdown due to COVID-19, the shutters were pulled down for the liquor shops across the country. In light of the social distancing norms, the liquor shops were shut to avoid long queues and avoid human contact to contain the spread of this virus. But the impact on the government was worse than on the people who just wanted to get drunk and release their stress during this global pandemic. The government earns a huge sum of revenue from the sale of liquor and during the 40 days long lockdown, the government had lost a lot of revenue which is estimated to be around 27,178 crores.<sup>8</sup> After the 40 days long lockdown the government reframed the rules and opened up the government liquor shops, only to witness a huge number of people crowding outside the liquor shops completely defying the social distancing norms. During the lockdown, there was the illegal sale of booze by the alcohol suppliers in the village and suburban areas as they found it difficult to make such illegal supplies in the heart of the city, in presence of a good number of police personnel. People who had grave withdrawal symptoms, developed due to the non-consumption of liquor travelled to these areas to get their supplies at prices which were way above the actual prices. Booze which was sold for Rs. 90 for a quarter before this

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<sup>6</sup>Omkar Khandekar, [Is an alcohol ban necessary during lockdown?](https://www.livemint.com/mint-lounge/features/is-an-alcohol-ban-necessary-during-the-lockdown-11587726286324.html) (24<sup>th</sup> April 2020, 5:26 PM)

<sup>7</sup>[Alcohol does not protect against COVID-19; access should be restricted during lockdown](https://www.euro.who.int/en/health-topics/disease-prevention/alcohol-use/news/news/2020/04/alcohol-does-not-protect-against-covid-19-access-should-be-restricted-during-lockdown)(14<sup>th</sup> April 2020)

<sup>8</sup>IANS, [Booze ban during lockdown cost states Rs 24,000 crore in 36 days](https://www.onmanorama.com/news/nation/2020/04/29/liquor-ban-coronavirus-lockdown-cost-states.html), Onmanorama (April 29, 2020 09:02 PM),

ban was sold illegally for Rs. 200 during this lockdown period.<sup>9</sup> Within seven days of lockdown and liquor ban, Kerala witnessed 7 suicides due to depression as they were unable to buy alcohol, whereas the virus caused only one casualty in the state during the said period.<sup>10</sup>

There have been a lot of talks and discussions going around as to whether this ban was beneficial in this situation or not. In this article, researchers have tried to consolidate the impact of alcohol ban on the people and the states and also try to suggest some measures which could be beneficial for both in this context.

## 2. IMPACT OF THE ALCOHOL BAN

On 24<sup>th</sup> March our PM Narendra Modi announced nationwide lockdown to safeguard people against coronavirus. Thereafter guidelines were released banning liquor sales by Ministry of Health Affairs invoking National Disaster Management Act of 2005. The reason for the ban came from the reports of the World Health Organisation gathered from Economic Times. The WHO's report intimated that the consumption of alcohol reduces immunity. World Health Organisation's regional office in Europe on 14<sup>th</sup> April noted that the consumption of alcohol is linked with many communicable and non-communicable diseases and also mental disorders making a person more prone to COVID-19.<sup>11</sup> Generally, alcohol is harmful to health and the harmful effects on the personal life are also well known to increase the risk of violence, be it partner violence, and can lead to alcohol poisoning at times.

The harmful effects of alcohol consumption were detailed in an advisory issued by MHA titled "Minding our minds". The document read "The use of tobacco/alcohol/other drugs to cope with emotions or boredom can worsen physical and mental health, and reduce

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<sup>9</sup>K Shiva Kumar, Illegal booze agents make a killing, people line up for Neera in Mysuru amid COVID-19 lockdown, The New Indian Express (03rd April 2020 12:08 PM), <https://www.newindianexpress.com/states/karnataka/2020/apr/03/illegal-booze-agents-make-a-killing-people-line-up-for-neera-in-mysuru-amid-covid-19-lockdown-2125212.html>.

<sup>10</sup>Nidheesh M.K. , In God's own country, 1 died of Covid-19 but 7 commit suicide after alcohol ban, live mint (29 Mar 2020, 05:38 PM) , <https://www.livemint.com/news/india/in-god-s-own-country-1-died-of-covid-19-but-7-commit-suicide-after-alcohol-ban-11585483376504.html>.

<sup>11</sup> Shalini Ojha, Why government banned alcohol sale during the 40-day lockdown?, Newsbytes ( April 18, 2020, 5:05 PM), <https://www.newsbytesapp.com/timeline/india/60027/280524/why-indian-government-banned-liquor-sale-during-lockdown>.

immunity. People who already have a substance use problem may require professional help, especially when they feel low or are stressed,".<sup>12</sup>

Domestic abuse is another reason for such a decision. According to one official, the lockdown has seen the rise in domestic abuse and also alcohol consumption escalates it. The concern of government was that of serpentine queues with no social distancing norms if the wines shops are opened up. Therefore, it seemed appropriate to not allow alcohol shops to open up. This time is difficult for all of us from all over the country and we hear about the spread of such a deadly virus through newspapers, television, family, media and other sources. The decision of lockdown was taken to prevent the spread of corona and to protect ourselves and others. This implies staying home and not moving out except to buy necessities. However, states revenues have been hit dearly during the lockdown period due to this alcohol ban. Some states have started home delivery of the liquor and others asked for the shops to be open for limited hours. But the centre government junked all the requests of the state in this regard.

During the lockdown, alcohol consumption can increase mental health issues, domestic abuse and health vulnerability. Although alcohol is not the only cause of domestic abuse. However, The World Health Organisation says the use of alcohol can reduce self-control and make people less efficient to negotiate the issues in their relationships making alcohol one contributing factor.<sup>13</sup>

COVID-19 cannot be prevented from drinking alcohol, WHO reminded and also asked the government to take up measures to limit alcohol consumption.

A political analyst and a leader of the Swaraj India party also suggested a “ National Plan for gradual reduction of India’s dependence on alcohol”.<sup>14</sup> Bigger states like UP and Maharashtra have been affected by the ban and lost approximately 50-100 crore daily. But the lifting of the ban was not a solution and other ways to earn revenues could be looked upon. Also, it

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<sup>12</sup>Minding our minds during the COVID-19,<https://www.mohfw.gov.in/pdf/MindingourmindsduringCoronaeditedat.pdf>

<sup>13</sup>Roli Shrivastava & Kim Harrisberg, Covid-19 lockdown: Will India’s move to ease alcohol restrictions fuel domestic abuse?, Scroll.in (May 10, 2020 · 08:30 pm) , <https://scroll.in/article/961208/covid-19-lockdown-will-indias-move-to-ease-alcohol-restrictions-fuel-domestic-abuse>.

<sup>14</sup> Yogendra Yadav, Urban India’s opposition to alcohol prohibition shows its ostrich-like & elitist attitude, The Print (Dec 4 ,2019, 12:58 PM) , <https://theprint.in/opinion/urban-india-alcohol-prohibition-opposition-shows-ostrich-like-attitude/330096/>.

was made clear that liquor is not an essential commodity and only essential commodities could be sold during the lockdown.

Another reason for increased alcohol consumption is its affordability. According to one research it says, beer is economical in middle and lower-income countries as compared to high-income countries making it easily available. Alcohol is anyways not good for health and poses high health risks with mental sickness. Also consuming strong ethanol when it is adulterated with methanol, can result in severe health issues which include death.

Misinformation has created a myth amongst the people that alcohol consumption can kill COVID 19. It does not.<sup>15</sup> Consumption of alcohol is associated with several diseases and mental health disorders making a person more vulnerable to the virus. Moreover, alcohol affects the immune system and increase the risk of infecting with the virus. Hence people should reduce the consumption of alcohol normally and more particularly during the pandemic.

At this time of such pandemic non-availability of alcohol is important. Social distancing cannot be maintained after alcohol consumption as people become more comfortable and tend to lose their shyness. Also, alcohol weakens our immunity system and boosting up immunity is need of an hour.

The Government's intention behind this alcohol ban was indeed good. The government wanted to contain the spread of virus further through human contact as they would all flock together outside the liquor shops to buy alcohol spreading this virus as it is a highly contaminating virus which spreads through human contact. What the government was not prepared for was that many people would lose their lives due to serious withdrawal symptoms due to non-consumption of alcohol and the huge loss of revenue that the government earns through the liquor sale.

As per a report by All India Institute of Medical Sciences (AIIMS), published in 2019, around 160 million people drink liquor in India, amongst whom around 57 million are addicted to alcohol, which means one-third of the people who consume liquor needs medical assistance in alcohol-related problems.<sup>16</sup> People with withdrawal symptoms may experience

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<sup>15</sup>Supra note 5

<sup>16</sup>Shikha Sharma, COVID-19 | Why it was a bad idea to regulate sale of alcohol during lockdown, money control (May 10, 2020 10:24 AM), <https://www.moneycontrol.com/news/india/covid-19-why-liquor-beer-suicide-bad-idea-to-regulate-sale-of-alcohol-revenue-lockdown-5246851.html>.

anxiety, tremors and seizures and in few cases may even be life-taking. During the very first week of the lockdown, many people committed suicide as they could not cope with their urge to consume alcohol and went into depression and ended their lives. In Kerala there were reports of 7 suicides due to withdrawal symptoms; one suffered cardiac arrest for the same reason and one person was reported to have consumed aftershave to quench his thirst for liquor.<sup>17</sup>In Telangana, around 10 people committed suicide due to the withdrawal symptoms.

The Confederation of Indian Alcoholic Beverages Companies (CIABC) have come forward and pointed out that the liquor ban during the lockdown has resulted in the illicit sale of liquor and spurious liquor is also being sold in the market. This has caused serious health hazards as well and caused law and order problem also. The CIABC Director Vinod Giri said, “alcohol is one of the most important sources of revenue for state governments and by shutting down retail shops, states are depriving themselves of the tax revenues that are so vitally required in fighting the coronavirus pandemic.”<sup>18</sup>In Fatehpur district of Uttar Pradesh, 2 people aged 32 years lost their lives due to drinking of inauthentic liquor. In Karnataka, a man disturbed and depressed due to unavailability of alcohol committed suicide by hanging himself.<sup>19</sup> In Assam, due to consumption of Industrial chemical with water, two people lost their lives. The overworked healthcare personnel were flooded with another issue wherein families approached them to address the alcohol-related issues, thus eventually the state government was forced to revisit the guidelines and state like Kerala had propounded a ‘parcha’ system wherein alcohol could be sold to people with doctor’s prescription.

### 3. LEGAL PERSPECTIVE OF THE BAN

The question that arises here is whether the Central Government can impose a temporary ban on the sale of liquor in the states? Entry 8 of List 2<sup>20</sup> read with Art 246 of the Constitution<sup>21</sup> mentions that the State has exclusive power to make laws regarding the manufacture, distribution and sale of liquor. The Central Government cannot intervene in the exclusive

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<sup>17</sup>Alex Michael Binoy, Coronavirus lockdown: Does the ban on alcohol sale do more bad or good? (26<sup>th</sup> April 2020), <https://www.sakaltimes.com/opinion-nation/coronavirus-lockdown-does-ban-alcohol-sale-do-more-bad-or-good-49076>.

<sup>18</sup>Press Trust Of India, Allow liquor sale; illicit trade burden on exchequer: CIABC to 10 states, Economic Times (April 07, 2020, 16:33 IST) , <https://retail.economictimes.indiatimes.com/news/food-entertainment/grocery/allow-liquor-sale-illicit-trade-burden-on-exchequer-ciabc-to-10-states/75028189>.

<sup>19</sup>Supra note 5

<sup>20</sup>Constitution of India, See Schedule 7, List 2 Entry 8, [http://constitutionofindia.etal.in/schedule\\_7\\_2/](http://constitutionofindia.etal.in/schedule_7_2/)

<sup>21</sup>Constitution of India, Article 246, <https://indiankanon.org/doc/77052/>

domain of the state. Although the Central Government under List 3, Entry 29<sup>22</sup> has the power to deal with the epidemic and under Entry 97 in List 1<sup>23</sup> the Parliament has exclusivity in dealing with disasters. The Centre can put a temporary ban on sales if it is shown to be done to deal with the pandemic, but if other essential and non-essential articles are allowed to be delivered, will it be right to prevent the retailers from supplying liquor.

The temporary ban on liquor is notably an executive power exercised under the Disaster Management Act, 2005 but before passing such orders it is to be tested on the grounds of rationality and proportionality test. Even if the suppliers agree to comply with the orders, treating alcohol different from any other non-essential item is arbitrary. Selling, production and manufacture of liquor are in the exclusive jurisdiction of the state and the states shall be given the liberty to decide upon it, moreover, liquor being one of the main sources of revenue, states can improve their state's economy and be ready and steady in fighting the pandemic.

It is argued that the alcohol would aggravate the domestic violence cases during this lockdown but there are varied reasons for domestic violence and not just alcohol. Even after imposition of a temporary ban on liquor the domestic violence cases were at a 10 year high. Within March 25<sup>th</sup> to May 31<sup>st</sup>, 1,1477 domestic violence complaints were received.<sup>24</sup>

#### **4. THE WAY AHEAD**

Looking into the problem, our national agenda lacks liquor control policies and as far as liquor policy is concerned it is hard to formulate and imagine such a policy. Complete prohibition is not much effective as it affects not only the revenues of the state but also pave the way for the illegal sale of liquor. Although complete ban brings drinking problem down however it tends to encourage smuggling, liquor mafia and spurious liquor.

Complete prohibition has not proven to be a good decision and for the state, it is a double-edged sword meaning that the prohibition on alcohol protects people from the harmful effects but on the other hand it also means no revenues or money in the hand of the state. This implies that if a state ignores its duty to protect people from the effect of alcohol only then

<sup>22</sup>Constitution of India, See schedule 7, List 3 Entry 29, <https://www.mea.gov.in/Images/pdf1/S7.pdf>

<sup>23</sup> Constitution of India, See schedule 7, List 1 Entry 97, <https://www.mea.gov.in/Images/pdf1/S7.pdf>

<sup>24</sup>Vignesh Radhakrishnan, Domestic violence complaints at a 10-year high during COVID-19 lockdown (24<sup>th</sup> June, 2020 15:24 PM), <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>.

revenues can shoot up for them but the state must protect its citizens from the effects of alcohol consumption during the pandemic so the revenues of the states have to be compromised. This way the decision for the state is a double-edged sword and a balance between the two is required.

Given the situation created by the liquor ban in our country, Supreme Court said that to avoid the long queues outside the liquor shops and to follow the rules of social distancing, the states can consider online liquor delivery. Although the Supreme court did not pass any order in this regard but suggested to opt for online delivery as a measure to promote social distancing by all the states.<sup>25</sup> States like Punjab, West Bengal and Chattisgarh by far have permitted online delivery of alcohol. One suggestion came from the Karnataka Drunkard Association to provide alcohol to people through rationing.<sup>26</sup> One more aspect of online delivery can be seen where if permission for delivery is given during the lockdown then it will increase access to liquor and due to stress, isolation and lack of work, people will find it easy to drink anytime and there is a high possibility to harmful health effects which could be more dreadful than COVID 19. To avoid such complications, the Government can keep a check on the purchases made by people and a limit could be set to buy alcohol per individual.

Another measure which a state could take is to provide e-tokens for the sale of alcohol. E-token could be provided through any governmental platforms and only in this way people could purchase liquor during the lockdown period. States like Maharashtra has started the system of e-tokens to avoid crowds and follow social distancing.<sup>27</sup> Moreover, Chattisgarh and Delhi have also brought in the token system which has alcohol sale run by the state-owned corporation. As

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<sup>25</sup>FE Online, No stay on liquor sale, rules Supreme Court, suggests home delivery to maintain social distancing (May 08, 2020 1:50 PM), <https://www.financialexpress.com/india-news/liquor-sale-lockdown-coronavirus-supreme-court-petition-online-order-alcohol-home-delivery-social-distancing-mha-guidelines/1952249/#:~:text=The%20Supreme%20Court%20has%20refused,delivery%20to%20maintain%20social%20distancing.&text=Liquor%20home%20delivery%2C%20Online%20liquor.of%20liquor%20during%20the%20l ockdown.>

<sup>26</sup>Bangalore Mirror Bureau, 'Drunkards' association wants state to lift liquor ban, Bangalore Mirror (April 28, 2020, 06:00 IST) [https://bangaloremirror.indiatimes.com/bangalore/others/drunkards-association-wants-state-to-lift-liquor-ban/articleshow/75417644.cms.](https://bangaloremirror.indiatimes.com/bangalore/others/drunkards-association-wants-state-to-lift-liquor-ban/articleshow/75417644.cms)

<sup>27</sup>Maharashtra begins e-token system for liquor sale; mulls home delivery of alcohol, India Tv (May 12, 2020 18:19 IST), [https://www.indiatvnews.com/news/india/maharashtra-e-token-system-liquor-home-delivery-apply-online-e-token-app-alcohol-wine-shops-pune-nashik-616412.](https://www.indiatvnews.com/news/india/maharashtra-e-token-system-liquor-home-delivery-apply-online-e-token-app-alcohol-wine-shops-pune-nashik-616412)



suggested by some International organisation, liquor shops could be opened for some hours in a day. Take away system could be introduced whereby people can purchase liquor from home and can come to pick up their booze from the store. Moreover, time to pick up could be decided by the seller. Services of online delivery platforms like Zomato, dunzo and swiggy could be used to deliver alcohol at home. Given the circumstances, it looks like corona is going to stay for some time so we have to bring the home delivery system into alcohol retail sales.

Amongst all the things the government is required to reduce the dependency on liquor, stop promoting booze, and effective enforcement of existing rules and laws for the sale of liquor is required. Recommendations are made by WHO for a healthy lifestyle which includes boosting of immunity during this crisis and among various other recommendations, one is to avoid the intake of alcohol and to quit tobacco. People with withdrawal symptoms can seek counselling and can be allowed to have alcohol only with medical prescription. This way alcohol consumption could be restricted and other major health issues can be avoided.

Many changes have been brought by the lockdown which would have taken years to achieve otherwise. Videoconferencing is one example where courts had to implement looking into the present scenario and they have brought courts into our homes. Home delivery has become a part of our life now and we know that there is almost nothing that cannot be delivered to our homes. States should rethink about the online selling of liquor with some Dutch courage.

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