# APPENDIX 11
# THE BIHAR PROHIBITION ACT, 1938.

## (Bihar Act VI of 1938).

**An Act to introduce and extend the prohibition of the manufacture, sale and consumption of liquors,[1] [tari and intoxicating drugs in the Province of Bihar.**

## CHAPTER I

### Preliminary

### Comments & Case-Law

[The challenge to the validity of the provisions of the T.N. Act on ground of it being discriminatory and violative of Article 1 on a comparison thereof with the provisions of the Land Acquisition Act is not sustainable. The source of authority for the two being different, Article 14 can have no application. 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. *State of Tamil Nadu vs. Ananthi Ammal*, **(1995)1 SCC 519**.

Though the word business is ordinarily more comprehensive that the word trade, one is used as synonymous with the other. Even accepting the test laid down in Narain Swadeshi Weaving Mills *v*. Commer. of Excess Profits Tax, **AIR 1955 SC 1761**

1. see now S. o. No. 187 dated 1.4.1991.

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that the word 'business' connotes some real, substantial and systematic or organized course of activity with a set purpose, if the activity of a dealer, say, in ghee is business; then how does it cease to be business if it is in liquor ? Liquor can be manufactured, brought or sold like any other commodity. It is consumed throughout the world, though some countries restrict or prohibit the same on economic or moral grounds. The morality or otherwise of a deal does not affect the quality of the activity though it may be a ground for imposing a restriction on the said activity. The illegality of an activity does not affect the character of the activity but operates as a restriction on it. If a law prohibits dealing in liquor, the dealing does not cease to be business, but the said law imposes a restriction on the said dealing. The dealing in liquor is business and a citizen has a right to do business in that commodity; but the State can make a law imposing reasonable restriction on the said right, in public interest. *Krishan kumar narula vs. State of Jammuand Kashmi**r***,AIR1967SC1368.**

The Legislature of a State is fully competent to regulate the business of vending intoxicating liquor, to mitigate its evils or suppress it entirely. There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen. As it is a business attended with danger to the community, it may 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. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. Hence, the provisions of the (Ajmer) Excise Regulation (I of 1915) purporting to Regulate trade in liquor in all its different spheres are valid. *Cooverjee B. Bharucha vs. Excise Commissioner*, **AIR 1954 SC 220.**

There can be a monopoly only when a trade which can be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. But when a contract is thrown open to public-auction. It cannot be said that there is exclusion of competition and thereby a monopoly is created. Further, in certain circumstances exclusion or competition so as to create a monopoly either in a State in some other body may be justified. Every case must be judged on its own facts and in is own setting of time. ibid.

To regulate the sale of medical or toilet preparations containing alcohol and/ or intoxicating drugs, is consistent with the scheme and provisions of the Tamil Nadu Prohibition Act i.e. Prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs in the State. The restriction of obtaining license under R. 11 of the Tamil Nadu Spirituous (Preparation) Control Rules (1984) and other restrictions imposed by the said Rules (1984) are consistent with the provisions of the Tamil Nadu Prohibition Act (1937) and the State Govt. had authority to frame such Rules under S. 54(2) (m) of the said Act (1937). *Kanya Kumari District Sidha and Ayurveda Vaidgar Sangam vs*. Government of Tamil Nadu, **AIR 1996 SC 1314.**

Therefore, the provisions of the T.N. Act, except for the provision as to installments in Section 11, are not violative of Article 14. It is therefore, unnecessary to consider whether or not the Act has the protection of Article 31-C of the Constitution.

The T.N. Act being valid legislation, its provisions preclude the State from acquiring land for the purpose of a Harijan Welfare scheme under the Land Acquisition Act. *State of Tamil Nadu vs*. *Ananthi Ammal,***(1995) 1 SCC 519.**

The provisions of Chapter VI of the T.N. Slum Areas (Improvement and Clearance) Act, 1971, which deal with the acquisition of land for the purposes of

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Slum clearance, are substantially similar to the provisions of the T.N. Acquisition of Land for Harijan Welfare Schemes Act, 1978. The 1978 Act has already been held to be intra vires the Constitution except in regard to the provision for payment of the compensation amount in installments. The Slum Clearance Act does not provide for payment of the compensation amount in installments. That no solatium is payable under the Slum Clearance Act does not make any substantial difference. It is not uncereasonable that the State should not have to pay solatium in consideration of the compulsory nature of the acquisition of land that is slum land. ibid.

The A.P. Act prohibiting the production and manufacturing of all intoxicating liquors while exempting toddy from the said prohibition is not discriminatory. Today 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. State of *A.P. vs*. *Mc. Dowell andCo*., **AIR 1996 SC 1627.**

The provision under Section 11 in regard to payment of the compensation amount by installments in the manner stated therein is wholly unreasonable. The owner of the land or another person interested therein would require compensation in lieu of the land forthwith to re-establish himself, whether in a new residence or on another piece of agricultural land or otherwise. The provisions of the section in this behalf are clearly severable. The T.N. Act can stand even when the provisions in regard to the payment of the compensations amount by installments are excised. To the extent that section 11 provides for payment of compensation it is ultra vires Article 14. The

provisions of Section 11 (1) subsequent to the words "in a lump sum" must, therefore, be struck down. ***State of Tamil Nadu vs. Ananthi Ammal*** **(1995) 1 SCC 519.**

There is no unreasonableness in Section 22 which makes the provisions of the T.N. Act applicable also to cases in which proceedings have been started before the commencement of the T. N. Act under the Land acquisition Act for the purposes of Harijan Welfare Schemes, particularly having regard to the terms of Section 20. However, the judgment under appeal striking down the T. N. Act was delivered as far back as September 1981, and no stay thereof was obtained from the Supreme Court. It is likely, therefore, that in cases where proceedings under the Land Acquisition Act had already been started to acquire lands for Harijan Welfare Schemes, they might have been revived and completed in the interregnum. It is, therefore, made clear that the provisions of Section 22 shall have no effect in such cases where awards have been made. ibid.

When the liquors are taken in excess the injuries are confined to the party offending is a fact which does not exist. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self- abasement which it creates. But as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized community, there are few sources of crime and misery to society equal to



that dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The sale of such liquors in this way has therefore, been, at all times, by the courts of every State, considered as the proper subject of legislative regulation. Coover Jee B. Bharucha vs. Excise Commissioner, **AIR** 1954 **SC** 220.

**Countervailing Duty.-** The countervailing duty is attracted at the point of import i.e. physical of the goods into the taxing territory) and only the payment of duty is deferred, in case the goods imported are removed to a bonded warehouse, to a later point of time, for purpose of convenience of collection. It will not be appropriate to construe the provisions in such a manner as imposing a liability on some persons (who have no bonded warehouse) at one point of time and on others, at a different point of time. Also if the liability to pay the duty itself were referable to a later point of time, the insistence on a bond in the terms prescribed would appear to be redundant. The provision that, where the facility is availed of, the assesse would pay duty at the rate prevalent at the later point of time (often higher than at the point of import but not necessarily so) is not consistent with the above concept but is rather a logical consequence of the privilege of deferment given to the assessee. *Shraff & Co. vs. Municipal Corporation,* ***1989*** *(Supp)* ***SCC347****.*

**Prohibition to manufacture of Liquor –** The enactment of any law providing for introduction of prohibition is within the legislative competence of a State Legislature Entry 8 of List II of the Seventh Schedule to the Constitution speaks of production, manufacture, possession, transport etc, of intoxicating liquors. It means that the power to make a law with respect to the said matters rests with the State Legislature what is significant is that Entry 8 of List II speaks expressly of production and manufacture of intoxicating liquors as well. It is clear that the industries engaged in production and manufacture of intoxicating liquors do not fall within Entry 24 of List II but do fall within Entry 8 of List II of the Seventh Schedule. The Parliament, therefore, 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 of the Seventh Schedule, since Entry 52 of List I governs only

Entry 24 of the List II but not Entry 8 of List II *State of Andhra Pradesh vs. Mc. Dowell and Co.,***AIR1996SC1627.**

**Prohibition** – The U.P. Excise (Amendment) Act, 1972 has introduced "prohibition"with effect from 22.1.1972 in the State of Uttar Pradesh. By the enactment of U.P. Excise (Second Amendment) Act, 1978 which substituted a new section 37 A and cured the defects which in section 37A which had led a full Bench of the Allahabad High Court to declare if violative of Article 14 of the Constitution and void ab initio. The new provision will be operative from 1.5.1972 and was declared to be valid law. *State of U.P. vs. Garib Dass*, (1977) 1 SCC 171.].

Whereas it is expedient as early as possible to bring about the prohibition, except for medicinal, scientific, industrial or such like purposes, of the production, manufacture, possession, export, import, transport, purchase, sale and consumption of liquor, tari and intoxicating drugs in the Province of Bihar.

And where as it is desirable to give effect to the above mentioned policy by introducing it in certain selected areas in the said Province and utilizing the experience gained therein for extending it to the other areas thereof;

It is hereby enacted as follows:-

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1. **Short title, extent and commencement. –** (1) This Act may be called the Bihar Prohibition Act, 1938.

(2)It extends to the whole of the province of Bihar.

(3)This section and sections 3 and 9 shall come into force in the whole of the Province of Bihar at once.

(4) The remaining provisions of this Act, or any of them, shall come into force in any local area in the Province of Bihar on such date as the Governor may, by notification, and different dates, may be appointed for different provisions.

**2. Repeals.–**From the date on which any of the provision of this Act mentioned in the first column of the Schedule came into force in any local area, the enactments mentioned opposite such provision in the second column of the Schedule shall cease to be in force in such area to the extent specified in the third Column of the Schedule.

Provided that the Governor may, by notification, declare that any of the provisions of this Act mentioned in the first column of the Schedule shall cease to be in force in any local area on such date as may be specified in the notification and thereupon the portions mentioned in the third column of the Schedule of the enactments mentioned opposite any such provision in the second column of the Schedule with any subsequent statutory modifications thereof shall revive and came into force in such area on and with effect from such date.

3. **Definitions. –** In this Act. Unless there is something repugnant in the subject or context,-

(**I**) Bottle – "Bottle' means to transfer liquor from a cask or other vessel to a bottle, jar, flask or pot or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not, and includes rebottling;

(2)*Buy or Buying* – "Buy" or "Buying" includes any receipt including gift;

(3)*Collector* – 'Collector" means a Collector of land-revenue or a Deputy Commissioner or any person appointed under sub-section (1) of section 5 to exercise all or any of the powers or to perform all or any of the duties of a Collector under this Act;

(4)Cultivation – "Cultivation" includes the tending or protecting of a plant during growth and

does no necessarily imply raising it from seed;

(5)Export – "Export" means –

(a)to take out of any local area in which this Act is in force to any other local area in the province of Bihar in which this Act is not in force, or

(b)to take out of the Province of Bihar;

(6)Import – "Import"' means-

(a)to bring into any local area in which this Act is in force from any other local area in the Province of Bihar in which this Act is not in force, or

(b)to bring into the Province of Bihar;

(7)I*nstitution*– " Institution" includes clubs, restaurants, hotels and shops where liquor, intoxicating drug or article containing liquor or drug is sold under license;

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(8)Intoxicating drug. – "Intoxicating drug" means –

(i) the leaves small, stalks and flowering of fruiting tops of the Indian hemp plant (Cannabis sativa L.) including all forms known as bhang. siddhi or ganga;

(ii)charas, that is, therein obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;

(iii)any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared there from; and

(iv)any other intoxicating or narcotic substance which the Governor may, by notification declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930 (II of 1930);

(9)*Liquor*- "Liquor" includes spirit of wine, mentholated spirits, spirits, wine, beer and all liquids consisting of or containing alcohol but does not include tari or talras; (10)*Local body*- "Local body" means a District or Local Board constituted under the Bihar and Orissa Local Self Government Act, 1885 (Ben. Act III of 1885) or a District Committee constituted under the Cess Act, 1880,(Ben. Act IV of 1880), or a Municipality or Notified Area Committee constituted or appointed under the Bihar and Orissa Municipal Act, 1922, (B & O. Act, VI of 1922) or the Jharia Mines Board of Health;

(11) *Manufacture*- "Manufacture" includes every process, whether natural or artificial, by which any fermented spirituous, or intoxicating liquor or intoxicating drug is produced, prepared or blended, and also re-distillation and every process for the rectification of liquor; (12) *Officer in charge of a police station*- "Officer in charge of a police station" has the same meaning as in the Code of Criminal Procedure, 1898, (V of 1898)][1]and includes any person invested with the powers of an officer in charge of a police- station under section 38; (13) *Place*- "Place" includes also a house, shed, enclosure, building, shop, tent and vessel;

(14) *Police-Station*- "Police-station" has the same meaning as in the code of Criminal procedure, 1898 (V of 1898)][1];

(15) *Prohibition authority*-"Prohibition authority" means the Prohibition Commissioner, a collector, a Prohibition Superintendent or a Prohibition Officer;

(16) *Prohibition Commissioner*-"Prohibition Commissioner" means the officer appointed to be the Prohibition Commissioner under sub-section (1) of section 5;

(17) *Prohibition Officer*-"Prohibition appointed to be a Prohibition Officer

under sub-section (1) of section 5;
(18) *Prohibition Superintendent*-"Prohibition Superintendent" means a person appointed to be a Prohibition Superintendent under sub-section (1) of section 5;
(19) *Rectification*-"Rectification' includes every process whereby spirit are purified or are colored or flavored by mixing any material therewith;

1. Now code of Criminal Procedure, 1973 (Act 2 of 1974).

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(20) *Sale or Selling*- "Sale" or "Selling" includes any transfer including gift;
(21) *Spirits* – "Spirits" means any liquor containing alcohol and obtained by distillation (whether it is denatured or not);
*Explanation* – 'Denatured" means subjected to a process prescribed by the Governor by notification for the purpose of rendering unfit for human consumption;
(22) *Talras* - "Talras" means juice drawn from a palmyara or date plam tree into and kept in receptacles in the prescribed manner so as to prevent any fermentation of the juice; (23) *Tar*i – "Tari" means juice drawn from a palmyara or date plam tree; and
(24) *Transport* – "Transport" means to move from one place to another within any local area to which this Act applies.

## CHAPTER II
## Establishment and control.

**4. Prohibition authorities and prohibition committees. –** (1) There shall be the following classes of prohibition authorities for the purpose of this Act, namely :-
(a) the Prohibition Commissioner ;
(b) the Collector ;
(c) Prohibition Superintendent, who may be either honorary or stipendiary; and
(d) Prohibition Officers, who may be either honorary or stipendiary.

(2) (i) the Collector or other Prohibition authority in charge of a district may constitute prohibition committees for any portion or portions thereof.
(ii) Such Prohibition committees shall –
(a) exercise and perform the prescribed powers and duties, and
(b) generally assist the Collector or other Prohibition authority in charge of the district, as the case may be, in carrying out the objects of this Act.

**5.Appointment of Prohibition authorities and their powers and duties.-** (1) The authorities specified in sub-section (1) of section 4 shall be appointed by the Governor and shall exercise and perform in the prescribed areas the prescribed powers and duties, and their conditions of powers and duties, and their conditions of service (in the case of authorities other than honorary authorities) and their relation to each other shall be such as may be prescribed.

(2) The Provincial Government may, at any time, by notification withdraw from any of the said authorities any or all of the powers referred to in sub-section (1).

**6. Prohibition authorities to be guided by orders and instruction of Provincial Government. –** In the exercise of the powers and the discharge of the duties conferred and imposed on a Prohibition authority under sub-section (1) of section 5, such prohibition authority shall be guided by such orders and instruction as he may from time to time receive from the Provincial Government.

**7. Revision of order of Prohibition authority. –** An order passed by a Prohibition authority, other than the Prohibition Commissioner, under any of the provisions of this Act may be revised by the prescribed authority in the prescribed manner.

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## CHAPTER III.

## Prohibitions and penalties

**8. Prohibition of manufacture of liquor and construction and working of distillery or brewery. –** Whoever –

(a) Manufactures liquor; or

(b) constructs or works any distillery or brewery; shall be punishable with imprisonment of either description which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

**9. Prohibition of import, export, transport, sale, etc., of liquor. –** Whoever (a) Import, Exports, transports or possesses liquor;

(b) Bottles of any liquor for sale;

(c) Sell or buys liquor;

(d) Consumes liquor; or

(e) Uses, keeps or has in his possession any materials, still, utensils, implement or apparatus whatsoever for the manufacture of any liquor;

shall be punishable with imprisonment of either description which may extend to six month, or with fine which may extend to one thousand rupees, or with both.

**10. Prohibition of import, export, transport, sale, manufacture, etc., of intoxicating drug.-** (1) Whoever –

(a) imports, exports, transports or processes any intoxicating drug; (b) except in accordance with rules made by the Provincial Government in this behalf, cultivates the hemp plant or extracts any portion of such plant from which any intoxicating drug can be manufactured;

(c)uses, keeps or has in his possession any materials, still, utensils, implement or apparatus whatsoever for the manufacture of any intoxicating drug.

(d) sells or buys any intoxicating drug; or

(e) consumes any intoxicating drug;

Shall be punishable with imprisonment of either description which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(2) Whoever manufactures any intoxicating drugs shall be punishable with imprisonment of either description which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

**11. Prohibition of import, export, transport, sale, etc. of talras.–**Whoever – (a) imports, exports, transports or possesses talras,

(b) bottles talras for sale,

(c) sells or buys talras, or

(d) consumes talras except at a place specified in a permit granted for the sale of talras under clause (b) of sub-section (1) of section 31; **12. Prohibition of**

**import, export, transport, sale, etc., of tari.-** Whoever- (a) imports, exports, transports or possesses tari;

(b) bottles tari for sale;

(c) sells or buys tari; or

(d) consumes tari;

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shall be punishable with imprisonment of either description which may extend to six months or with five which may extend to one thousand rupees, or with both.

**13. Prohibition of tapping of tari-producing trees and drawing of tari.-**Whoever-

(a) taps any tari-producing tree or permits to be tapped any tari producing tree belonging to him or in his possession; or

(b) draws tari from any tree or permits tari to be drawn from any tree Belonging to him or his possession;

Shall be punishable with imprisonment of either description which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**14. Exception.-**Nothing contained in sections 8,9,10,11,12 or 13 shall apply to any act, done under and in accordance with the provisions of this Act, or the terms of any rule, notification or order, license or permit issued. there under.

**15. Presumption on prosecutions under section 9 or 10. –** It may be presumed until the contrary is proved, that a person accused of any offence under clause (e) of section 9, or clause (c) of sub-section (1) section 10 has committed such offence in respect of any stills, utensils. Implement or apparatus whatsoever for the manufacture of liquor or any intoxicating drug or any such materials as are ordinarily used for the manufacture of liquor or any intoxicating drug for the possession of which he is unable to account satisfactorily.

**16.Permits to dispose of certain articles when Act, brought into force in any area-** When the provision of sections 8,9,10,11 or 12 are brought into force in any area, the Provincial Government may issue a permit to any person who was lawfully in possession on the day before such section was so brought into force of any article, the possession or sale of which is prohibited by the said section, to possess and sell such articles within such period and subject to such condition as may be specified in the permit.

**17. Permits to manufacture liquor.-** Provincial Government may issue a permit to any person to manufacture liquor in any distillery and to sell or export any liquor so manufactured to such persons or to such areas and subject to such condition as may be specified in the permit.

**18. Punishment for rendering or attempting to render denatured spirit fit for human consumption-** Whoever renders or attempts to render fit for human consumption any sprit, whether manufactured in India or not, which has been denatured, or has, in his possession, any spirit in respect of which he knows or has reason to believe that any such attempt has been made, shall be punishable with imprisonment of either description which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For the purposes of this section, it shall be presumed, until the contrary is proved, that any sprit which is proved on chemical analysis to contains any quantity of any of the prescribed denaturants is or contains or has been derived from denatured spirit.

**19. Prohibition of advertisement.-** Whoever prints or publishes in any newspaper, book, leaflet, booklet or any other single or periodical publication or otherwise displays or distributes any advertisement or other matter commending, soliciting the use of, or offering any liquor, tari or

intoxicating drug other than liquor, tari or drugs exempted under section 28 shall be punished with fine which may extend to one thousand rupees:

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Provided that this section shall not apply to –

(a) catalogues or price lists which may be generally or specially approved by the Prohibition Commissioner;

(b) any advertisement printed and published in a newspaper before the first day of November, 1938;

(c) any bona fide scientific opinion expressed on the medicinal value of tari or any specified liquor or drug.

**20. Punishment for vexatious search, seizure, arrest, etc.,-** Any officer or person exercising powers under this Act, who –

(a) without reasonable ground of suspicion, searches or causes to be searched any place, or

(b) vexatiously and unnecessarily seized the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act, or

(c) vexatiously and unnecessarily detains, searches or arrests any person, or (d) in any other way maliciously exceeds or abuses his lawful powers, shall be punishable with imprisonment of either description which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**21. punishment for vexatious delay.-** Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to the officer in charge of the nearest police station as required by section 39 any person arrested or any article seized under this Act, shall be punishable with imprisonment of either description which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**22. Punishment for abetment or escape of persons arrested, etc.,-** Any officer or person exercising powers under this Act, who –

(a) unlawfully releases any person arrested under this Act, or

(b) abets the escape of any person arrested under this Act, or

(c) abets the commission of any offence against this Act, and

Any other officer of the Crown or of a local body who abets the commission of any offence against this Act, shall be punishable with imprisonment of either description which may extend to six months, or with time which may extend to five hundred rupees, or with both.

**23. Punishment for offences not otherwise provided for-** Whoever is guilty of any willful Act, or intentional commission in contravention of the provisions of this Act, or of any rule, notification or order made or anypermit or license issued there under and not otherwise provided for in this Act, shall be punishable with fine which may extend to two hundred rupees.

**24. Punishment for abetment of offences against the Act.-** Where any offence against this Act, is committed in any area in which it is in force, whoever commits, or attempts to commit, or abets the commission of, any of the Acts, making up the offence shall be liable to be punished therefore, whether such commission, attempt or abetment takes place within or outside such area.

**25. Things liable to confiscation.-** When an offence has been committed against this Act, the liquor, [tari][1] , talras, intoxicating drug, materials, still, utensils, implement, or apparatus in respect of or by means of which the offence was.

1. see now S.O. No. 187 dated 1.4.

committed shall be liable to confiscation along with the receptacles, packages, covering, animals, vessels, carts or other vehicles used to hold or carry the same:

Provided that no animal, vessel, cart or other vehicle as aforesaid shall be liable to confiscation unless the owner thereof is proved to have been implicated in the commission of the offence.

**26. Confiscation how ordered.-** (1) When the offender is convicted or when the person charged with an offence against this Act, is acquitted, but the Court decides that anything is liable to confiscation such confiscation may be ordered by the Court.

(2) When an offence against this Act, has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this Act, and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Magistrate or Prohibition authority, and the Magistrate or such Prohibition authority may order such confiscation:

Provided that no such order shall be made until the expiration of three months from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they may produce in support of their claims.

**27. Offences under the Act, to be cognizable. –** All offences under this Act, shall be cognizable, and subject to the provisions of this Act, the provisions of the Code of Criminal Procedure, 1898 (V of 1898) [1], with respect to cognizable offences shall apply to them.

## CHAPTER IV

## Exemptions and Licenses.

**28. Power to notify exemptions.-** (1) The Governor may, by notification and subject to such conditions as may be specified in such notification, exempt [2][tari] or any specified liquor or intoxicating drug or article containing such liquor or drug from the observance of all or any of the provisions of this Act, on the ground that such liquor, drug or article is required for a medicinal, scientific, industrial or such like purpose.

(2) When issuing a notification under sub-section (1), the Governor shall have power to provide that a breach of any of the conditions subject to which the exemption is granted shall be punishable with imprisonment of either description which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**29. Exemption of bonafide travellers and lawful consignments.-** Until the Governor by notification otherwise directs, the provisions of this Act, shall not apply – (a)to liquor or intoxicating drugs in the possession of bonafide travelers coming from an area in which this Act, is not in force and going to an area in which this Act, is not in force while such travelers are passing through any area in which this Act, is in force, if such liquor or intoxicating drugs are intended for the personal use of such travelers;

Provided that a person shall not be deemed to be a traveler for the purposes of this clause if he remains in an area in which this Act is in force for a period exceeding forty-eight hours exclusive of the time taken in travelling through such area; and

1. Now See Cr. P.C. 1973 (2 of 1974).
2. See now S. O. No. 187 dated 1.4.1991.

(b) to lawful consignments of liquor or intoxicating drugs carried by a railway administration or by any steamer, ferry or other means of transport through or into any area in which this Act, is in force.

**30. License forbonafidemedicinal or other purposes.-** The Provincial Government or, subject to the control of the Provincial Government, the Collector may issue licenses to any person or in respect of any institution, whether under the management of Government or not, for the manufacture, export, import, transport, sale or possession of any liquor, intoxicating drug or article containing such liquor or drug, on the ground that such liquor, drug or article is required by such person or in respect of such institution for a bonafide medicinal, scientific, industrial or such like purpose:

Provided that when any liquor, intoxicating drug or article containing such liquor or drug has been obtained by any person for a bonafide medicinal purpose from any person or institution licensed to sell the same under this section, it shall not be necessary for such person to obtain a license for the possession of the same.

**31. License for tapping fortalras.-** (1) Subject to the control of the Provincial Government, the Collector or any officer empowered by him may grant –

(a) license for the tapping of any Palmyra or date palm tree for juice intended be used as talras or for the manufacture of gur; or

(b) Permits for the possession, transport or sale of talras.

(2) When a permit is granted under clause (b) of sub-section (1) for the sale of talras, any person may consume talras sold in accordance with such permit at the place specified in such permit.

**32. Permits and license.-**The Provincial Government or any officer empowered by them in this behalf may grant-

(a) permits authorizing any person to consume and possess for personal consumption any liquor or intoxicating drug;

(b) licences to any institution to possess liquor and issue it to such of its members as hold permits under clause (a); and

(c) licences to any person in charge of restaurants attached to a railway train, steamer or ferry to possess liquor and serve it to bonafide passenger travelling by such train, steamer or ferry.

**33. Exemption of liquor required for religious purposes.-** The Provincial Government may, by notification, declare that liquor or intoxication drug required by persons other than Musalmans for bonafide religious purposes to be specified in such notification shall be exempt from all or any of the provisions of this Act, subject to such conditions and restrictions as may be specified in such notification.

**34. Exemption in case of Christians on religious grounds.-** The privisions of this Act, shall not apply to the brewing, possession or use of wine by Roman Catholics and members of the Church of England for the purposes of mass and Holy Communication in such quantity, to such an extent and under such condition as may be prescribed by the Provincial Government.

**35. Form and conditions of licences and permits-** Every licence or permit granted under section 30, 31 or 32 shall-

(1) be granted on payment of such fees, if any, for such period, and subject to such restriction and limitations and on such conditions.

(2) be in such form and contain such particulars, as the Provincial Government may direct either generally or in any particular case.

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**36. Power to cancel or suspend licences and permits. –** (1) The Collector may cancel or suspend any licence or permit granted under sections 30, 31 or 32-

(a) If any fee payable by the holder thereof is not duly paid; or

(b) In the event of any breach by the holder of such licence or permit or by his servants or by any one acting with his express or implied permission on his behalf, or any one of the terms or conditions of such licence or permit; or

(c) If the holder thereof is convicted of any offence against this Act, or of any cognizable and non-boilable offence; or

(d) If the conditions of such licence or permit provide for its cancellation or suspension at will; or

(e) If the purpose for which the license or permit is granted ceases to exist.

(2) The Provincial Government may cancel or suspend any such license or permit without assigning any reasons.

**37. Penalty for breach of the conditions of licence and permits. –** In the event of any breach by the holder of any licence or permit granted under sections 30, 31 or 32 or by his servants or by any one acting with his express or implied permission on his behalf, of any or the terms or conditions of such licence or permit, such holder shall, in addition to the cancellation or suspension of the licence or permit granted to him, be punishable with imprisonment of either description which may extend to six months, or with fine which may extend to one thousand rupees, or with both, unless he shall establish that all due and reasonable precautions were exercised by him to prevent any such breach.

Any person who commits any such breach shall, whether he acts, with/without the permission of the holder of the licence or permit, be liable to the same punishment.

## CHAPTER V

## Powers, Duties and Procedure of Officers, etc.

**38. Prohibition authorities may be vested with powers of officer in charge of police station.-** The Provincial Government may, by notification, invest any of the Prohibition authorities specified in section 4 with all or any of the powers or duties conferred or imposed by the code of Criminal Procedure, 1898 (V of 1898)[1], on the officer in charge of a police-station in respect of investigations, arrests, searches, seizures and detention in custody for offences under this Act, and may, in such notification, specify the area within which such authority shall exercise such power: Provided that such power shall not be conferred on any officer whose rank is lower than that of sub-inspector.

**39. Arrest of offenders, seizure of contraband liquor and articles without warrant.-** (1) Any officer or person authorized by the Provincial Government in this behalf may-

(a) arrest without warrant any person committing within his view an offence punishable under sections 8,9,10,11,12 or 13;

(b) seize and detain any tari, liquor, intoxicating drug or other article which he has reason to believe to be liable to confiscation under this Act; and shall when he so seizes such article, give to the person from whom such article is seized a receipt for the same;

1. Now See Cr. P.C., 1973 (2 of 1974).



Provided that if the officer or person making the arrest under this section is not empowered to admit to bail, such officer or person may, if he is satisfied as to the identity of the person arrested, release him on his executing a bond in an amount not exceeding two hundred rupees for his appearance before a Police officer or Magistrate having jurisdiction to inquire into the case or forthwith forward him to the nearest Police-station.

(2) Any person authorized by the Provincial Government under this section, who seized or detains any article under clause (b) of sub-section (1) shall forward such article without unnecessary delay to the officer in charge of the nearest police-station.

**40. Duty of officials of all departments and local bodies to assist.-** Every officer of the Crown and every officer or servant of a local body shall be legally bound to assist any Prohibition authority or Police Officer in Carrying out the provisions of this Act.

**41. Offences to be reported etc.-** Every village chaukidar and dafadar shall be bound to give immediate information at the nearest police station or to a Prohibition authority of any breach of any of the provisions of this Act which may come to his knowledge; and all such officers and servants shall be bound to take all reasonable measures in their power to prevent the commission of any such branches which they may know or have reason to believe are about or likely to be committed.

**42. Landholders and others to give information.-** Every person who occupies any land or building or who is a landlord of an estate, residing in the village, on or in which there shall be any tapping for tari or manufacture of any liquor or intoxicating drug not authorized by a permit or license issued under this Act, shall, in the absence of reasonable excuse, be bound to give notice of the same to a magistrate or to a Prohibition authority or to an officer of the Police as soon as such tapping or manufacture shall have come to his knowledge.

**43. When attendance of witnesses to be dispensed with, and procedure in such cases.-** A Police Officer or any Prohibition authority vested with the powers of an officer in charge of a police-station shall, instead of summoning to appear before him any person who, from sickness or other infirmity, may be unable so to do or whom, by reason of rank or sex, it may not be proper to summon, proceed to the residence of such person and thereto require him to answer such questions as he may consider necessary with respect to such inquiry; and such person shall be bound so to answer accordingly.

## CHAPTER VI
## Rules and Notifications.

**44. Power to make rules.-** (1) The provincial Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the Provincial Government may make rules-

(a) For the issue and cancellation of licences and permits and the enforcement of the conditions thereof and the fees to be paid for such licences and permits;

(b) prescribing the powers to be exercised and the duties to be performed by paid and honorary prohibition authorities in furtherance of the objects of this Act, the area in which such powers and duties shall be exercised and performed, the conditions of service of such authorities and their relation with each other;

(c) determining the local jurisdiction of Police Officers and Prohibition authorities in regard to inquiries and the exercise of preventive and investigating powers; (d) authorizing any officer or person to exercise any power or perform duty under this Act;

(e) prescribing the powers and duties of prohibition committees and the members thereof and intervals at which the members of such committees shall make their reports;

(f) regulating the delegation by the Prohibition Commissioner or by Collectors or other District Officers of any powers conferred on them by or under this Act;

(g) prescribing the manner in which receptacles, into which talras may be drawn or kept, shall be treated so as to prevent fermentation;

(h) regulating the cultivation of the hemp plant, the collection of those portions of such plant from which intoxicating drugs can be manufactured and the manufacture of such drugs there from;

(i) declaring how denatured spirit shall be manufactured and what substances shall be deemed to be denaturants;

(j) declaring by what authorities orders passed by any prohibition authority other than the Prohibition Commissioner may, be revised and prescribing the time and manner of presenting applications for revision under section 7, and the procedure for dealing therewith;

(k) for the grant of travelling and other allowances to witnesses, and of compensation for loss of time to persons who are arrested and released on the ground that they have been improperly arrested and to persons charged before a Magistrate with offences under this Act and acquitted;

(l) for the disposal of articles confiscated and of the proceeds thereof; and

(m) prescribing the quantity and the extent to which and the conditions under which wine may be brewed, possessed or used for the purposes of section 34.

**45. Effect of rules on publication.-** All rules made under this Act shall be published in the Bihar Gazette and, upon such publication, shall have effect as if enacted under this Act.

## CHAPTER VII
## Legal Proceedings

**46. Actions against the Crown, etc.-** No action shall lie against the Crown or against any Prohibition authority or Prohibition Committee, or against any Police or other Officer, for damages in any Civil Court for act in good faith done or ordered to be done in pursuance of this Act.

## [1][THE SCHEDULE
## (See Section 2)

| Provision of this Act brought into force. | Enactment repealed. | Extent of repeal. |
|---|---|---|

1. Subs. by Bihar Act 6 of 1939.



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| Section 8 … | The Bihar and Orissa Excise Act and all enactments, other than the Dangerous Drugs Act, 1930 amending the Bihar and Orissa Excise Act, 1915. | So far as they relate to liquor. | 1915 |
| Section 9 … | The Bihar and Orissa Excise Act, 1915, and all enactments, other than the Dangerous Drugs Act, 1930, amending the Bihar and Orissa Excise Act, 1915. | So far as they relate to liquor. | |
| Section 10 … | The Bihar and Orissa Excise Act, all enactments amending the said Act. | so far as they relate to intoxicating drugs. | 1915, and |
| Section 11… | The Bihar and Orissa Excise Act, all enactments amending the said Act. | So far as they relate to tari. | 1915, and |
| Section 12… | The Bihar and Orissa Excise Act, and all enactments amending the said Act. | So far as they relate to tari. | 1915, |