

## State Legislative Brief

### BIHAR

#### The Bihar Prohibition and Excise (Amendment) Bill, 2022

##### Key Features

- The Act specifies the punishment for consumption of liquor. The Bill instead empowers the state government to prescribe certain penalties for this category of offences.
- Offences under the Act are tried by a Sessions or Special Court. The Bill provides for trial of: (i) consumption of liquor by Executive Magistrates, and (ii) all other cases by Special Courts.
- Offences under the Act are non-compoundable. The Bill makes all offences compoundable.

##### Key Issues and Analysis

- Conducting trials is a judicial function. Under the Bill, in cases of liquor consumption, summary trials will be conducted by Executive Magistrates. This may violate the doctrine of separation of powers.
- The Bill permits the state government to prescribe fines, and imprisonment (in case of repeat offenders) for the consumption of liquor. The question is whether this amounts to excessive delegation.

**The Bill seeks to amend the Bihar Prohibition and Excise Act, 2016. The Act enforces the complete prohibition of liquor and intoxicants in Bihar. The Bill seeks to expedite trials under the Act, and shift focus from persons consuming alcohol to illegal suppliers and traders of liquor.**

**This analysis has been written based on the copy of the Bill circulated in advance to the Members of the Bihar Legislative Assembly.**

## PART A: HIGHLIGHTS OF THE BILL

### Context

The Directive Principles of State Policy under the Constitution provide that the state shall endeavour to prohibit the consumption (except for medicinal purposes) of intoxicating drinks and drugs which are injurious to health.<sup>1</sup> Further, the production, possession, transport, and sale or purchase of liquor fall under the State List of the Constitution.<sup>2</sup> Presently, four states (Gujarat, Bihar, Nagaland, and Mizoram) have laws which completely prohibit the sale of alcohol.<sup>3,4,5,6</sup> Table 3 in the Annexure compares key penal provisions under these laws.

The Bihar Prohibition and Excise Act, 2016 was enacted to enforce a complete prohibition of liquor in Bihar.<sup>3</sup> Under the Act, manufacturing, bottling, distribution, transportation, collection, storage, possession, purchase, sale, or consumption of any intoxicant or liquor is prohibited. From 2018 to 2020, over 45,000 FIRs were registered under the Act every year (Table 1 in Annexure). Further, during this period, the number of cases pending trial before courts almost quadrupled. More than 40,000 people were arrested under the Act each year from 2018 to 2020 (Table 2 in Annexure). The Act was amended in 2018 to make certain penalties less stringent.

In February 2022, the Supreme Court observed that trial courts in Bihar and the Patna High Court are being crowded by bail applications in matters under the Bihar Prohibition and Excise Act, 2016.<sup>7</sup> It highlighted that at one stage, 16 judges of Patna High Court were listening to bail matters, of which a large part consisted of prosecutions under the 2016 Act. It inquired from the Bihar government if any assessment was done regarding the court infrastructure and manpower required to deal with the volume of cases that may arise under the Act. In March 2022, the Bihar government informed the Court that it is proposing certain amendments to the Act to make it more efficacious and address the concerns raised relating to its implementation.<sup>8</sup>

The Bihar Prohibition and Excise (Amendment) Bill, 2022 seeks to amend the 2016 Act. As per the Statement of Objects and Reasons, the Bill is being brought to expedite trial in the courts and to focus on punishing illegal suppliers and traders of liquor, instead of persons consuming it.

### Key Features

- **Penalty for consuming liquor:** The Act specifies the following as offences: (i) consuming liquor or intoxicant in any place, (ii) being found drunk, (iii) drinking and creating nuisance or violence, and (iv) facilitating drunkenness or allowing assembly of drunk persons in a house. The first two offences are punishable with a minimum fine of Rs 50,000 for first-time offenders, or three months imprisonment in lieu of such fine. Repeat offenders are punishable with fine up to one lakh rupees, and imprisonment ranging from one to five years. The other two

offences may be punished with fine of one lakh rupees to five lakh rupees, and five to ten years of imprisonment. The Bill only penalises persons who consume any intoxicant, or are found drunk or under the influence of an intoxicant. These offences are punishable with: (i) a fine in the first instance, and one month imprisonment in case of failure to pay fine, and (ii) additional fine or imprisonment, or both, in case of repeat offences. The state government will prescribe fines for the first instance of offence, and fines and imprisonment for repeat offenders.

- **Trial for the offence of consumption of liquor:** Persons consuming alcohol, or found intoxicated, will be arrested and produced before the nearest Executive Magistrate (to be appointed by the state government in consultation with the High Court). The Magistrate will conduct a summary trial of such persons. The Executive Magistrate will exercise the powers of a Judicial Magistrate of the second class in such cases.
- **Consumption of liquor in a chemist shop:** The Act provides separate punishment for persons consuming liquor in a chemist or druggist shop or dispensary. The Bill removes this provision.
- **Special Courts:** Under the Act, all offences are tried either by a Sessions Court or a Special Court. Special Courts may be appointed or designated by the state government. The Bill provides that all offences (except for consumption of liquor) will be tried by a Special Court. It requires every district to have at least one Special Court. Special Courts will only try offences under the Act, and must endeavour to complete the trial within one year from the date of submission of the charge sheet. Judges in these Courts must be appointed by the state government in consultation with the Chief Justice of the High Court.
- **Timeline for investigation:** The Act requires the excise officer or police officer to file the investigation report within 60 days of registration of the case. The Bill relaxes this timeline to 90 days in case of offences punishable with a minimum of ten years imprisonment or death.
- **Offences made compoundable:** At present, all offences under the Act are non-compoundable. The Bill omits this provision, implying that offences under the Act may now be compounded. Compoundable offences are those which may be settled between parties.
- **Confiscation of items:** If an offence has been committed under the Act, certain items (such as intoxicants, vehicles, and premises) may be confiscated in such a manner as prescribed. The Bill provides that such items may be confiscated by the Collector (District Magistrate) or any officer authorised by him, based on the report of the investigating officer.
- **Destruction of items:** Under the Act, the Collector may order the sale or destruction of articles before their confiscation. This may be done if: (i) the article is subject to speedy and natural decay, is of nominal value, or can be put to misuse, or (ii) the sale would be in the public interest or for the benefit of the owner. As per the Bill, the Collector or an officer authorised by him may destroy items either without or after confiscation. Items may be destroyed if they: (i) may be misused, or (ii) are likely to endanger public safety.
- **Release of seized items:** The Act empowers excise officers and police officers to enter, inspect, and search any place, and seize any document, intoxicant or other items of concern, when investigating offences. The Bill adds that items or premises used for committing an offence under the Act, which have been seized by such officers, will be released (except for reasons to be recorded in writing) on payment of a penalty notified by the state government. In case of non-payment of penalty, the seized items will be confiscated.
- **Externment and internment of offenders:** The Act contains a chapter on externment and internment of notorious or habitual offenders. The Bill deletes this chapter.
- **Production of arrested persons:** The Act requires arrested persons to be produced before court within 24 hours. The Bill permits arrested persons to be produced before the Special Court, or the nearest Judicial Magistrate, either in person or through electronic video.

## PART B: KEY ISSUES AND ANALYSIS

### Penalty for consumption of liquor

Under the Act, offences involving the consumption of liquor may be punished with: (i) a fine (ranging from Rs 50,000 to five lakh rupees), or (ii) imprisonment (ranging from three months to ten years). The Bill provides that persons consuming liquor, or found drunk or under the influence of intoxicants, will be arrested and produced before the nearest Executive Magistrate. The Magistrate will conduct a summary trial of these offences. First-time offenders will be released if they pay the fine prescribed by the state government, otherwise, they will be imprisoned for one month. In case of repeat offenders, the state government may prescribe additional fines or imprisonment, or both. We discuss certain issues related to these provisions below.

Bill:  
Clause 4

Act:  
Section 37

### Empowering Executive Magistrates to conduct summary trials may violate separation of powers

The Bill provides that all offences relating to the consumption of liquor will be subject to summary trial by an Executive Magistrate. In this role, the Executive Magistrate will exercise the powers of a Judicial Magistrate of the second class. Conferring power on a member of the executive (the Executive Magistrate) to exercise judicial powers, as under the Bill, may violate the principle of separation of powers. Note that under the 2016 Act, all offences are tried by a Sessions Court or a Special Court.

The constitutional doctrine of separation of powers implies that the three organs of government (the legislature, the judiciary, and the executive) perform separate functions and act as separate entities. In particular, the Directive Principles of State Policy exhort the state to take steps to separate the judiciary from the executive in the public services of the state.<sup>9</sup> Vesting core judicial functions in Executive Magistrates may raise concerns about the separation of powers between the executive and the judiciary. The Code of Criminal Procedure, 1973 provides that under any law, the following division of functions should apply in the case of judicial and executive magistrates:

- **Judicial Magistrates:** Matters involving appreciation of evidence, or formulation of any decision which may expose a person to punishment, penalty, or detention, or have the effect of sending him for trial before any court;
- **Executive Magistrates:** Administrative or executive matters, such as granting, suspension or cancellation of licenses, and sanctioning or withdrawing from a prosecution.<sup>10</sup>

Conducting a trial is a judicial process, requiring an appreciation of evidence, and arriving at a decision of guilt or innocence. It may be argued that conducting a summary trial, thus, requires judicial training and competence. Executive Magistrates, who are trained to be administrators, may not possess such competence.

The Bonded Labour System (Abolition) Act, 1976 passed by Parliament contained a provision empowering state governments to confer power on Executive Magistrates to try offences.<sup>11</sup> In 2014, this provision was struck down by the Madras High Court.<sup>12</sup> A review petition filed by the central government was dismissed by the High Court in 2018.<sup>13</sup> The Court noted that justice and fair trial cannot be ensured by Executive Magistrates, who perform various other functions, and may not be legally qualified or trained. The Court, thus, held that the provision of the 1976 Act goes against the policy of separation of the judiciary from the executive contained in the Constitution.

### Prescribing punishment through subordinate legislation may amount to excessive delegation

As per the Bill, for the offences related to consumption of liquor, the state government is empowered to notify the fine for first-time offenders. In the case of repeat offenders, the state government may prescribe additional fines and/or imprisonment. No limits (upper or lower) are prescribed under the Bill for the penalties that may be notified by the state government. The question is whether prescribing punishment under subordinate legislation amounts to an excessive delegation of legislative powers. The Supreme Court has held that in the absence of standards, criteria or principles on the contents of subordinate legislation, the powers given to the executive may go beyond the permissible limits of valid delegation.<sup>14</sup> It may be argued that the punishment for a specified offence (in this case, consumption of liquor) should be specified in the parent law, and not be delegated to subordinate legislation.

## Annexure

**Table 1: FIRs registered, police and court disposal of cases under the 2016 Act (2018-2020)**

Year	FIRs registered	Police disposal of cases			Court disposal of cases		
		For investigation*	Disposed of	Pending investigation at year-end	For trial*	Disposed of	Pending trial at year-end
2018	45,742	45,800	32,839	12,961	32,051	998	31,053
2019	49,182	62,143	49,163	12,980	78,196	374	77,822
2020	45,235	58,215	38,047	20,168	1,14,372	321	1,14,051

Note: \*includes the cases pending investigation/trial from the previous year as well as the cases reported/sent for trial during the year.  
Sources: Crime in Bihar (2018-2020), State Crime Records Bureau, Bihar; PRS.

**Table 2: Status of persons arrested under the 2016 Act (2018-2020)**

Year	Persons arrested			Persons chargesheeted	Persons convicted	Persons acquitted	Persons discharged
	Male	Female	Total				
2018	39,775	753	40,528	39,167	399	651	0
2019	47,982	1,625	49,607	53,668	486	92	8
2020	40,911	2,191	43,102	44,322	94	260	0

Sources: Crime in Bihar (2018-2020), State Crime Records Bureau, Bihar; PRS.

**Table 3: Comparison of penalties for key offences under alcohol prohibition laws of various states**

	Bihar*	Gujarat	Mizoram†	Nagaland
Year of Enactment	2016	1949	2019	1990
Last amended in	2020	2017	-	-
<b>Unlawful import, export, transport, manufacture, possession, sale, and purchase</b>				
Imprisonment	<i>First offence:</i> 5 years-Life <i>Repeat offence:</i> 10 years-Life	Up to 10 years	Up to 5 years	Up to 3 years
Fine	<i>First offence:</i> Rs 1-10 lakh <i>Repeat offence:</i> Rs 5-10lakh	Up to Rs 5 lakh	Up to Rs 1 lakh	No upper limit mentioned
<b>Consumption of liquor</b>				
Imprisonment	<i>First offence:</i> 1 month <sup>§</sup> <i>Repeat offence:</i> As prescribed	<i>First offence:</i> Up to 6 months <i>Repeat offence:</i> 6 months-2 years	Up to 6 months	Up to 6 months <sup>#</sup>
Fine	<i>First/ repeat:</i> As prescribed	<i>First offence:</i> Up to Rs 1,000 <i>Repeat offence:</i> Up to Rs 2,000	Up to Rs 5,000	Up to Rs 2,000 <sup>#</sup>
<b>Rendering denatured spirit fit for human consumption</b>				
Imprisonment	10 years-Life	Up to 3 years	-	Up to 1 year
Fine	Rs 1-10 lakh	Up to Rs 1 lakh	-	Up to Rs 1,000
<b>Dealing in spurious liquor</b>				
Imprisonment	10 years-Life	7-10 years	-	-
Fine	Rs 1-10 lakh	No upper limit mentioned	-	-
<b>Chemists, druggists or apothecaries allowing their premises to be used for consumption of liquor/ intoxicants</b>				
Imprisonment	8-10 years	Up to 6 months	-	Up to 6 months
Fine	Rs 1-10 lakh	Up to Rs 1,000	-	Up to Rs 1,000
<b>Unlawful advertisement</b>				
Imprisonment	3-5 years	Up to 6 months	Up to 6 months	Up to 6 months
Fine	Up to Rs 10 lakh	Up to Rs 500	Up to Rs 10,000	Up to Rs 500

Note: Only penalties for specific offences are mentioned. \*After incorporating the changes under the Bihar Prohibition and Excise (Amendment) Bill, 2022. †The Act applies to the whole of Mizoram, except three Autonomous District Councils (Chakma, Lai, and Mara) constituted under the Sixth Schedule to the Constitution. §In case of failure to pay fine. #In Nagaland, the offence is consumption of liquor in a public place in contravention of a permit granted under the Act. 'As prescribed' means as prescribed by the state government.

Source: The Bihar Prohibition and Excise Act, 2016 (as amended by the 2022 Bill); The Gujarat Prohibition Act, 1949; The Mizoram Liquor (Prohibition) Act, 2019; The Nagaland Liquor Total Prohibition Act, 1989; PRS.

1. Article 47, [The Constitution of India](#).
2. Entry 8, List II (State List), Schedule VII, The Constitution of India.
3. [The Gujarat Prohibition Act, 1949](#) (modified up to January 15, 2015); [The Gujarat Prohibition \(Amendment\) Act, 2017](#).
4. [The Bihar Prohibition and Excise Act, 2016](#).
5. [The Nagaland Liquor Total Prohibition Act, 1989](#).
6. [The Mizoram Liquor \(Prohibition\) Act, 2019](#).
7. [Sudhir Kumar vs. State of Bihar](#), Supreme Court of India, SLP (Crl.) No. 2482 of 2022, Order dated February 23, 2022.
8. [Sudhir Kumar vs. State of Bihar](#), Supreme Court of India, SLP (Crl.) No. 1821 of 2022, Order dated March 8, 2022.
9. Article 50, The Constitution of India.
10. Section 3(4), [The Code of Criminal Procedure, 1973](#).
11. Section 21, [The Bonded Labour System \(Abolition\) Act, 1976](#).
12. [Government Order \(D\) No. 44](#), Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu, February 23, 2015.
13. Union of India vs. Gajendran, Madras High Court, Review Petition No. 698 of 2017, July 30, 2018.
14. Hamdard Dawakhana and Anr. vs. Union of India and Ors., Supreme Court of India, AIR 1960 SC 554.

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