

the Appeal to the Division Bench against a decision of a Single Judge of the High Court and Section 102 restricts Second Appeal if the value of claim does not exceed Rs.25,000-00. Most crucial and progressive march as per amendments are reflected in to Order 5 where the Defendant in the Suit has to file a Written Statement within 30 days from the date of institution of a Suit, Order 17 restricts the adjournment not more than three times by a party during hearing of the Suit and Order 18 Rule 4 gives a power to record the evidence by Commissioner. The cumulative effect of all these and such more amendments is based upon a ray of hope to gain confidence of the people that Justice shall not be delayed inordinately keeping the cases pending for 2 or 3 decades. The temple of Justice should not be treated as a cupboard to keep the files as pieces of decoration within the precincts of Courts but should be a temple, which redresses grievances of the aggrieved within the shortest possible time to enjoy the fruits of decree during the lifetime. Equally so the changes effected in restricting Revisions under Section 115 is not without reason. It is unfortunate that the litigant is being advised to climb the stairs of High Court against each and every order passed by the subordinate judiciary.

With the amendments enforced how are Advocates or Advocacy is effected. The

concept of engaging a Counsel by a Firm, Institution, individuals is to represent the Court on the basis of *Vakalathnama*. This engagement and the services rendered by an Advocate is not as a Charity but after charging the Fees (Service charges to be more appropriate). The delay emanates from an Advocate not only reprehensible but also unethical in as much as the delay will be detrimental to the client's cause and concern. In any given case, the client approaches the Advocate for speedy justice. To win or lose a case is certainly not in the hands of an Advocate. But certainly to seek innumerable adjournments is within the powers of the Advocate which will ultimately result in Justice virtually denied due to long pendency. But then the delay will not be shouldered by an Advocate, conveniently and convincingly the Courts will be prompted to shoulder the blame for the delay. As a matter of fact the Advocates and Bar Councils have to support such Rule of law, which were introduced aiming at dispensing quick and sure Justice. If at all public feels that quick dispensing of Justice is detrimental to their interest, it is for them to agitate by formulating their grievances by highlighting how they are effected. It is certainly not for Advocates to take up the cause since their job is not only to defend the case but primarily to assist the Court in coming to sound conclusion for dispensing Justice according to Law in force as early and as soon as possible.

STUDY OF A.P. PROHIBITION ACT IN THE BACKDROP OF A.P. EXCISE ACT

By

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1. A.P. Excise Act, 1968, hereinafter referred to as the Excise Act, has been enacted with a view to integrate the Laws in force in Andhra and Telangana areas of the State of A.P. on the subject of Excise, prior

to passing of Excise Act, A.P. (Telangana Area) Abkari Act, 1316-F and A.P. (Telangana Area) Intoxicating Drugs Act, 1333-F were in force in Telangana Area. A.P. (Andhra Area) Abkari Act, 1886

was in force in Andhra area. However by virtue of Section 2 of A.P. (Andhra Area) Proh. Act, 1937, A.P. (Andhra Area) Abkari Act, 1886 had ceased to be in force.

2. The Excise Act came into force in Telangana area of A.P, with effect from 30-8-1968 in pursuance of notification G.O. Ms. No.928, Revenue (1) dated 30-8-1968. Prohibition under A.P.P. Act, 1937 was lifted in Andhra area by notification issued in G.O. Ms. No.966, revenue dated 10-10-1969. The Excise Act came into force in Andhra area of A.P. State with effect from 1-11-1969. Total Prohibition had been brought into force in the entire State of A.P. by A.P. Prohibition Ordinance, 1994. The Ordinance 19/1994 has been repealed by enactment of A.P. Prohibition Act, 1995. Section 35 of A.P.P. Act, 1995 repealed A.P. (Andhra area) Prohibition Act, 1937. Section 73 of A.P. Excise Act repealed A.P. (Andhra area) Abkari Act, 1886, A.P. (Telangana Area) Abkari Act, 1316-F and A.P. (Telangana Area) Intoxicating Drugs Act, 1333-F. The Prohibition Act, 1995 was introduced for prohibition of manufacture, sale and consumption of intoxicating liquors in the State of Andhra Pradesh. A.P.P. Act was amended by Act 35 of 1995 with effect from 12-10-1995.

It was amended by Act 10/96 with effect from 7-2-1996 and was amended by Act 5/97. Act 5/97 also amended preamble of A.P.P. Act, 1995. First para of the preamble of A.P.P. Act, 1995 says it is an Act to introduce the prohibition of the manufacture, sale and consumption of arrack and regulate manufacture, sale and consumption of other Intoxicating liquors in the state.

3. As stated supra, the Excise Act has been passed with a view to integrate the laws in force in Andhra and Telangana areas on the subject of Excise. After lifting of total prohibition, A.P. Excise Act, 1968 and A.P.P. Act, 1995 as amended by the Act 5/97 are in existence in the State.

Contrary to the Goal of Integration of Laws pertaining to the Excise and Prohibition there are two enactments dealing with the intoxicating liquors.

4. Article 47 of the Indian Constitution says in particular, State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to Health.

5. In the statement of Object and Reasons while introducing Prohibition Act it is stated as follows :

“In recent times, it is noticed that the consumption of Alcoholic drinks has grown alarmingly and has developed into a social evil. Though the sale of arrack was banned by the Government with effect from the 1st October, 1993. There is no ban on the sale and consumption of Indian made liquors and Foreign Liquors beer, wine, etc. The women folk in the State of Andhra Pradesh have been agitating for the imposition of total prohibition. The Government have taken notice of their just demand and have decided to impose total prohibition on the consumption of alcoholic drinks, other than toddy.”

6. While introducing A.P.P. Amendment Act, 1997 it was stated that State Government made earnest efforts and took serious steps to effectively enforce the Prohibition Law throughout state. Despite best efforts of the Government the Prohibition related offences particularly illicit distillation and smuggling have been steadily increasing money and muscle power of the violators of prohibition law has the dangerous potential of disturbing peace and harmony in the society. The Government have repeatedly elicited the co-operation and support of the neighbouring States for arresting smuggling across borders. In the absence of total prohibition in the neighbouring States smuggling of liquor continued unabated. The growing menace

of illicit liquor has posed grave danger to the health and well-being of the gullible consumers. The Government have come to the painful conclusion that A.P.P. Act '95 needs to be modified to bring it in tune with the realities on the ground, while protecting effectively the vulnerable sections of the people. In pursuance of this objective it is now decided to continue prohibition of arrack, which singularly caused harm to the vulnerable sections and to effectively regulate the other types of intoxicating liquors.

7. While introducing A.P.P. (Amendment) Act, 1997 the Legislature expressed helplessness in implementing total Prohibition. It is stated that it is difficult to implement the Act in the absence of co-operation and support of the neighbouring States in arresting smuggling across the borders. In the absence of total prohibition in the neighbouring States' smuggling of liquor continued unabated. The absence of total prohibition in the neighbouring States is blamed for failure of effective implementation of total prohibition.

8. Comparative study of Excise Act and A.P.P. Act is necessary to assess about effectiveness of A.P.P. Act.

9. Section 7 of A.P.P. Act reads :-

Section 7. Prohibition of selling, buying and consumption of liquor:—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, A.P. Excise Act, 1968, is hereby prohibited. Section 8(b) of A.P.P. Act as amended by Act 35/95 says that whoever possesses, collects, buys, sells or transports any liquor without any licence or permit granted under A.P. Excise Act, 1968 shall be punished.

10. Section 7-A of A.P.P. Act, inserted by Act 35 of 1995 Reads-

Section 7-A. Prohibition of manufacturing of liquor - Manufacturing of liquor is hereby prohibited.

By A.P.P. Amendment Act, 1997. Section 7-A is substituted. The substituted Section 7-A reads:

Prohibition of production etc., of arrack :—The production, manufacture, storage, possession, collection, purchase, sale and transport of arrack is hereby prohibited.

11. A.P.P. Act did not define what is meant by manufacture. Under Section 2(22) of A.P. Excise Act, manufacturing is defined it says "*Manufacture*" includes every process whether natural or artificial by which any fermented or spirituous or intoxicating liquor or intoxicating drug is produced, prepared or blended and also re-distillation and every process for the rectification of liquor. Section 34(d) and (e) of A.P. Excise Act says that *whoever in contravention of this Act or of any rule notification or order may issued or passed thereunder or of any licence or permit granted or issued under this Act :-*

(d) constructs or works any distillery or brewery; or

(e) uses, keeps or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than Toddy; shall on conviction be punished.

11. Section-42 of A.P. Excise Act says that presumption as to commission of offence in certain cases:- In prosecutions under Section 34 (Sections 37 and 37-A) it shall be presumed until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of -

(a) any intoxicant, or

(b) any still, utensil, implement or apparatus whatsoever in the manufacture of any intoxicant other than toddy; or

- (c) any materials which have undergone any process towards the manufacture of an intoxicant or from which an intoxicant has been manufactured,

for the possession of which he is unable to account satisfactorily.

12. There is no equivalent provisions under A.P.P. Act for Section 34(d) and (e) and Section 42 of A.P. Excise Act.

13. Section 11 of A.P.P. Act provides for punishment for offences not otherwise provided for. It says that whoever is guilty of any wilful act or intentional omission in contravention of any of the provisions of this Act or of any rule, notification or order made thereunder and not other-wise provided for in this Act, shall be punishable with fine which may extend up to five hundred rupees.

14. Apart from failing to define what is meant by manufacture, AP.P. Act did not make any distinction between stages of preparation, attempt and commission of actual offence or production or manufacturing of arrack or illicitly distilled liquor.

15. A.P.P. Act contained five Chapters. Chapter III provided for prohibition and penalties, Chapter IV provided for exemption. Chapter V deals with the detection, investigation and trial of offences. Chapter VI deals with miscellaneous matters.

16. Section 31 of A.P.P. Act, gave overriding effect. to A.P.P. Act. It says save as otherwise provided the provisions of this Act shall have effect, not withstanding anything inconsistent therewith contained in the provisions of the Andhra Pradesh Excise Act 1968 and the rules made thereunder for the time being in force. By virtue of Section 31 of A.P.P. Act provisions of Prohibition Act will prevail over inconsistent provisions found in Excise Act.

17. Under Section 12 of A.P.P. Act, receptacles, packages, coverings, animals, vessles, carts or other vehicles used to hold

or carry the material or liquor, when an offence has been committed shall be liable to confiscation. Under Section 13(1) an officer seizing and detaining property liable for confiscation without unreasonable delay, shall produce seized property before Deputy Commissioner of Prohibition and Excise having jurisdiction over area. Under Section 13(2), the Deputy Commissioner of Prohibition and Excise may order confiscation of such property whether or not the prosecution is instituted. Under Section 13(3) while making an order of confiscation the Deputy Commissioner may order destruction of property which in his opinion need not be preserved or not fit for human consumption. Under Section 14 it is provided that officers in-charge of police stations shall take charge of and keep in safe custody under seal all articles seized under this Act. Seized property shall be produced before the Deputy Commissioner of Prohibition and Excise for taking action in accordance with the procedure specified in Section 13.

18. Under Section 17 in Chapter V, if any collector, prohibition officer or Magistrate has reason to believe that an offence under Section 7-A or 8 has been committed, he may issue a warrant for search for any liquor, material, still, utensil, implement or apparatus in respect of which the alleged offence has been committed. While making search suspected offender may be arrested. Section 18 provides for power of entry without search warrant. Under Section 19 the prohibition officer or any police officer of the rank of S.I. of Police and above may enter and inspect any place in which it is reasonably suspected that an offence under Section 7-A or 8 is being committed. He may examine, test, measure or weigh any material, stills, utensils implements, apparatus or liquor found in such place.

19. Sections 21 provides for arrest of offenders without warrant. Section 21 (b) provides that any prohibition officer or police officer may seize and detain any liquor

or other article which he has reason to believe to be liable to confiscation under A.P.P. Act. Under Section 29, police or prohibition officer has to take reasonable measures in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed. Combined effect of Section 21(b) and Section 29 is to give preventive powers to the prohibition or police officer for thwarting commission of any offence.

20. The Prohibition Officers are registering the cases under Section 7-A read with Section 8(e) of A.P.P. Act, whenever they find instances of persons possessing F.J. wash in drums or pots.

21. Though Prohibition Act appears to be simulacrum to Excise Act, there is distinction between Section 7A of A.P.P. Act and under Section 34(d) and (e) of A.P. Excise Act. The prohibition Act did not distinguish between stages of preparation, attempt and actual production or manufacture. Using, keeping any intoxicant is made punishable under Section 34(a) of A.P. Excise Act. Only in Sections 17, 19, 21(b) and 29, it is provided for dealing with the situation of possession of materials, stills, utensils implements *etc.* Section 17 is provides for issue of search warrants for search for any liquor, materials, stills, utensils, implements or apparatus in respect of which alleged offence has been committed. Section 19 provided for entry and inspection, to examine, test, measure or weigh any material, stills, utensils, implements apparatus or liquor found in such place. Section 21(b) provide for seizing of any liquor or other article which a prohibition officer has reason to believe to be liable for confiscation. Under Section 29 the Prohibition officials are given power to prevent commission of any breaches which they may know or have reasons to believe or about to be committed.

22. Proviso to Section 1(2) of A.P. Excise Act says that on and from the date of commencement of A.P.P. Act, 1995 the provisions of this act shall, in so far as they are inconsistent with the provisions of the said Act cease to operate.

Section 31 of A.P.P. Act has given over riding effect to the A.P.P. Act. Combined effect of these Sections is that in case of inconsistency between Excise Act and Prohibition Act, provisions of Excise Act shall cease to operate.

23. It is a moot question whether stages of preparation to produce or manufacture or attempt to produce and manufacture arrack or I.D.liquor amounts to production or manufacturing.

24. Statutes can be interpreted; (1) Literally or grammatically and (2) Logically or functionally. In a penal statute, Court is supposed to interpret words of ambiguous nature in a broad and liberal sense so that they may not become traps for honest and unwary men. The penal statutes have their purpose not only to punish the wrongdoer for some act done by him which is wrong or criminal but also to prevent the prospective doer from doing something which is either wrong or criminal in nature. In order to achieve these objectives, it is necessary that the penal laws should be strictly construed. Before arriving at a conclusion that a particular act is an offence under the law of the land, the law of the land must clearly spell out that act as an offence. If the words used in the statute are reasonably capable of two contradictions, the construction which is favourable to the accused should be preferred, but in construing the relevant words it is "obviously necessary to have due regard to the context in which they have been used". As laid down in *Alamgir v. State of Bihar*, (1959) 1 SCR 464. Words of Prohibition must be taken as they stand. They must not be stretched or amplified in order to meet the supposed evil which has to be checked. Under literal interpretation of statutes, the Court has to follow principle of construing words according to popular and

dictionary meaning. The Court has to follow this principle even if it results in absurdity or against policy or intention of the legislature. This is based on the principle *verbis legis non est recedendum* i.e., from the words of the law there should not be any departure, for none can so well explain the meaning of the words than the makers of the statutes in their own direct words.

25. In view of Section 1(2) of A.P. Excise Act and Section 31 of A.P.P. Act, the Prohibition Act has to be given primacy in case of inconsistency between two Acts. As the Prohibition Act did not distinguish between stages of preparation, attempt and actual production or manufacturing unless production or manufacturing is complete, strictly speaking, it cannot be said that the offence has been committed of production or manufacturing of I.D. liquor or arrack under Section 7-A of A.P.P. Act. There may be instances of finding babul wood, Jaggery, near place of water sources. F.J. Wash may be found at some place. There may be found arranged still, without there being any F.J. Wash in the vessel. There may be working still without there being any I.D. liquor in the receiver pot. By considering Sections 12, 13, 17, 19, 21 (b) and 29 of A.P. Excise Act, it can be stated that the Prohibition officials are given preventive powers. The Prohibition officers are given power to seize the material suspected to be liable for confiscation or which may be used in the production of I.D. liquor. When Section 7-A of A.P.P. Act is compared with Sections 34(d) and 34(e) and Section 42 of A.P. Excise Act, one fails to understand as to why provisions similar to Sections 34(d), 34(e) and 42 of A.P. Excise Act are not incorporated in A.P.P. Act, even though A.P. Excise Act is precursor to A.P.P. Act. It is easy to state that the instance of finding F.J. Wash becomes an offence under Section 11 of A.P.P. Act. It is difficult to state whether the same becomes an offence under Section 7-A of A.P.P. Act.

25. Section 8(e) of A.P.P. Act provides for punishment for the offence under

Section 7-A of A.P.P. Act. The offence under Section 7-A is punishable with imprisonment which shall not be less than one year but which may extend up to 5 years and with fine which shall not be less than Rs.10,000/- but which may extend upto Rs.1,00,000/-. Section 62 of the A.P. Excise Act empowered Magistrates to impose enhanced penalties. Section 62 of the Excise Act says notwithstanding anything in Section 29 of the Code of Criminal Procedure, 1973 it shall be lawful to any Magistrate of 1st class to pass any sentence authorised by this Act in excess of his powers under Section 32 of said Code. There are no similar provisions in A.P.P. Act similar to Section 62 of the Excise Act which empowers Magistrate to impose enhanced punishment. Though Section 8(e) of A.P.P. Act provides for imprisonment which may extend up to 5 years and with fine which shall not be less than Rs.10,000/- but which may extend upto Rs.1,00,000/-. The offence under Section 7-A cannot be punished with imprisonment exceeding 3 years and with fine exceeding Rs.5,000/- unless the Magistrate intends to invoke Section 325 of Cr.P.C.

29. Section 34(a) of A.P. Excise Act, provides that whoever in contravention of A.P. Excise Act or of any rule, notification licence or permit *etc.*, imports, exports, transports, manufactures, collects or possess or sells any intoxicant shall on conviction punished. Section 8(b) of A.P. Excise Act, as amended by the Amendment Act, 1977 provides that whoever sells, transports, produce or manufacture any liquor other than arrack except in accordance with the provisions of A.P. Excise Act, 1968 or terms of any rule, notification, order, licence or permit issued thereunder shall be punished. There is no need for continuation of this Section in view of Section 34(e) of A.P. Excise Act. A.P.P. Act as it originally enacted and as it stood amended by successive amendments gives an impression that the Act has been tailored, amended and partially abandoned. It is difficult to concede that the Act failed or it became difficult

to implement A.P.P. Act because of the non co-operation of the neighbouring States. The Act became difficult to be implemented effectively because of the inherent weaknesses of the A.P.P. Act. Some of the

provisions which are existing in A.P. Excise Act ought to have been incorporated into A.P.P. Act. A.P.P. Act have to be reviewed afresh. Even for affectively implementing Prohibition of arrack alone.

A.P. ADMINISTRATIVE TRIBUNAL SHOULD BE ABOLISHED - WHY?

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The Back Ground:-

Article 371-D was inserted in the Constitution of India by the 32nd Amendment with effect from 1-7-1974. It is not necessary to mention or deal with the events that led to this Amendment. The events that took place do no credit to the three organs of the State.

The President of India in exercise of the powers conferred on him under Article 371-D Clauses (3) & (4) made an order called "The A.P. Administrative Tribunal Order of 1975", which came into force on 6-7-1976. Clause (2) of the order states that the Chairman shall be a person who at the time of the appointment to the Tribunal is a Judge of the High Court and other members shall be persons having knowledge of public administration. The Judge and the members appointed to the Tribunal were all persons drawn from outside the State of Andhra Pradesh. Under Clause (5) of Article 371-D, the Government had jurisdiction to annul, modify any order of the Administrative Tribunal after recording reasons for doing so. The order of the Tribunal became effective only on its confirmation by the Government. A three months period was specified for confirming the order. An appeal by special leave lay to the Supreme Court from the orders of the A.P. Administrative Tribunal.

The High Court of Andhra Pradesh had no power of superintendence.

The Supreme Court in *Samba Murthy's* case (1987) 1, SCC 362 = AIR 1987 SC 663 held that Clause (5) of Article 371-D violated the basic structure of the Constitution of India and struck down the said clause. The effect was that the Government lost the power of scrutiny of the order of the A.P. Administrative Tribunal.

By the 42nd Amendment Act of 1976, Part XIV-A was inserted in the Constitution of India consisting of Articles 323 - A and 323-B. Parliament was empowered to establish Administrative Tribunals for the adjudications of or trial by the said Tribunal, of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or of any local authority *etc.*,

Parliament passed an Act called the Administrative Tribunals Act, 1985. Clause (4) of the said Act gave power to the Central Government to establish a Central Administrative Tribunal to deal with the matters connected with the Central Services. On a request from a State Government, it can establish an Administrative Tribunal for that State.