

## CHAPTER-III: CONTROL ENVIRONMENT

It is the responsibility of the Government and the top management of the Department to establish the control environment through measures such as adopting consistent policies, ensuring timely action to implement the policies, ensuring availability of qualified employees, making available updated manuals to guide work, taking timely and strict action against violations and initiating measures to strengthen systems. We noticed several weaknesses in the control environment, which are described below:

### 3.1 Did the top management act as a role model by adopting transparent procedures?

As per the Abkari Act and the Foreign Liquor Rules, 1953, Foreign Liquor includes plain rectified spirit including absolute alcohol intended to be used for manufacture of liquor meant for human consumption. Import fee of ₹ 5 per litre was leviable on import of IMFL other than beer, vide notification issued in March 1996. As such Extra Neutral Alcohol (ENA) imported into the State from other States for manufacture of potable liquor comes under the classification of IMFL and attracts levy of import fee.

Test check of the records of the distilleries revealed that the import fee was not levied in the State and this was pointed out in the Report of the C&AG for the periods ended 31 March 2007 and 31 March 2008. In reply to this, the Government cited the decision of the Supreme Court in the case of Synthetic and Chemicals vs State of UP and others (October 1989) for not levying the import fee. The Supreme Court, in this case, held that rectified spirit was not alcohol fit for human consumption but an industrial alcohol which was outside the purview of State legislation. However, later in January 1997, the Supreme Court in the case of Bihar Distillery and ANR vs Union of India and others held that so far as the rectified spirit supplied or utilised for potable purpose was concerned, levy of excise duty and all other controls shall be with the States. Thus as per the notification issued in 1996 and the latter decision of the Supreme Court in 1997, the import fee was leviable on rectified spirit.

The Public Accounts Committee, after discussion of the paragraphs observed (July 2008) that in reality IMFL was a finished product and rectified spirit, a raw material and since the definition creates confusion and much practical difficulties, recommended necessary amendment to be made in the Act as well as the Rules in such a way so as to fix separate rates for finished goods and raw material. However, the Government, instead of fixing separate import fee for finished goods and raw materials, abolished (December 2009) the import fee for rectified spirit or Extra Neutral Alcohol including absolute alcohol intended to be used for the manufacture of liquor meant for human consumption by amending the Act with retrospective effect from 30 March 1996.

We examined the procedures followed to bring about an amendment in the Abkari Act to waive import fee. We noticed that three amendments to the Abkari Act were under consideration of the Government, one for giving effect to the recommendations of the Expert Committee (Lalithambika Committee) and two other bills (Bill Nos. 37 and 47) for inserting a new section/modifying

a section (these bills were earlier presented in 2006). As per the orders of the Minister for Labour and Excise the amendment of Section 6, for abolition of import fee, was also incorporated and a common Bill (Bill No 313) was presented and issued as an Ordinance (January 2010). Our observations are detailed below:-

- The note for the Council of Ministers indicated that the proposed amendment would not involve any financial commitments/implications. While the amendments to give effect to the recommendations of the Lalithambika Committee and to Bill Nos 37 and 47 did not involve any financial implications, amendment to Section 6 had major financial impact. In fact, in the Subject Committee on Economic Affairs to which the bill was referred, five members gave a dissent note against the bill on the grounds that the State Exchequer would lose a considerable amount of revenue if import fee was not levied.
- We noticed that the Statement of Objects and Reasons appended to the bill indicated that amendments were proposed to the Abkari Act in consideration of the recommendations of the Expert Committee (Lalithambika Committee) along with amendments proposed in the Bill Nos. 37 and 47. Amendment to Sn. 6 to waive import fee was neither based on the Expert Committee's recommendations nor based on Bill Nos. 37 and 47. Thus, there was no information about the reasons for amending Section 6 to waive import fees.

We are of the opinion that the bill was proposed to the Council of Ministers by including an incorrect statement on financial impact and to the Legislature without complete information about the Section 6. In the Audit Reports considered by the PAC, a revenue loss of ₹ 142.18 crore was pointed out. Further, based on the number of permits/No Objection Certificates issued to the distilleries for import of ENA during 2010-11, we are of the view that there would be a recurring annual loss of approximately ₹ 77 crore to the Exchequer due to abolition of import fee.

We consider that the Government and top management of the Department did not adopt transparent procedures to get an amendment to the Abkari Act enacted.

After we pointed out the matter the Government stated (November 2011) that the top management acted as a role model by adopting transparent procedure as reflected in the Abkari policy announced from time to time. The Department prevented illicit liquor in the market substantially which might be one of the major reasons for increased consumption of IMFL sold through authorised outlets. Further with the objective of reducing alcoholism and intensifying campaign against alcoholism, Excise Department has taken earnest efforts by revising existing Budget provision of ₹ 20 lakh to ₹ 2 crore.

The reply is not acceptable as it is not specific to the point raised in audit.

### 3.2 Did the Government adopt consistent policies?

**The consumption of IMFL in the State increased by 63 per cent from 133 lakh cases to 217 lakh cases in five years**

Every year the Government announces an Abkari policy stating briefly the strategies/activities to be undertaken during the year and announcing the changes in the rate of fees/rentals etc for various kinds of licenses issued under the Abkari laws. We noticed contradictions between different policies of the Government. For instance, though the Government's annual Abkari policy emphasised on discouraging consumption of alcohol, yet the Government's action to grant more licences for liquor outlets and to regularise ineligible bar hotels contradicted this broad policy objective. The number of liquor outlets and liquor consumption in the state increased steadily during the five year period 2006-07 to 2010-11 as shown in the following table. Further, Kerala has the highest per capita consumption of liquor in the country as per the publication of the Public Relations Department titled "Substance Abuse Prevention and Control – A master plan for Kerala".

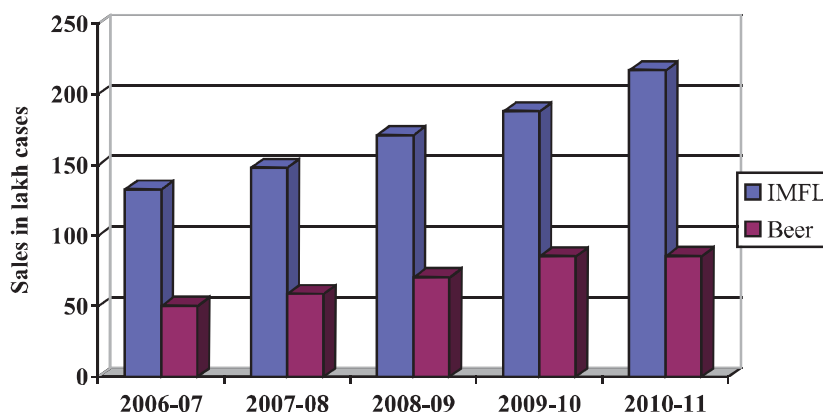
#### Major Foreign Liquor Outlets

Type of Licence	No of licences sanctioned during 2006-07 to 2010-11	Total number as on 31.03.2011
FL3 Bar Hotels	153	683
FL1 Liquor shops	33	384
Total	186	1067

#### Details of Liquor Consumption

Year	Sales in lakh cases		Increase over the previous year (in lakh cases)	Gross sale (₹ in crore)
	IMFL	Beer		
2006-07	132.65	50.05	33.04	3143.29
2007-08	148.01	58.62	23.93	3669.49
2008-09	171.17	70.60	35.14	4631.00
2009-10	188.05	85.24	31.52	5539.85
2010-11	217.02	85.61	29.73	6730.30

Source: KSBC



We noticed that the population of the State increased by about 1.5 lakh persons per year (based on the population of 318.41 lakh in 2001 and 333.8 lakh in 2011) whereas the increase in annual liquor consumption ranged from 24 lakh to 35 lakh cases during the review period, indicating an increase in the rate of consumption.



### 3.3 Were the policies implemented effectively?

It is the responsibility of the top management of the Department to ensure that action is taken to implement the policies of the Government. We noticed that many of the policy statements were not followed up by action plans or their implementation was tardy. As a result, implementation of Government policies was ineffective.

Major policy statements	Status of implementation
Government is fully committed to discourage alcohol consumption as it leads to serious social problems. (Abkari Policy 2007-08)	Consumption is increasing each year.
Stringent action will be initiated against illicit liquor trade in the State. (Abkari Policy 2007-08)	Intelligence inputs and minutes of field level conference reveal illicit liquor trade is still rampant in the State
Enforcement will be strengthened with popular committees. (Abkari Policy 2007-08)	Popular committees were formed. But only 27 to 53 <i>per cent</i> of the targeted meetings were convened during the period 2006-07 to 2010-11.
Production and distribution of sweet toddy is under active consideration. (Abkari Policy 2007-08 and 2008-09)	Not implemented
Awareness programme to create awareness among students/ public about the ill effects of alcohol consumption. (Abkari Policy 2007-08)	₹ 20 lakh was provided in each budget for the programmes and the campaigns, street shows, etc. were being conducted regularly. We consider that the allocation is meagre to have a perceptible impact.
Creation of an apex body for cooperative societies and to give permission to them for production of sweet toddy. (Abkari Policy 2007-08 and 2008-09)	Not implemented
Production of cheap IMFL at CHICOPS distillery at Palakkad (Abkari Policy 2008-09)	Not implemented
Starting of de-addiction centres in selected	Government ordered (2009-10) deaddiction

Major policy statements	Status of implementation
Government hospitals with the co-operation of Health department (Abkari Policy 2009-10)	centres to be started in government hospitals in eight districts. However, the centres have not yet been started so far.
As part of improving the toddy sector, Government proposed to start toddy parlours in all districts (Abkari Policy 2011-12)	Not yet started

### 3.4 Was the Excise manual useful in guiding the work of employees?

The Kerala Excise Manual currently used by the Department was prepared in 1972. We noticed that it has not been revised so far despite several major changes relating to prohibition of alcohol, creation of intelligence wing and amendments to Abkari laws. As the manual is outdated it could only be of limited use in guiding the work of departmental employees. The employees of the Department confirmed that the manual, though useful, needs to be updated.

### 3.5 Was prompt follow up action taken on study reports?

We noticed that during the period under review, various study reports were submitted to the Department for improvement of its functioning. However, no action was taken on a majority of the recommendations as shown below.

Even though various study reports on Excise department were given, no follow up action was taken

Sl. No	Study Report	Year of report	Status/Remarks
1	Report on Simplification of procedures and methods in the Excise Department	2008	The report contained many recommendations relating to confiscation, personnel, modernisation of check posts, starting a website, revision of excise manual, providing facility for consumption of IMFL in FL1 shops, etc. No follow up action was taken on these recommendations.
2	Expert Committee formed to study and to report changes required in Abkari Act	December 2009	The Abkari Act was amended vide Act 3 of 2010 in April 2010 by introducing new sections/provisions, etc. based on one of the recommendations of the committee.
3	Report by the Committee on Chemical Composition of Toddy	January 2009	Pending with Government.

### 3.6 Was effective action initiated against violations at the Commissionerate?

We noticed from the correspondence files between the Commissionerate and field offices, kept in the Commissionerate, that even though violation of licence conditions/permit system was reported from the field offices, effective corrective measures were not taken at the Commissionerate. In response to our

audit query, the Commissionerate replied that data regarding FL-3<sup>1</sup> licences cancelled for violation of license conditions was not available with them and that such data was available at the Division offices. As the Excise Commissioner was the competent authority to cancel licences under the Abkari Act and the Foreign Liquor Rules, non-availability of such basic details at the Commissionerate raises doubts about the seriousness with which reports of violations are treated.

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<sup>1</sup> Foreign Liquor-3 Hotel (Restaurant) Licence.