

STATUS OF 158th REPORT OF LAW COMMISSION IN RESPECT OF DIPP (IL SECTION)

Name of the Ministry/Department: Department of Industrial Policy & Promotion (IL Section)

Sl. No.	Report No.	Subject	Steps taken for implementation	Present status	Reasons for delay
1	158 th Report of Law Commission	Amendment in the first Schedule of IDR Act, substituting the following as item No. 26 in the Schedule "Fermentation industries but not including alcohol"	<p>The issue of Jurisdiction under IDR Act 1951 on potable and industrial alcohol was taken to Cabinet for decision in 1999 and the Cabinet decided to await the judgment on the Supreme Court in the case of Government of Haryana Vs. Haryana Brewery Ltd. Later with the approval of Cabinet, D/o IPP got itself impleaded in the said case. Supreme Court disposed of the case vide judgment dated 12.2.2002. However, the decision dated 12.2.2002 did not bring any change in law regarding respective jurisdiction of States and the Union. In the meantime Kerala High Court on its judgment delivered on 8.11.2001 had observed that "it is clear that a license under I(D&R) Act , is essential for establishing an alcohol industry.... and Civil Appeal No.2185/2002 (James Joseph Vs Govt. of Kerala) was filed in the Supreme Court on the judgment of the Kerala High Court, in which this Department was made a party. The main issue raised in this case relates to the power/jurisdiction of Union and States in potable liquor sector. Judgment in CA No. 2185/2002 was delivered on 13.2.2008 by Supreme Court which upheld the earlier judgment dated 29.1.1997 of Supreme Court in the Bihar Distillery case which gave jurisdiction over potable alcohol matters in the States.</p> <p>In the backdrop of the Hon'ble Supreme Court's above referred judgment, the Law Commission of India in its 158th Report recommended to substitute the item "26" of the First Schedule to the Act as: "Fermentation Industries but not including Alcohol". The Law Commission took suo moto cognizance of the emerging practical problems as a sequel</p>	Implemented	<p>Law Commission in its 158th Report in 1998 recommended amended in the First Schedule of the I(D&R) Act, 1951 as under "Fermentation Industries but not including alcohol". The above recommendation were in the backdrop of the Hon'ble Supreme Court judgment delivered on 29.01.1997, in the case of Bihar Distillery Vs Union of India.</p> <p>The Recommendations of the Law Commission was examined by the Department of Industrial Policy & Promotion, being the Administrative Ministry for Industries (Development and Regulation) Act, 1951. The matter was taken to Cabinet for a decision and the Cabinet in its meeting held on 17.02.1999 decided to await the judgment of the Hon'ble Supreme Court in the case of Govt. of Haryana Vs Haryana Brewery Ltd. The Department of Industrial Policy & Promotion accordingly got itself impleaded in the said case. The Hon'ble Supreme Court disposed of the matter on 12.02.2002. However, the decision dated 12.02.2002 did not bring any change in law regarding respective jurisdiction of States and the Union. In the meanwhile a C.A. No. 2185/2002 was filed in the Hon'ble Supreme Court in which this Department was made a party. The main issue raised in this case relates to the power/jurisdiction of Union and States in potable liquor sector. Judgment in C.A. No.</p>

		<p>to the decision of the constitution Bench of the Hon'ble Supreme Court in interpreting the constitutional provisions pertaining to the subject and stated that in the interest of maintaining balance between the Union and the States to levy and collect revenue, and also to put an end to legal wrangling, it is eminently proper and expedient to substitute the item 26 of the First Schedule to the Act as under: <i>"Fermentation Industries but not including alcohol"</i></p> <p>The Recommendation of the Law Commission has been examined in depth both by this Department and CoS. While both Law Commission and CoS had recommended amendment in the First Schedule of the I(D&R) Act, 1951, this Department is of the view that in the event of the subject "Alcohol" being taken out of the First Schedule of I(D&R) Act, 1951, the Industrial as well as potable alcohol will come under the purview of the State Government, which was not the intention of the Hon'ble Supreme Court judgment in the Bihar Distillery case. Moreover, the effect of implementation of the recommendation of the Law Commission would imply that alcohol (both potable and industrial) shall no longer be a Central subject.</p> <p>After consulting all concerned Ministries / Departments and Ministry of Law, Justice and Co. Affairs a Cabinet Note dated 2-9-2015 was prepared for implementation of 158th Report of Law commission for seeking approval of the Cabinet for : (i) Substituting the existing entry 26 of the First Schedule to I(D&R) Act, 1951 with "26 Fermentation Industries (Other than potable alcohol)"; and (ii) Industries (Development and Regulation) amendment Bill, 2015 to give effect the above amendment. The proposal was slightly in variance with the Law Commission recommendations but totally in conformity with the Supreme Court judgment in the Bihar Distillery case. The Cabinet in its meeting held on 9-9-2015 has approved DIPP's above proposal.</p>		<p>2185/2002 was delivered on 13.2.2008 by the Hon'ble Supreme Court, upholding the earlier decision in the Bihar Distillery case, which gave jurisdiction over potable alcohol matters to the States.</p> <p>Thus bulk of the delay may be attributed to the prolonged legal battle. Subsequently, substantial time was also spent on consultation with concerned Ministries/Departments. The matter was also taken up with Department of Legal Affairs twice as Department decision was slightly in variance with Law Commission Recommendations. Department of Legal Affairs advised to take the matter to Cabinet. Subsequently, second round of inter-Ministerial consultation was done while circulating the Cabinet Note. Thus this process also took long time.</p>
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