

D Prabhu v. The Commissioner of Prohibition and Excise

- ❖ **BENCH:** Justice R Suresh Kumar and Justice G Arul Murugan



- ❖ **FORUM:** Madras High Court

❖ **OBSERVATIONS**

- The Madras High Court recently noted that it was high time that the Government of Tamil Nadu rethink its liquor policy for the welfare of the people in the state, especially the younger generation who are the pillars of tomorrow. The court added that a conscious decision could be taken based on public opinion and though taking a decision may not be an easy task, that should not justify the State's support to the liquor policy presently in place.
- The bench of Justice R Suresh Kumar and Justice G Arul Murugan noted that the Government Rules, regarding the location of TASMALC shops, should be for the protection and welfare of the people.
- However, presently, the Rules appear to be made to protect the TASMALC shops whose aim is to enhance the sale of intoxicating material that ultimately affects the society.
- "The Rule, especially Rule 8 of the 2003 Rules, should be made to protect the welfare of the people in various localities in the State from the menace of people thronging in these kinds of liquor vending shops which create almost everyday law and order problems.
- But here, the Rule appears to have been made to protect these kind of TASMALC retail vending shops or IMFL retail vending

shops or clubs or bars which aim to enhance the selling of these intoxicating materials which will go a long way to affect the society at large, i.e., the people in Tamil Nadu," the court observed.

- The court was hearing a petition to forbear the authorities from opening a recreational club in Woraiyur, Trichy. The petitioner had argued that once the recreational club was opened within a week or two, it would later become only a liquor-selling place after obtaining the F.L.2 license.
- The petitioner informed the court that though he, along with the people in the location had raised objections, the same were rejected prompting them to approach the High Court by way of a public interest litigation. The authorities informed the court that the objection raised by the petitioner and others was already considered by the District Collector and rejected. It was submitted that as per the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules 2003, objections to the application for a license would be considered in case of any violation of the Rules.
- In the present case, since no rules were violated, the objections were not considered. The court noted that as per Rule 8 of the 2003 Rules, in Municipal Corporations and Municipalities, TASMALC shops or Bars or Recreation Club for selling IMFL shall not be established within a distance of 50 meters and in other areas within 100 meters.
- The court also noted that in the present case, the proposed location was in a municipal area and no place of worship or educational institution was located within 50 meters of the proposed location. Thus, the court observed that the decision of the District Collector rejecting the objection was not faulty in a strict sense as the rules were not violated.
- At the same time, the Court also observed that 50 meters was not a vast distance and it was possible that in some cases, an educational institute or a place of worship was located in the 51st or 52nd meter.

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- The Court observed that in such cases, the location of the TASMAL shop or liquor vending place would not be against the rules as per the decision of the administration but the people for whom the governance is made would feel otherwise.
- The court also observed that the State should take a conscious decision in revisiting the existing liquor policy, which was putting the common public, especially the younger generation in peril which was evident from the innumerable cases being reported daily.

Vijayakumari v. Jayakumar

❖ **BENCH:** Justice Bechu Kurian Thomas



❖ **FORUM:** Kerala High Court

❖ **OBSERVATIONS**

- The Kerala High Court has held that the penalty for breach of a 'Protection Order' passed under Domestic Violence Act is applicable even if such order also recognizes the woman's right to a 'Shared Household'.
- Section 18 of the DV Act pertains to protection orders and Section 19 pertains to residence orders. Ordinarily, an order falling within the category of a residence order does not qualify for being proceeded against under Section 31 of the DV Act.
- Section 31 prescribes imprisonment of upto one year or fine of upto twenty thousand rupees or both.
- Justice Bechu Kurian Thomas said, " While granting protection to a woman in a domestic relationship, if her right to the shared household is protected expressly, such an order can qualify as a protection order also. Merely because a right of residence in the

shared household is protected in the order, it does not mean that it cannot qualify as a protection order."

- The Bench also said that absence of statutory penalty for breach of residence order is an anomaly, which the law makers must look into.
- The Act envisages protection of the right of a woman to a shared household but has unfortunately omitted to provide an effective remedy through Section 31. Of course, under Section 19(4) of the DV Act, the residence order can be treated as an order under Chapter VIII of the Cr.P.C.
- However, recourse to the said chapter of the Code cannot be an effective remedy as has been seen over the years and the objective of the statute is not being met."
- As per factual matrix of the case, the Magistrate Court had passed an interim order restraining petitioner's husband from harming her or dispossessing her from the shared household. Petitioner claimed non-compliance of said order and approached the Magistrate to initiate proceedings under Section 31 of the Act.
- The Magistrate dismissed the petition on finding that the order restraining the husband from dispossessing the wife was only a residence order under Section 19 and not a protection order under Section 18 and that there is no breach of protection order.
- Counsel for the petitioner submitted that every endeavour must be made to enable the women in a domestic relationship to enjoy the orders of the court. It was argued that domestic violence includes even restriction of access to a shared household as an economic abuse.
- On the other hand, the Counsel for the respondent argued that Section 31 provides a penalty for breach of protection order and not that of a residence order.
- The Court referred to the decisions in Velayudhan Nair v. Karthiayani (2009) which was followed in Suneesh v. State of Kerala and Another (2022) wherein it was held that non-compliance of residence order can result in initiation of proceedings under Code for Criminal Procedure but not under

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Section 31 DV Act.

- It said protection order directing prohibition of commission of any act of domestic violence within its ambit would also include access to a shared household.
- It said, "Therefore if the order directs prohibition of the commission of any act of domestic violence, such an order can also take within its fold, the provision for access to a shared household as per Section 18(a). Similarly, if the order prohibits the commission of any specific act that can also qualify to be treated as a protection order as per Section 18(g), provided it is issued as an order of protection."
- The Court stated that the right of access to a shared household of a wife can also be treated as a protection order if that order contains terms for the protection of a woman in a domestic relationship.
- It said, " A right of access to a shared household can be treated as a protection order if the terms of the order treat it as a measure of protection for a woman in a domestic relationship. Thus the nature and content of the order issued by the Magistrate determines its character as a protection order or as a residence order."
- In the present case, the Court stated the order issued by the Magistrate intended it to be treated as an order of protection specifically to protect her from dispossession from a shared household and not merely as a residence order. It thus held that violation of the protection order would attract a penalty as per Section 31.
- As such, the petition was allowed. The court thus set aside the order of the Magistrate to the extent it was treated as a residence order and directed the Magistrate to initiate proceedings under Section 31.

Shailendra Mani Tripathi v. Union Of India

- ❖ **BENCH:** CJI DY Chandrachud comprising Justice JB Pardiwala and Manoj Misra
- ❖ **FORUM:** Supreme Court India

❖ OBSERVATIONS

- The Supreme Court asked the Union to consult all stakeholders on the question of having a menstrual leave policy for working women.



- The Court also expressed apprehension that such a policy may not be welcomed by the employers and create troubles for women seeking jobs. The bench led by CJI DY Chandrachud comprising Justice JB Pardiwala and Manoj Misra was hearing a petition which sought menstrual leave for female students and working women across India.
- The CJI opined that while introducing such a leave policy may encourage women to be at the forefront of the workplace, one had to also consider the flip side of employers not agreeing to hire women at the cost of compromising their workplace productivity.
- There are two very different perspectives:
 - Having that menstrual leave policy encourages the women to be part of the workforce;
 - The other perspective is that mandating such policies will actually impose a sort of a bar on women being employed because the employer will then shun women in the workplace. We do not want that to happen also."
 - Stressing the above apprehension, the CJI said that ultimately the matter would fall within the policy domain as the employer would also be a stakeholder in this.
- This whole issue is a purely policy issue for employers to consider especially at the governmental level because when you try to

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do to protect women, it will actually work to their disadvantage.

- The Counsel for the petitioner however contended the policy for menstrual leave has in fact been adopted by several private employers. Globally also Asian countries like Japan and Indonesia have accepted menstrual leave policies.
- It may be noted that the United Kingdom, Wales, Spain, Zambia, China, Taiwan and South Korea too have introduced menstrual leave policies for women in the workplace.
- A similar petition was filed by the Petitioner in 2023 as well. There the bench of Chief Justice DY Chandrachud, Justice PS Narasimha, and Justice JB Pardiwala refused to interfere in the matter and granted liberty to the petitioner to submit a representation to the Union Ministry of Women and Child Development.
- The petitioner however informed that no response was given by the Ministry yet. The bench then granted liberty to the petitioner to again make a representation before the Secretary in the Union Ministry of Women and Child Development who shall hold a joint stakeholder meeting to consider if such a policy formulation was possible.
- The court also clarified that the order would not hinder State Governments from making decisions for the betterment of the employees. "We permit the petitioner to move the Secretary in the Union Ministry of Women and Child Development once again with a copy to learned ASG Aishwarya Bhati who has assisted the Court in other matters pertaining to women in the workplace.
- We request the Secretary, the Union Ministry of Women and Child Development to look into the matter at a policy level and after due consultation with all the stakeholders at the Union and the State level consider whether it would be appropriate to formulate a model policy.
- We clarify that this does not stand in the way of the State govt to take appropriate decisions bearing in mind the welfare of the concerned employees"

Nipun Malhotra v. Sony Pictures Films India Private Ltd

❖ **BENCH:** Chief Justice of India DY Chandrachud, Justices JB Pardiwala and Manoj Misra



❖ **FORUM:** Supreme Court India

❖ **OBSERVATIONS**

- In a notable judgment delivered, the Supreme Court has issued a set of guidelines to the visual media to ensure a dignified portrayal of persons with disabilities.
- The Court stressed that portrayals which carry negative stereotypes about persons with disabilities would impact their dignity and perpetuate social discrimination against them.
- A bench comprising Chief Justice of India DY Chandrachud, Justices JB Pardiwala and Manoj Misra was hearing a challenge to the certification granted to the film 'Aankh Micholi' produced by Sony Pictures on the ground that the film depicted persons with disabilities in an undignified manner.
- While refusing to interfere with the certification granted by the Central Board of Film Certification, the Court used the opportunity to "provide a framework of the portrayal of persons with disabilities in visual media that aligns with the anti-discrimination and dignity-affirming objectives of the Constitution as well as the Rights of Persons with Disabilities Act."
- Highlighting that the representation of persons with disabilities must not lead to their marginalization, the judgment authored by CJI DY Chandrachud stated :
 - "As long as the overall message of the film justifies the depiction of disparaging language being used against

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persons with disability, it cannot be subjected to restrictions beyond those placed under Article 19(2). However, language that disparages persons with disabilities, marginalizes them further and supplements the disabling barriers in their social participation, without the redeeming quality of the overall message of such portrayal must be approached with caution. Such representation is problematic not because it offends subjective feelings but rather, because it impairs the objective societal treatment of the affected groups by society. We believe that representation of persons with disabilities must regard the objective social context of their representation and not marginalized persons with disability."

- The Court issued the following guidelines :
 - Words cultivate institutional discrimination. Terms such as "cripple" and "spastic" have come to acquire devalued meanings in societal perceptions about persons with disabilities. They contribute to the negative self-image and perpetuate discriminatory attitudes and practices in society.
 - Language that individualizes the impairment and overlooks the disabling social barriers (e.g. terms such as "afflicted", "suffering", and "victim") should be avoided or adequately flagged as contrary to the social model.
 - Creators must check for accurate representation of a medical condition as much as possible. The misleading portrayal of what a condition such as night blindness entails may perpetuate misinformation about the condition, and entrench stereotypes about persons with such impairments, aggravating the disability.
 - Persons with disabilities are under-represented. Average people are unaware of the barriers persons with disabilities face. Visual media must reflect their lived experiences. Their portrayal must capture the multitudes of their lived realities, and should not be a uni-dimensional, ableist characterisation.

- Visual media should strive to depict the diverse realities of persons with disabilities, showcasing not only their challenges but also their successes, talents, and contributions to society. This balanced representation can help dispel stereotypes and promote a more inclusive understanding of disability.
- Such portrayals should reflect the multifaceted lives of persons with disabilities, emphasizing their roles as active community members who contribute meaningfully across various spheres of life. By highlighting their achievements and everyday experiences, the media can shift the narrative from one of limitation to one of potential and agency.

Frank Vitus v. Narcotics Control Bureau

❖ **BENCH:** Justice Abhay S Oka and Justice Ujjal Bhuyan



❖ **FORUM:** Supreme Court India
❖ **OBSERVATIONS**

- The Supreme Court held that there cannot be a bail condition that enables the police to constantly track the movements of the accused and virtually peep into the privacy of the accused.
- A bench of Justice Abhay S Oka and Justice Ujjal Bhuyan was examining whether a bail condition requiring an accused to drop a pin on Google Maps for the investigating officer to access his location violates a person's right to privacy.
- The Court set aside the bail condition requiring the accused to share the Google Maps PIN in his mobile device with the investigating officer. "There can't be a bail

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condition defeating the very objective of bail. There can't be a bail condition enabling the police to constantly track the movement of the accused and virtually peep into the private life of the accused," Justice Oka verbally pronounced the verdict.

- The court also relaxed a bail condition that required the foreign accused to obtain an assurance from his Embassy that they would not leave India. The bench said that there cannot be bail conditions that defeat the purpose of granting bail.
- Object of bail conditions cannot be to keep a constant vigil on the movements of the accused. The judgment authored by Justice Oka stated : "The object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21. If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the rights of the accused guaranteed under Article 21, including the right to privacy.
- The reason is that the effect of keeping such constant vigil on the accused by imposing drastic bail conditions will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail."
- As regards the facts of the present case, the Court observed that the bail condition requiring the accused to drop the PIN location on Google Maps will not result in real-time tracking.
- The Court reached this conclusion after taking inputs from Google LLC. Therefore, the condition of the accused dropping a PIN on Google Maps, as it stands, is completely redundant as the same does not help the first respondent," the Court observed. "Imposing any bail condition which enables the Police/Investigation Agency to track every movement of the accused released on bail by

using any technology or otherwise would undoubtedly violate the right to privacy guaranteed under Article 21.

- In this case, the condition of dropping a PIN on Google Maps has been incorporated without even considering the technical effect of dropping a PIN and the relevance of the said condition as a condition of bail," it added. Therefore, the Court directed the deletion of the said condition. The court was dealing with a special leave to appeal petition against the Delhi High Court's conditions for granting interim bail to Frank Vitus, a Nigerian national accused in a drugs case.
- In 2022, the High Court had ordered the accused and a co-accused to place a pin on Google Maps so their whereabouts would be visible to the Investigating Officer. Additionally, the High Court had directed the accused to obtain a certificate from the Nigerian High Commission confirming they would not leave India and would appear before the trial court.
- While hearing the matter, the Supreme Court had asked Google India to explain the functioning of Google PIN in the context of bail conditions requiring the accused to share their live mobile location.
- After excusing Google India from this explanation, the court directed Google LLC to clarify the workings of Google PIN. On April 29, after reviewing the affidavit from Google LLC, Justice Oka found it "superfluous". He also remarked that this bail condition is hit by Article 21 of the Constitution.
- Additional Solicitor General Vikramjeet Banerjee for the Narcotics Control Bureau (NCB) argued that such a condition helps share the live location of the accused. However, Justice Oka disagreed, emphasizing that it cannot be a bail condition, even if it has been used in two instances by the court.

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