State of A. P. and others

Vs

McDowell and Co. and others etc.

Civil Appeal Nos. 4712-17 with 4718 of 1996

(B. P. Jeevan Reddy, S. C. Sen JJ)

21.03.1996

JUDGEMENT

B. P. JEEVAN REDDY, J.

1.Leave granted in Special Leave Petitions.

2. In response to wide-spread agitation by the women of Andhra Pradesh, the Government prohibited the sale and consumption of intoxicating liquors by an Ordinance issued on December 27, 1994. In February, 1995, the Legislature of Andhra Pradesh enacted the Andhra Pradesh Prohibition Act, 1995 (hereinafter referred to as 'the Act") replacing the Ordinance. It was reserved for and received the assent of the President of India. The long title and the preamble to the Act reads :

> "An Act to introduce Prohibition of the Sale and Consumption of intoxicating liquors in the State of Andhra Pradesh and for matters connected therewith or incidental thereto.
>
> WHEREAS Article 47 of the Constitution of India enjoins that the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks which are injurious to health;
>
> AND WHEREAS there is urgent need in public interest to bring about the prohibition of the sale and consumption of intoxicating liquors, except for medicinal, scientific, industrial and such like purposes, in the State of Andhra Pradesh.
>
> BE it enacted by the legislative Assembly of the State of Andhra Pradesh in the Forty-sixth Year of the Republic of India as follows :-"

3. Clause (7) of Section 2 defines the expression "liquor" to include"(a) spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine, beer and every liquid consisting of or containing alcohol; and (b) any other intoxicating substance which the Government may, by notification declare to be liquor for the purposes of this Act, but does not include toddy." Section 7 is the main provision prohibiting selling, buying and consumption of liquor. It reads :

> "Prohibition of selling, buying and consumption of liquor.

7. The selling, buying, being in possession and consumption of liquor, otherwise than in accordance with the provisions of this Act, or as the case may be, the Andhra Pradesh Excise Act, 1968, is

hereby prohibited.:

4. Section 8 prescribes the punishment for contravention of the provisions of Section 7. Sections 9 and 10 provide for punishment of persons found in State of intoxication and for abetting the escape of persons arrested. Section 11 makes any contravention of the provisions of the Act or of any rule, notification of order made thereunder punishable. Sections 12, 13 and 14 deal with seizure and confiscation. Chapter IV containing Sections 15 and 16 provides for exemption. Sub-section (1) of Section 15 needs to be set out in view of the submissions made before us. It reads:

> "15. (1) Subject to such rules as may be made in this behalf, the prescribed authority may issue, -
>
> (i) permits to persons who are foreigners under the Foreigners Act, 1939 and to persons who are non-resident Indians to consume liquor;
>
> (ii) licences to hotels and restaurants recognised as three star and above in accordance with such rules as may be made and to such categories of institutions as may be specified by notification subject to such criteria as may be prescribed to sell foreign liquor or Indian liquor to the holders of permits granted under this Act;
>
> (iii) permits to those who are medically certified by any notified medical authority as requiring to consume liquor on account of any diagnosed health condition or problems, to consume liquor;
>
> (iv) permits to persons who are tourists from outside the State and to persons who are not ordinarily residents of the State to consume liquor;
>
> (v) permits to members serving or retired belonging to the armed forces to consume liquor;
>
> (vi) permits to companies, corporations, institutions, industrialists, exporters; importers and similar such functionaries as may be notified, who normally entertain foreigners, non-resident Indians and guests coming from outside the State in pursuance of their business activity or the activity connected with their institutions to buy and serve liquors.
>
> (vii) permits to consume liquor in cases of medical emergency; and
>
> (viii) permits for sacramental wine used in masses conducted in Churches."

5. The other sub-sections of Section 15 contain provisions ancillary to sub-section (1). Section 16 exempts the liquor in possession of bona fide travellers for their own personal use while passing through any local area in which the Act is in force. It also saves lawful consignment of liquor carried through or into any such local area from the operation of the Act. The remaining provisions are in the nature of machinery provisions and need to be noticed except Sections 32 and 33. Section 33 excepts certain operations from the purview of the Act. It reads :

> "32. Nothing in this Act shall be deemed to preclude,-
>
> (a) the Andhra Pradesh Beverages Corporation Limited to carry on trade in liquor in

accordance with rules made in this behalf;

(b) the buying and selling of liquor carried on by the military canteens in the state under any licence granted in accordance with the provisions of the Andhra Pradesh Excise Act, 1963 and the rules made thereunder; and

(c) the consumption of medicines containing alcohol."

6. Section 33 confers the rule-making power upon the Government while Section 35 repeals the Ordinance issued in December, 1994.

7. There are a number of industries in the State of Andhra Pradesh engaged in the manufacture of intoxicating liquors. They had taken out D-2 and B-2 licences prescribed by the rules made under the Andhra Pradesh Excise Act, 1968. The period of these licences, we are told, was one year, i.e., financial year. The Government of Andhra Pradesh refused to renew the said licences, when they came up for renewal, in the light of the provisions of the Act. Several licencees approached the High Court of Andhra Pradesh by way of writ petitions challenging the provisions of the Act and seeking a declaration that the Act does not prohibit the manufacture of liquor, though it may well prohibit the sale and consumption, thereof. The Full Bench, which heard the writ petitions, agreed with the writ petitioners. They declared that Section 7 of the act did not prohibit the manufacture of liquor though it prohibited consumption, sale and possession thereof. They referred to the fact that several classes of persons within the state of Andhra Pradesh are exempted from the operation of the Act whose requirements have to be met. The prohibition of possession of liquor in Section 7 the Full Bench opined, was only for the purpose of consumption, selling and buying within the State and does not affect the manufacture. Accordingly, a directions was issued to the State of Andhra Pradesh to consider the applications filed by the manufacturers for renewal of their licences without reference to the prohibition policy or to the provisions of the Act. The orders rejecting applications for renewal were quashed. The Full Bench thought it unnecessary to go into the question of legislative competence of the Andhra Pradesh Legislature to make the said Act in view of the interpretation placed by it on Section 7. The judgment was delivered on April 28, 1995.

8. Against the judgment of the Full Bench of the Andhra Pradesh High Court, the State of Andhra Pradesh preferred Special Leave Petitions (C) Nos. 13936-13941 of 1995. They were entertained by this Court and notice issued to the respondents therein. It was directed that pending further orders status quo as on the date of the said order (July 21, 1995) shall be maintained. The writ petitioners-respondents were, however, permitted to manufacture their products with the existing stocks of raw material up to and inclusive of August 16, 1995. It was directed that they should not continue their manufacturing operations beyond the said date irrespective of the fact whether their stocks of raw materials were exhausted or not by that date. It was further directed that the finished products manufactured by them until the said date may be allowed to be cleared by the state in accordance with law and subject to the conditions laid down in the letter of the Commissioner of Prohibition and Excise No. 9736/95/Ex/J-5 dated May 24, 1995 referred to in the letter of the Commissioner dated June 16, 1995. It was also clarified that the said order shall not preclude the Governor of Andhra pradesh from issuing an ordinance seeking to amend the Act, if he is so advised, with a view to remove the alleged defects pointed out by the Full Bench.

9. On July 18, 1995, the Governor of Andhra Pradesh issued Ordinance no. 12 of 1995 amending certain provisions of the Act. Sections 2, 3 and 5 of the ordinance were given effect from January 16, 1995 (the date of commencement of the Act). Section 2 amended the long title of the Act by

including the expression "manufacture" within the ambit of the prohibition envisaged by it. By Section 3 the preamble to the Act was also similarly amended. Section 4 amended the definition of "liquor" contained in clause (7) of Section 2 of the Act. The amended definition reads as follows.

> "(7). 'Liquor' includes,-
>
> (a) spirits of wine, wine, beer and every liquid consisting of or containing alcohol including Indian liquor and Foreign liquor;
>
> (b) any other intoxicating substance which the Government may by notification, declare to be liquor for the purposes of this Act,
>
> but does not include toddy, denatured spirits, methylated spirits and rectified spirits;"
>
> This amendment was evidently effected in the light of the seven-Judge Constitution Bench decision of this Court in Synthetics and Chemicals Limited v. State of Uttar Pradesh, (1990) 1 SCC 109 : (AIR 1990 SC 1927).

10. Section 5 inserted Section 7-A after Section 7. Section 7-A is a short one. It reads: "7-A. Manufacturing of liquor is hereby prohibited." Sections 6 to 9 of the Ordinance amended certain other provisions of the Act which need not be noticed for the purpose of these appeals.

11. On October 12, 1995, the Legislature of Andhra Pradesh enacted the Andhra Pradesh Prohibition (Amendment) Act, 1995 in terms of Ordinance No. 12 of 1995 with certain minor changes which are not relevant for our purpose. The manufacturers of intoxicating liquors in Andhra Pradesh have now come forward with these writ petitions under Article 32 of the Constitution of India challenging the constitutional validity of Act 35 of 1995 (hereinafter referred to as the "amending Act").

12. Shri Ashok Desai, learned counsel for the petitioner in Writ Petition (C) No. 569 of 1995 submitted that the amending Act insofar as it prohibits the manufacture of liquor within the State of Andhra Pradesh is beyond the legislative competence of the Andhra Pradesh Legislature. Learned Counsel submitted that by virtue of the enactment of the Industries (Development and Regulation) Act, 1951 (I.D.R. Act) and the inclusion of fermentation industries (manufacturing alcohol and other products of fermentation industries) in the Schedule to the Act, the State legislature is denuded of its power to licence and regulate the manufacture of liquor. Learned counsel placed strong reliance upon the holding in Synthetics and Chemicals Limited (AIR 1990 SC 1927), that after the 1956 Amendment to I. D. R. Act including alcohol industries as Item 26 in the First Schedule to that Act, the control of the alcohol industries is vested exclusively in the Union and that thereafter, licences to manufacture both potable and non-potable is vested in the Central Government (Para 85 of the judgment). The next submission of Sri Desai was that the act is violative of Article 14 insofar as it prohibited the manufacture or liquor by the units in Andhra Pradesh even for limited local consumption. Even after the amending Act, learned counsel submitted, several classes of persons are exempted from the operation of the Act and their requirements have to be met. Closing down the industries manufacturing liquor in Andhra Pradesh and importing the requirements of the consuming classes (exempted categories) from outside the State is discriminatory and violative of Article 14, he submitted.

13. Sri Ganguly, learned counsel appearing for the petitioner in Writ Petition (C) No. 602 of 1995, submitted that the later decision of the Constitution Bench of this Court in Khoday Distilleries v.

State of Karnataka, (1995) 1 SCC 574 : (1995 AIR SCW 313) does not altogether rule out the argument that right to trade in intoxicating liquors is within the ambit of Article 19(1) (g). The learned counsel reiterated the submissions of Sri Desai in other respects.

14. Sri Rohinton F. Nariman, learned counsel appearing for the petitioner in Writ

Petition (C) No. 593 of 1995, laid stress upon the provisions contained in clauses (1), (2) and (3) of Article 246 of the Constitution and submitted that the power of the State Legislature to make a law with reference to matters enumerated in List- II in the Seventh Schedule to the Constitution (provided by Clause (3) of Article 246) is subject to the Parliament's power specified in Clauses (1) and (2) of the said Article. Relying upon certain decisions of this Court, learned counsel contended that once the parliament has enacted the I.D.R. Act and included the fermentation industries within the purview of that Act by 1956 Amendment, the Parliament must be deemd to have expressed its clear intention to occupy the entire field of fermentation industries including alcohol industries. If so, the State Legislatures have no power to make any law with respect to the said industries. The control over the said industries is exclusively that of the Union. Learned counsel reiterated the submission of Sri Desai based upon Article 14.

15. Sri G. Ramaswamy, learned counsel appearing in Writ Petition (C) No. 680 of 1995, referred to the Constituent Assembly Debates with respect to Entry 52 in List-I of Seventh Schedule of the Constitution as well as to certain decisions of this Court which, according to the learned counsel, help in understanding the principles enunciated in Synthetics and Chemicals Limited (AIR 1990 SC 1927). Learned counsel submitted that by not prohibiting toddy which contains more alcohol than beer and some other wines, the Act has brought about an invidious distinction which is a negation of the equality clause contained in Article 14.

16. Sri Soli J. Sorabjee, learned counsel appearing for the State of Andhra Pradesh, on the other hand, submitted that the state has the exclusive power to make a law with respect to Entry 8, which entry is in no manner impinged upon by Entry 52 in List-I or by the I. D. R. Act made in pursuance thereof. Learned counsel submitted that whenever the question of legislative competence is raised, the matter has to be examined applying the doctrine of pith and substance, as has been repeatedly affirmed by the Federal Court as well as this Court in a number of decisions. Learned counsel submitted that any incidental trenching upon the field reserved for the Union cannot be characterised as travelling beyond the assigned field. He submitted that the decision in Synthetics and Chemicals Limited (AIR 1990 SC 1927) should be read in the light of the question raised therein and should not be read as a statute. The observations relied upon by the learned counsel for the writ petitioners, he submitted, cannot be characterised as constituting the ratio of the said decision. They cannot be understood as decisions on those issues since those issues were not in controversy before the Court nor were the parties at issue thereon. He referred to certain later decisions of this Court to indicate how they have understood the decision in Synthetics and Chemicals Limited (AIR 1990 SC 1927). Learned counsel submitted that the decisions of this Court in Harshankar v. Dy. Excise and Taxation Commr. (1975) 3 SCR 254 : (AIR 1975 SC 1121) and Khoday Distilleries (1995 AIR SCW 313) conclusively lay down that no citizen of this country has a fundamental right to trade in liquor. Once they have no such rights, the learned counsel submitted, writ petition under Article 32 of the Constitution, which lies only to enforce a fundamental right, is misconceived. Learned counsel also disputed the correctness of the petitioners' submissions based upon Article 14.

PART - II

17. Part XI of the Constitution deals with relations between the Union and the States. Chapter-I in this Part bears the heading "Legislative Relations: Distribution of Legislative Powers." Clause (1) of Article 245 declares that "subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State." Clause (1) of Article 246 declares that "notwithstanding anything contained in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List')." Clause (2) of Article 246 declares that "notwithstanding anything in Clause (3), Parliament and, subject to Clause (1), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List')". Clause (3) of Article 246 then declares that "subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the State List)." Clause (4) says that "Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List." Article 248 vests the residuary legislative power in the Union. Article 249 empowers the Parliament to legislate with respect to a matter in the State List in national interest while Article 250 empowers the Parliament to legislate with respect to any matter in the State List if a proclamation of emergency is in operation. Article 251 says that the provisions of Articles 249 and 250 do not restrict the power of the Legislature to make any law which it is competent to make but if such law is repugnant to any of the provisions of the law made by the Parliament under the said Articles, the law made by Parliament shall prevail so long only as the law made by the Parliament continues to have effect. Article 252 empowers the Parliament to legislate for two or more States by their consent. It also provides for adoption of such legislation by other States. Article 254 declares that if any provisions of law made by the Legislature of a State with respect to matters enumerated in the Concurrent List is inconsistent with the provisions of any law made by the Parliament, whether made earlier to the state enactment or later, the State enactment shall to the extent of repugnancy be void. If, however, the state enactment is reserved for and receives the assent of the President, such law will prevail in that State notwithstanding its repugnancy with a parliamentary enactment.

18. After considering the aforesaid provisions and the scheme of the Constitution, a nine-Judge Bench of this Court in S. R. Bommai v. Union of India, (1994) 3 SCC 1 ; (1994 AIR SCW 2946) has opined that within the sphere allotted to States, they are supreme.

19. It has been repeatedly pointed out by this Court and the Federal Court (dealing with a similar distribution of legislative powers among the Centre and the Provinces under the Government of India Act, 1935) that the several entries in the three List in the Seventh Schedule are mere legislative heads and that it is quite likely that very often they overlap. Wherever such a situation arises, it is held, the issue must be solved by applying the rule of pith and substance. As explained by T.L. Venkatarama Iyer, J. in A. S. Krishna v. State of Madras 1957 SCR 399 : (AIR 1957 SC 297 at p. 301).

It must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Ss. 91 and

92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intravires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment. Vide Citizens Insurance Company of Canada v. William Parsons, (1881) 7 AC 96; The Attorney-General for Ontariao v. Attorney General for the Dominion of Canada, 1894 AC 189; The Attorney General of Ontaria v. Attorney-General for the Dominion, 1896 AC 348; Union Colliery Company of British Columbia v. Bryden, 1899 AC 580; Attorney General for Canada v. Attorney-General for Ontaria, 1937 AC 355; Attorney-General for Alberta v. Attorney-General for Canada, 1939 AC 117; and Board of Trustees of Letherbridge Northern Irrigation District v. Independent Order of Foresters, 1940 AC 513."

20. The learned Judge pointed out that this very principle was enunciated by the Federal Court in Subramanyan Chettiar v. Muttudesmi Goundan 1940 FCR. 188 : (AIR 1941 FC 47) and the Privy Council in Prafulla Kumar v. Bank of Commerce Ltd. AIR 1947 PC 60, wherein the statement of law in Subramanyan Chettiar was endorsed in full.

21. Sri Sorabjee invited our attention to the decision of the Federal Court in Bhola Prasad v. King-Emperor, 1942 FCR 17 : (AIR 1942 FC 17) where it was held that the power to legislate "with respect to intoxicating liquors conferred upon the Provincial Legislature by Entry 31 in the Provincial Legislative List includes a power to prohibit intoxicating liquors throughout the province or any specified part of province unless the meaning of the words used is restricted or controlled by the context or by other provisions in the Act."

22. Learned counsel also invited our attention to another decision of the Federal Court in Miss Kishori Shetty v. King, 1949 FCR 650 : (AIR 1950 FC 69). The appellant was charged for being in possession of a certain quantity of foreign liquor/whisky in excess of the limit provided under the notification issued under Section 14-B of the Bombay Abkari Act. The appellant contended that Section 14-B insofar as it prohibited possession of foreign whisky was beyond the legislative competence of the Provincial Legislature inasmuch as it amounts in effect to prohibiting the import of such goods into the country which can be done only by the Central Legislature. It was submitted that under Item 19 in List-I of the Seventh Schedule to the 1985 Act, the Centre had the exclusive power to make a law with respect to "import and export across customs frontier as defined by the dominion frontiers" whereas States power to make a law with respect to intoxicating liquors was limited to Item 31 in List-II (which read "intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs"). She, therefore, contended that Section 14-B is void to the extent it prohibited the possession of imported whisky/liquor. This contention was rejected in the following words : (At Pp. 70-71 of AIR).

"We are unable to accede to this contention. As pointed out by this Court in Bhola Prasad v. King Emperor, 1942 FCR 17 : (AIR 1942 FC 17) the legislative power given to the Provinces under Item 31 of List II is expressed in wide and unqualified terms which in their natural and ordinary sense are apt to cover such an enactment as S. 14-B in its amended form, and we see nothing in the Federal Legislative List and more particularly in Item 19 to lead us to cut down the full meaning of the Provincial entry by excluding foreign liquors from its purview. There is, in our view, no irreconcilable conflict here such as would necessitate recourse to the principle of Federal supremacy laid down in S. 100 of the Constitution Act. Section 14-B does not purport to restrict or prohibit dealings in liquor in respect of its importation or exportation across the sea or land frontiers of British India. It purports to deal with the possession of intoxicating liquors which, in the absence of limiting words, must include foreign liquors. It is far-fetched, in our opinion, to suggest that, in so far as the provision covers foreign liquors, it is legislation with respect to import of liquors into British India by sea or land."

23. It is not necessary to burden this judgment with any more decisions on this subject.

24. We may now notice the relevant entries in our Constitution. Entries 8, 6, 24 and 51 in List-II of the Seventh Schedule to the Constitution read thus:

"8. Intoxicating liquors, that is to say; the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

6. Public health and sanitation; hospitals and dispensaries.

24. Industries subject to the provisions of Entries 7 and 52 of List I.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

25. Entries 52 and 7 in List-I may now be set out. They read :

"52. Industries, the control of which by the Union is declared by parliament by law to be expedient in the public interest.

7. Industries declared by Parliament by law to be necessary for the purpose of defence of for the prosecution of war."

26. Entry 33 in List-III was substituted by the Constitution IIIrd (Amendment) Act, 1954. The background to this entry is explained by this Court in Ch. Tika Ramji v. State of Uttar Pradesh 1956 SCR 393 : (AIR 1956 SC 676). Entry 33 in List-III reads

:

"33. Trade and commerce in, and the production, supply and distribution of,-

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible, oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

27. The entries aforementioned disclose the following features: the power to make a law with respect to "industries" lies with the States (Entry 24 in List-II) but the said entry is made expressly subject to the provisions of Entries 7 and 52 in List-I. It means that if the Parliament declares by law that it is expedient in the public interest to take over the control of a particular industry or industries, such industry or industries get transplanted to List-I. In other words, the industries in respect of which the Parliament makes a declaration contemplated by Enry 52 in List-I, the States are denuded of the power to make any law with respect to them under. Entry 24 in List-II. The Parliament has indeed made the declaration contemplated by Entry 52 in List-I in Section 2 of the I. D. R. Act which reads :

"2. Declaration as to expediency of control by the Union.- It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

28. By an amendment effected in 1956, the First Schedule was amended. The Amendment Act inter alia introduced Entry 26 in the Schedule. It reads: "Fermentation Industries: (1) Alcohol, (2) other products of fermentation industries." The contention of the learned counsel for the petitioners is based upon these provisions. The submission is this: manufacture and production of intoxicating liquors is an industrial activity falling within Item 26 of the First Schedule to the I. D. R. Act; the I. D. R. Act provides for licencing of industries mentioned in the First Schedule to the Act besides providing extensive control and regulation of such industries and their products; the grant, the renewal and the refusal to grant or renew the licences is thus the exclusive province of the Centre; the State has no say in the matter; the State Legislature is incompetent to prohibit manufacture of intoxicating liquors. But this argument, in our opinion, ignores the existence and the ambit of Entry 8 in List-II. Entry 8 expressly speaks of production, manufacture, possession, transport, purchase and sale of intoxicating liquors. It means that the power to make a law with respect to said matters rests with the State Legislature. What is significant is that the entry speaks expressly of production and manufacture of intoxicating liquors as well. This would mean that the industries producing and manufacturing intoxicating liquors fall within the purview of Entry 8. In other words, we must first carve out the respective fields of Entry 24 and Entry 8 in List-II. Entry 24 is a general entry relating to industries whereas Entry 8 is a specific and special entry relating inter alia to industries engaged in production and manufacture of intoxicating liquors. Applying the well-known rule of interpretation applicable to such a situation (special excludes the general), we must hold that the industries engaged in production and manufacture of intoxicating liquors do not fall within Entry 24

but do fall within Entry 8. This was the position at the commencement of the Constitution and this is the position today as well. Once this is so, the making of a declaration by the Parliament as contemplated by Entry 52 of List-I does not have the effect of transferring or transplanting as it may be called, the industries engaged in production and manufacture of intoxicating liquors from the State List to Union List. As a matter of fact, the Parliament cannot take over the control of industries engaged in the production and manufacture of intoxicating liquors by making a declaration under Entry 52 of List-I, since the said entry governs only Entry 24 in List II but not Entry 8 in List II.

(Emphasis added)

29. Faced with the above position, learned counsel for the petitioners resorted to more than one argument to get over it. Firstly, it was submitted that Entries 24 and 8 should be read harmoniously and that such harmonious reading should mean that the industries engaged in production and manufacture of intoxicating liquors would fall within Entry 24 because Entry 24 deals with industries as such while Entry 8, according to this reading, would be confined to matters other than production and manufacture of intoxicating liquors. It is not possible to agree with the submission which runs counter to the express language of Entry 8. It requires us to delete the words "production and manufacture" from Entry 8 which is not open to us. We cannot re-write the entry. Another limb of this argument was that only those industries manufacturing intoxicating liquors which are not within the purview of the I. D. R. Act will fall under Entry 8. Reading the definition of "industrial undertaking" in Clause (d) and the definition of "factory" in Clause (c) of Section 3 of the I. D. R. Act, it is submitted that two types of industries are not covered by the I. D. R. Act, viz., those where manufacturing process is carried on (i) with the aid of power but with less than 50 workers and (ii) without the aid of power but with less than 100 workers. The submission is that these industries which are not within the purview of the I. D. R. Act would remain within the purview of Entry 8 while the other industries would be under the control of the Union. This argument is equally unacceptable. This argument is premised upon the assumption that Entry 52 in List-i over-rides Entry 8 in List-II as well, which assumption, as we shall presently point out, is without a basis and unacceptable. Moreover, industries which are exempted from the I. D. R. Act are exempted because of the very provisions of the I. D. R. Act - and not by virtue of Entry 8 in List-II. The ambit and scope of a constitutional entry cannot be determined with reference to a Parliamentary enactment. The definition of "factory" in Clause (c) of Section 3 of the I. D. R. Act may be changed tomorrow. The meaning and scope of Entry 8 in List-II does not and cannot vary with the change in the provisions of the I. D. R. Act. This submission too is, therefore, unacceptable. It was then contended that Entry 52 in List-I governs not only Entry 24 in List-II but all other entries in List-II including Entry 8 insofar as it deals with industries. We cannot accept this submission either. A perusal of List-II would show that whenever a particular entry was intended to be made subject to an entry in List-I or List-III, it has been so stated specifically. Not one but several entries in List-II are made subject to one or the other entry in List-I or List-III. (See Entries 2, 13, 17, 22, 23, 26, 27 and 33). Certain other entries use a different phraseology to demarcate the spheres of the Union and the States. For example, Entry 32 reads' "32. Incorporation, regulation and winding up of corporations other than those specified in List-I and Universities." All this shows that whenever a particular entry in List-II is sought to be made subject to another entry in List-I or List-III or where a demarcation is sought to be made between the Union and the States within a particular head of legislation, the founding fathers have taken care to say so expressly. We cannot, therefore, accept the argument of the learned counsel for the petitioners that Entry 52 in List-I impinges upon, overrides and governs Entry 8 in List-II as well. It does not. We must make it clear that Entry 8 speaks of only intoxicating liquors and does not, therefore, apply to or take in liquors which do not fall within the expression

"intoxicating liquors." The power to make a law with respect to production and manufacture of intoxicating liquors (among other matter mentioned in Entry 8) is that of the States alone. The prohibition of production and manufacture of intoxicating liquors too squarely falls within the four corners of Entry 8 read with Entry 6 in List-II. This is also the decision of the Constitution Bench in Khoday Distilleries Limited (1995 AIR SCW 313). In the summary contained in Para 60, conclusion (d) reads:

> "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."

30. Counsel for the petitioners, however, say that this issue is no longer res integra. According to them, the matter is concluded by the seven-Judge Bench decision of this Court in Synthetics and Chemicals Limited. (1990 (1) SCC 109 : AIR 1990 SC 1927). In particular, they rely upon the following observations in Para 85 (of SCC) : (Para 84 of AIR) of the opinion of Sabyasachi Mukharji, J., rendered on behalf of six learned Judges:

> "After the 1956 amendment to the I. D. R. Act bringing alcohol industries (under fermentation industries) as Item 26 of the First Schedule to I. D. R. Act the control of this industry has vested exclusively in the Union. Thereafter, licences to manufacture both potable and non-potable alcohol is vested in the Central Government. Distilleries are manufacturing alcohol under the central licences under I. D. R. Act. No privilege for manufacture even if one existed, has been transferred to the distilleries by the States. The State cannot itself manufacture industrial alcohol without the permission of the Central Government. The States cannot claim to pass a right which they do not possess. Nor can the States claim exclusive right to produce and manufacture industrial alcohol which are manufactured under the grant of licence from the Central Government. Industrial alcohol cannot upon coming into existence under such grant be amenable to States claim of exclusive possession of privilege. The state can neither rely on Entry 8 of List II nor Entry 33 of List III as a basis for such a claim."

31. Sri Sorabjee, however, submits that the said observations do not constitute the ratio of the said decision. They are in the nature of obiter, he says. The said decision was concerned with the powers of the States to levy vend fee on industrial alcohol and not with the legislative competence of the States to regulate and control the industries engaged in the production and manufacture of intoxicating liquors. The said decision, therefore, the learned counsel says, is no authority on the issue arising in these appeals.

32. In our opinion, the decision in Synthetics and Chemicals Limited (1990 (1) SCC 109 : (AIR 1990 SC 1927) does not help the petitioners in these writ petitions for the decision expressly

recognises the power of the state to prohibit the manufacture, sale and consumption of intoxicating liquors. In the summary contained in para 86, (of SCC) : (Para 85 of AIR) Clause (a) reads thus :

> "(a) It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers."

33. The discussion on support of this conclusion is found in Paras 28 and 29 of the judgment, (in AIR 1990 SC 1927), where Sabyasachi Mukharji, J., speaking for himself and five other learned Judges, quotes the following holding from Har Shankar (AIR 1975 SC 1121)

> "28. In this connection, it may be necessary to refer to the observations of this Court in Har Shankar case (1975) 1 SCC 737 : (AIR 1975 SC 1121), where Chandrachud, J. (as the learned Chief Justice then was) stated : (SCC p. 758, para 53) : (At p. 1132 of AIR.)
>
> 'In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in the State of Bombay v. F. N. Balsara, (1951 SCR 682 : (AIR 1951 SC 318), Cooverjee B. Bharucha v. Excise Commr. and the Chief Commmr. Ajmer, (1954 SCR 873 : (AIR 1954 SC 220) State of Assam v. A. M. Kidwai, Commr. of Hills Division and Appeals, Shillong, (1957 SCR 295 : (AIR 1957 SC 414) Nagendra Nath Bora v. Commr. of Hills Division and Appeals, Assam, (1958 SCR 1240) : (AIR 1958 SC 398), Amar Chandra Chakraborty v. Collector of Excise, Govt. of Tripura, (1972 2 SCC 442 : (AIR 1972 SC 1863) and State of Bombay v. R. M. D. Chamarbaugwala (1957 SCR 874, as interpreted in State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36 : (AIR 1972 SC 1816) and Nashirwar v. State of M.P. (1975) 1 SCC 29 : (AIR 1975 SC 360). There is no fundamental right to do trade or business in intoxicants. The State under its requlatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession.'

(Emphasis added)

29. Though most of the cases dealt with the right of the State Government as regards auction of country liquor, in Balsara case, Nashirwar case and Har Shankar case, (1975 (3) SCR 254 : AIR 1975 SC 1121), this Court was concerned with the right of the State Government over foreign liquor. After considering all the decisions of five Constitutional Benches, Chandrachud, J. summed up the position at page 274 (of SCR) : (at p. 1130 of AIR) of the report in Har Shankar case as follows : (SCC p. 755, para 47) : (at p. 1130-31 of AIR.)

> 'These unanimous decisions of five Constitution Benches uniformly emphasised after a careful consideration of the problem involved that the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilised communities."

(Emphasis added)

34. Reference may also be had in this behalf to Para 74 of the judgment. Towards the end of the para, Mukharji, J. observes: "All the authorities from Cooverjee Bharucha case (AIR 1954 SC 220) to Har Shankar case (AIR 1975 SC 1121) dealt with the problems or disputes arising in connection with the sale, auction, licensing or use of potable liquors." Not only no dissent is expressed from these decisions, their principle is in fact reiterated in Clause (a) of Para 86 set out above.

35. Be that as it may, it is enough for us to know that the decision in Synthetics and Chemicals Limited (AIR 1990 SC 1927) clearly recognises and affirms the power of the States to prohibit the manufacture, production, consumption and sale etc. It is not necessary for us to go into and express our opinion regarding the observations in the judgment with respect to the power of licensing. That may have to await a proper case where that question may directly arise. For this reason, we are not referring to or dealing with the several submissions of Sri Sorabjee with respect to the correctness of the particular sentence occurring in Para 85 of Synthetics and Chemicals Limited.

36. For the above reasons, we hold that the judgment in Synthetics and Chemicals Limited (AIR 1990 SC 1927) does not advance the case of the petitioners herein.

37. It follows from the above discussion that the power to make a law with respect to manufacture and production and its prohibition (among other matters mentioned in Entry 8 in List-II) belongs exclusively to the State Legislatures. Item 26 in the First Schedule to the I. D. R. Act must be read subject to Entry 8 - and for that matter, Entry 6 - in List-II. So read, the said item does not and cannot deal with manufacture, production or with prohibition of manufacture and production of intoxicating liquors. All the petitioners before us are engaged in the manufacture of intoxicating liquors. The State Legislature is, therefore, perfectly competent to make a law prohibiting their manufacture and production - in addition to their sale, consumption, possession and transport - with reference to Entries 8 and 6 in List-II of the Seventh Schedule to the Constitution read with Article 47 thereof.

38. In view of our finding that the impugned enactment is perfectly with the legislative competence of the State legislature and is fully covered by Entry 8 read with Entry 6 of List-II, it is not necessary for us to deal with the arguments based upon Clause (3) of Article 246 of the Constitution except to say the following: once the impugned enactment is within the four corners of Entry 8 read with Entry 6, no central law whether made with reference to an entry in List-I or with reference to an entry in List-III can affect the validity of such State enactment. The argument of occupied field is totally out of place in such a context. If a particular matter is within the exclusive competence of the State legislature, i.e., in List -II that represents the prohibited field for the Union. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the States. The concept of occupied field is really relevant in the case of laws made with reference to entries in List-III. In other words, whenever a piece of legislation is said to be beyond the legislative competence of a State Legislature, what one must do is to find out, by applying the rule of pith and substance, whether that legislation falls within any of the entries in List II. If it does, no further question arises; the attack upon the ground of legislative competence shall fail. It cannot be that even in such a case, Article 246(3) can be employed to invalidate the legislation on the ground of legislative incompetence of State Legislature. If, on the other hand, the State legislation in question is relatable to an entry in List-III applying the rule of pith and substance, then also the legislation would be valid, subject to a Parliamentary enactment inconsistent with it, a situation dealt with by Article 254. Any incidental trenching, as already pointed out; does not amount to encroaching upon the field reserved for the Parliament, though as pointed out by T. L. Venkatarama Iyer, J. in A. S. Krishna (AIR 1957 SC 297), the extent of trenching beyond the competence of the legislating body

may be an element in determining whether the legislation is colourable. No such question arises here.

39. We may in this connection refer to the Constitution Bench decision of this Court in Calcutta Gas Company v. State of West Bengal 1962 Suppl. (3) SCR 1 : (AIR 1962 SC 1044), which furnishes a complete answer to the petitioners contentions on this score. The West Bengal Legislature passed in Act (West Bengal Oriental Gas Company Act, 1960) with a view to take over the management and control of the undertaking of the Oriental Gas Company. Notifications were issued under the Act taking over the Company which was questioned by way of a writ petition in the Calcutta High Court. The writ petition was dismissed whereupon the matter was brought to this Court. The main contention on behalf of the appellant was that the West Bengal Legislature had no legislative competence to enact the said Act. It was submitted that by virtue of the Industries (Development and Regulation) Act, 1951, which contains a declaration in terms of Entry 52 in List-I and the schedule whereof included "fuel gases - (coal gas, natural gas and the like)" under Item 2(3), the power to make law with respect to industries engaged in the manufacture of gas has been vested in the Union and that the State has been totally denuded of that power. It was contended that Entry 24 in List-II takes in all industries and that Entry 25 (which reads: "Gas and gas-works") should be confined to matters other than those covered by Entry 24. Inasmuch as the impugned enactment was a law relating to gas industry, it was submitted, the Act made by the State Legislature is incompetent and void. Reliance was also placed upon Article 246 of the Constitution. All these contentions were negatived. After referring to the provisions of the I. D. R. Act and the impugned West Bengal Act, the relevant entries in the Seventh Schedule to the Constitution (including Entries 7 and 52 in List I and Entries 24 to 27 in List-II) and the principles governing the interpretation of the entries in the Seventh Schedule, the Court indicated that the matter was susceptible of three possible constructions, viz., "(1) entry 24 of List II, which provides for industries, generally, covers the industrial aspect of gas and gas works leaving entry 25 to provide for other aspects of gas and gas-works; (2) entry 24 provides generally for industries, and entry 25 carves out of it the specific industry of gas and gas-works, with the result that the industry of gas and gas works, is excluded from entry 24; and (3) the industry of gas and gas-works falls under both the entries, that is, there is a real overlapping of the said entries." The Court opined that having regard to the well-settled principles relating to interpretation of these entries, that interpretation which reconciles and harmonises the contending entries should be adopted and held thus :

> "Entry 24 is List II in its widest amplitude takes in all industries including that of gas and gas-works. So too, entry 25 of the said List comprehends gas industry. There is, therefore, an apparent conflict between the two entries and they overlap each other. In such a contingency the doctrine of harmonious construction must be invoked..... If industry in entry 24 is interpreted to include gas and gas works, entry 25 may become redundant, and in the context of the succeeding entries, namely, entry 26, dealing with trade and commerce, and entry 27, dealing with production, supply and distribution of goods, it will be deprived of all its contents and reduced to useless lumber..... On the other hand, the alternative contention enable entries 24 and 25 to operate fully in their respective fields; while entry 24 covers a very wide field, that is, the field of the entire industry in the State, entry 25, dealing with gas and gas-works, can be confined to a specific industry, that is the gas industry....It is, therefore, clear that the scheme of harmonious construction suggested on behalf of the State gives full and effective scope of operation for both the entries in their respective fields while that suggested by learned counsel for the appellant deprives entry 25 of all its content and even makes it redundant. The former interpretation must,

> therefore, be accepted in preference to the latter. In this view, gas and gas-works are within the exclusive field allotted to the states. On this interpretation the argument of the learned Attroney-General that, under Art. 246 of the Constitution, the legislative power of State is subject to that of Parliament ceases to have any force, for the gas industry is outside the legislative field of Parliament and is within the exclusive field of the Legislature of the State. We, therefore, hold that the impugned Act was within the legislative competence of the West Bengal Legislature and was, therefore, validly made."

The Court proceeded to hold further :

> "As we have indicated earlier, the expression industry in entry 52 of List I bears the same meaning as that in entry 24 of List II, with the result that the said expression in entry 52 of List I also does not take in a gas industry. If so, it follows that the Central Act, in so far as it purported to deal with the gas industry, is beyond the legislative competence of Parliament."

40. The ratio of the above decision fully supports what we have said hereinbefore. In fact, Entry 8 is more specific than Entry 25 in List-II. While Entry 25 merely speaks of "gas and gas-works"*, Entry 8 expressly speaks of production and manufacture besides possession, transport, purchase and sale of intoxicating liquors. The ratio of the Calcutta Gas Company (AIR 1962 SC 1044) full supports our conclusion that the industries engaged in the production and manufacture of intoxicating liquors are outside the purview of Entry 24 and fall squarely within Entry 8 in List-II and that Entry 52 in List-I does not over-ride or impinge upon Entry 8 in List-II. According to this decision, the expression "industry" in both Entry 24 in List-II and Entry 52 in List-I must carry the same meaning, which means that if a particular industry is not within the purview of Entry 24 in List-II, it would equally not be within the purview of Entry 52 in List-I. The decision also supports our conclusion that Article 246 cannot be invoked to deprive the State legislatures of the powers inhering in them by virtue of entries in List-II. To wit, once an enactment, in pith and substance, is relatable to Entry 8 in List-II or for that matter any other entry in List-II, Article 246 cannot be brought in to yet hold that State legislature in not competent to enact that law.

> *Perhaps, it is appropriate to point out in the interest of avoiding any misunderstanding that Entry 35 of List-II should be read with Entry 53 of List-I, which reads:
>
> "53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be expedient in the public interest." Not only mineral gases fall under Entry 53 in List-I, the words "gas works" also have to be properly understood. In short, both the said entries have to be read harmoniously and their respective fields delineated properly.

CONTENTION BASED UPON ARTICLE 19 (1) (g) :

41. The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution Bench decision in Khoday Distilleries (1995 AIR SCW 313). It is raised before us again. In Khoday Distilleries, this Court reviewed the entire case-law on the subject and concluded that a citizen has no fundamental right to trade or business in

intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is considered to be res extra commercial (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs which are injurious to health. For the same reason, the Bench held, the State can create a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Yet an argument is sought to be built upon certain words occurring in Clauses (e) and (f) of the summary contained in Para-60 of the decision. In these clauses, it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under Clause (6) of Article 19 or even otherwise. Seizing upon these observations, Sri Ganguly argued that this decision implicitly recognises that business in liquor is a fundamental right under Article 19(1) (g). If it were not so, asked the learned counsel, reference to Article 19(6) has no meaning. We do not think that any such argument can be built upon the said observations. In Clause (e), the Bench held, a monopoly in the State or its agency can be created "under Article 19(6) or even otherwise." Similarly, in Clause (f), while speaking of imposition of restrictions and limitations on this business, it held that they can be imposed "both under Article 19(6) or otherwise." The said words cannot be read as militating against the express propositions enunciated in Clauses (b), (c), (d), (e) and (f) of the said summary. The said decision, as a matter of fact, emphatically reiterates the holding in Har Shankar (AIR 1975 SC 1121) that a citizen has no fundamental right to trade in intoxicating liquors. In this view of the matter, any argument based upon Article 19(1) (g) is out of place.

42. For the sake of completeness, and without prejudice to the above holding, we may examine the alternate line of thought. In Cooverjee Bharucha, (AIR 1954 SC 220) a Constitution Bench of this Court expressed its whole-hearted concurrence with the opinion of Field, J. in Crowley v. Christensen, (1889-90) 34 L. Ed. 620, to the effect that: "There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority." While laying down the said proposition. Mahajan, C.J., speaking for the Court, referred generally to the position obtaining under Article 19(1) (g) and Clause (6) of the Article. The learned Chief Justice said that the reasonableness of the restriction has to be determined having regard to the nature of the business and the conditions prevailing in that trade. The learned Chief Justice said: "The nature of business is, therefore, an important element in deciding the reasonableness of the restrictions." These observations, it may be noted, were not made with particular reference to trade in intoxicating liquors but are general in nature. Indeed, it is after making these general observations that the Bench proceeded to refer to and express its concurrence with the observations of Field, J. referred to above. The said observations cannot be read as recognising a fundamental right to trade in intoxicating liquors. Any such proposition would run counter to the main holding in the decision referred to above. It is true that in Krishna Kumar Narula v. State of Jammu and Kashmir, (1967 3 SCR 50 : (AIR 1967 SC 1368), Subba Rao, C. J., speaking for the Constitution Bench, adopted a slightly different approach, viz., every trade is a trade; even the trade in intoxicating liquor is a trade; however, the nature and character of the business is relevant for determining the extent of restrictions that can be placed on such trade or business; inasmuch as intoxicating liquors are inherently harmful to the individuals consuming them and to the society as a whole, it can even be prohibited but it cannot be said that trade or business in intoxicating liquors is not a trade or

business within the meaning of Article 19(1) (g). Even adopting this approach, it would be evident - and the decision in Krishna Kumar Narula recognises it - that the trade and business in intoxicating liquors can be restricted, severely curtailed or even prohibited. The fact that Article 47 of the Constitution expressly speaks of the obligation of the State to endeavour to bring about prohibition of the consumption of intoxicating drinks is itself a clear and definite pointer in this direction. Imposing prohibition is to achieve the directive principle adumbrated in Article 47. Such a course merits to be treated as a reasonable restriction within the meaning of Clause (6) of Article 19.

43. Thus, whichever line of thought one adopts, the result is that the prohibition of manufacture, production, consumption and sale of intoxicating drinks brought about by the Act (as amended by the 'Andhra Pradesh Act 35 of 1995) is perfectly valid and beyond challenge.

CHALLENGE BASED ON ARTICLE 14 :

44. The attack on the amending Act based on Article 14 was mounted on several grounds.

45. Sri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in State of Tamil Nadu v. Ananthi Ammal, (1995 (1) SCC 519 : (1995 AIR SCW 355). Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, the Parliament is supreme. There are no limitations upon the power of the Parliament. No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by Courts on two ground and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-II of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness - concepts inspired by the decisions of United States Supreme Court. Even in U. S. A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the Courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary** or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the

representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action,

> **An expression used widely and rather indiscriminately - an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in Attil Mac Tiller v. Atlantic Coast-line Ranbroad Company, (1942) 87 LEd 610. "The 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", said the learned Judge.

the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (See Council of Civil Services Union v. Minister for the Civil Services, (1985 AC 374), which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in R. v. Secretary of State for the Home Department Ex-parte Brind, (1991 AC 696 at 766-7 and 762. It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in Ananthi Ammal (1995 AIR SCW 355), we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, insofar as Section 11 of the Act provided for payment of compensation in installments if it exceeded Rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed:

> "7. When a statute is impugned under Article 14 what the Court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis."

46. It is this paragraph which is strongly relied upon by Sri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word "arbitrary" in Para-7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression "arbitrary" was used in Para-7.

47. Reference was then made by Sri G. Ramaswamy to the decision in Mithu v. Union of India, (1983) 2 SCC 277 : (AIR 1983 SC 473) wherein section 303 of the Indian Penal Code was struck down. But that decision turned mainly on Article 21, though Article 14 is also referred to along with Article 21. Not only did the offending provision exclude any scope for application of judicial discretion, it also deprived the accused of the procedural safeguards contained in Sections 235(2) and 354(3) of the Criminal Procedure Code. The ratio of the said decision is thus of no assistance to the petitioners herein.

47A. We make it clear that the above discussion is confined to an Act made by the Legislature. We express no opinion insofar as delegated legislation is concerned.

48. Learned counsel for the petitioners then sought to demonstrate the discriminatory aspect of the impugned amending Act in prohibiting the production and manufacture of intoxicating liquors in Andhra Pradesh and importing the requirements of State (to meet the need of exempted categories) from outside the State. We are unable to see any unreasonablness in it much less any discrimination. This ground is really one of unreasonableness rather than discrimination. The Andhra Pradesh Legislature can make a law limited to the territory of that State but not beyond. The exempted categories put together constitute a fraction of the total consuming population of Andhra Pradesh. If production and manufacture of intoxicating liquors is permitted in the name of meeting the needs of this miniscule population, it would give to several other problems in turn. The present capacity of the industries in Andhra Pradesh engaged in manufacture and production of intoxicating liquors is many many times over and above the requirements of the exempted categories. If the production is to be scaled down correspondingly for each of the factories, they would become uneconomic and not viable. Choosing one or two of them would be beset with legal and practical difficulties. In all the circumstances, the State appears to have thought it advisable to import the small quantities required rather than face a number of problems arising from restricted production, supervision and enforcement.

49. Sri G. Ramaswamy next contended that prohibiting the production and manufacturing of all intoxicating liquors while exempting toddy from the said prohibition is discriminatory. Learned counsel contended that the alcohol content of toddy is higher than the alcohol content of Beer and certain Wines. We are unable to see any substance in the argument. Toody is a class apart. It is drawn from tree. The Excise Act and Rules make a clear distinction between toddy on one hand and other intoxicating liquors on the other, though it may be that toddy is also included within the meaning of intoxicating liquors. In the circumstances, it cannot be said that it is not a case of reasonable classification having regard to the object of legislation. Moreover, it is always open to the state to introduce prohibition in stages. It is not necessary that the prohibition should be total and absolute whenever it is imposed. This principle has been affirmed by this Court in the matter of nationalisation of bus routes C. S. Rowji v. State of Andhra Pradesh, (1964) 6 SCR 330 : (AIR 1964 SC 962).

50. Counsel for the petitioners complained of discrimination in the matter of providing exemptions. It is complained that there is no justification in providing for grant of permits to "companies, corporations, institutions, industrialists, exporters, importers and similar such functionaries as may be notified" for entertaining not only foreigners and N. R. Is, but also persons from outside the State of Andhra Pradesh in connection with their business. Similar criticism is levelled against certain other clauses in Section 15 as well. We are of the opinion that this argument is not open to manufacturers of intoxicating liquors like the petitioners. It would be a different matter if any person affected by such discriminatory treatment complains of the same. The petitioners at any rate

cannot be heard to complain of the same. We decline to entertain this argument. We express no opinion thereon.

51. It was suggested in parting that the policy of prohibition is a difficult one to enforce, that though laudable in principle, it gives rise to several other ills and so on. We need not express any opinion on these comments since we are concerned only with the constitutionality of the impugned statutes and not with their wisdom.

52. For the above reasons, the attack upon the constitutionality of the Andhra Pradesh (Amendment) Act 35 of 1995 both on the grounds of legislative incompetence and violation of fundamental rights fails. The Amending act, which has been given retrospective effect from the date of commencement of the Principal Act, i.e., Andhra Pradesh Prohibition Act, 1995, is constitutionally valid. The writ petitions challenging its validity are accordingly dismissed.

53. Insofar as the civil appeals preferred against the Full Bench judgment of the Andhra Pradesh High Court are concerned, they have become academic in view of the Andhra Pradesh (Amendment) Act 35 of 1995 and the retrospective effect given to it. No separate arguments were addressed in these matters. It is, therefore, unnecessary to deal with the questions raised therein. They are accordingly disposed of as unnecessary in the light of the dismissal of the writ petitions challenging the validity of the Andhra Pradesh Amendment Act 33 of 1995.

54. No costs. Order accordingly.