



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Vol. LVII] MONDAY, DECEMBER 19, 2016/AGRAHAYANA 28, 1938

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV

Acts of Gujarat Legislature and Ordinances promulgated and
Regulations made by the Governor.

HOME DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 19th December, 2016.

GUJARAT ORDINANCE NO. 7 OF 2016.

AN ORDINANCE

further to amend the Gujarat Prohibition Act, 1949.

WHEREAS the Legislative Assembly of the State of Gujarat is not in session;

Bom. XXV
of 1949.

AND WHEREAS the Governor of Gujarat is satisfied that circumstances exist which render it necessary for him to take immediate action to amend the Gujarat Prohibition Act, 1949;

NOW, THEREFORE, in exercise of the powers conferred on him by clause (1) of article 213 of the Constitution of India, the Governor of Gujarat is hereby pleased to make and promulgate the following Ordinance, namely :-

IV- Ex.-23

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1. **Short title and commencement.**-(1) This Ordinance may be called the Gujarat Prohibition (Amendment) Ordinance, 2016.

(2) It shall come into force at once.

2. **Bom. XXV of 1949 to be temporarily amended.**- During the period of operation of this Ordinance, the Gujarat Prohibition Act, 1949 (hereinafter referred to as "the principal Act") shall have effect subject to the amendments specified in sections 3 to 28.

Bom. XXV of
1949.

3. **Amendment of section 2 of Bom. XXV of 1949.**- In the principal Act, in section 2, in clauses (29), (33) and (52), for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted.

V of 1898.
2 of 1974.

4. **Amendment of section 65 of Bom. XXV of 1949.**- In the principal Act, in section 65,-

- (i) in clause (e), for the words "sells or buys", the words "possesses, transports, sells or buys" shall be substituted;
- (ii) for the portion beginning with the words "shall, on conviction" and ending with the words "also with fine", the following portion and the proviso thereunder shall be substituted, namely:-

"shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to ten years and with fine which may extend to five lakh rupees:

Provided that, in absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court-

- (i) for a first offence, such imprisonment shall not be less than two years and fine shall not be less than one lakh rupees;
- (ii) for a second offence, such imprisonment shall not be less than three years and fine shall not be less than two lakh rupees;

- (iii) for a third or subsequent offences, such imprisonment shall not be less than seven years and fine shall not be less than five lakh rupees.”.

5. *Insertion of a new section 65AA in Bom. XXV of 1949.*-In the principal Act, after section 65, the following section shall be inserted, namely:-

Punishment for possession, etc., of lesser quantity of intoxicant.

“65AA. Notwithstanding anything contained in sections 65 or 66, whoever sells, buys, possesses or transports any intoxicant which is less than in quantity as specified by the State Government by notification in the *Official Gazette*, shall, on conviction, be punished, for each such offence with imprisonment for a term which may extend to three years and also with fine.”.

6. *Amendment of section 66 of Bom. XXV of 1949.*- In the principal Act, in section 66, in sub-section (1),-

- (i) in clause (b), for the words “consumes, uses, possesses or transports”, the words “consumes or uses” shall be substituted;
- (ii) for paras (ii) and (iii), the following para shall be substituted, namely:-

“(ii) for a second or subsequent offences, with imprisonment for a term which may extend to two years but which shall not be less than six months and with fine which may extend to two thousand rupees.”.

7. *Amendment of section 67 of Bom. XXV of 1949.*- In the principal Act, in section 67,-

- (i) in sub-section (1), for the words “one year” and “one thousand rupees”, the words “three years” and “one lakh rupees” shall be substituted, respectively;
- (ii) in the proviso to sub-section (1), for the words “three months” and “five hundred rupees”, the words “one year” and “fifty thousand rupees” shall be substituted, respectively.

8. *Amendment of section 67-1A of Bom. XXV of 1949.*- In the principal Act, in section 67-1A,-

- (i) in sub-section (1), for the words “one year” and “one thousand rupees”, the words “three years” and “one lakh rupees” shall be substituted, respectively;
- (ii) in the proviso to sub-section (1), for the words “three months” and “five hundred rupees”, the words “one year” and “fifty thousand rupees” shall be substituted, respectively.

9. *Amendment of section 68 of Bom. XXV of 1949.*- In the principal Act, in section 68, for the portion beginning with the words “shall, on conviction” and ending with the words “one thousand rupees” as appearing in clause (iii), the following portion shall be substituted, namely:-

“shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to ten years but which shall not be less than seven years and with fine which may extend to one lakh rupees.”.

10. *Amendment of section 85 of Bom. XXV of 1949.*- In the principal Act, in section 85, for sub-section (1), the following sub-section shall be substituted, namely:-

“(1) Whoever, in any street, thoroughfare, public place, in any place to which the public have or are permitted to have access, is drunk and creates nuisance, takes up a quarrel with any person, uses foul or abusive language, indulges in fight with others, misbehaves with any woman or behaves obscenely, shall, on conviction, be punished with imprisonment for a term which may extend to three years but which shall not be less than one year and with fine.”.

11. *Amendment of section 91 of Bom. XXV of 1949.*- In the principal Act, in section 91, in sub-section (2), for the words and figures “the Code of Criminal Procedure, 1898”, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted.

V of 1898.

2 of 1974.

12. *Deletion of section 92 of Bom. XXV of 1949.*- In the principal Act, section 92 shall be deleted.

13. *Amendment of section 93 of Bom. XXV of 1949.*- In the principal Act, in section 93, in sub-section (2), for the words and figures V of 1898. "the Code of Criminal Procedure, 1898", the words and figures "the 2 of 1974. Code of Criminal Procedure, 1973" shall be substituted.

14. *Amendment of section 97 of Bom. XXV of 1949.*- In the principal Act, in section 97,-

(i) for the words "one year" and "one thousand rupees", the words "three years" and "fifty thousand rupees" shall be substituted, respectively;

(ii) the following proviso shall be added, namely:-

"Provided that any officer who abets the offence punishable under section 65A shall, on conviction, be punished with imprisonment which may extend to seven years and with fine which may extend to one lakh rupees."

15. *Amendment of section 102 of Bom. XXV of 1949.*- In the principal Act, in section 102, in sub-section (1), for the words and figures V of 1898. "the Code of Criminal Procedure, 1898", the words and figures 2 of 1974. "the Code of Criminal Procedure, 1973" shall be substituted.

16. *Amendment of section 104 of Bom. XXV of 1949.*- In the principal Act, in section 104, in the first proviso to sub-section (1), for the words "not exceed five hundred rupees", the words "be such as the State Government may by notification in the *Official Gazette*, specify" shall be substituted.

17. *Amendment of section 104A of Bom. XXV of 1949.*- In the principal Act, in section 104A, for the words and figures "section 562 of V of 1898. the Code of Criminal Procedure, 1898", the words and figures "section 2 of 1974. 360 of the Code of Criminal Procedure, 1973" shall be substituted.

18. *Deletion of section 115 of Bom. XXV of 1949.*- In the principal Act, section 115 shall be deleted.

19. *Amendment of section 115A of Bom. XXV of 1949.*- In the principal Act, in section 115A, for the words and figures “the Code of Criminal Procedure, 1898”, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted. V of 1898.
2 of 1974.
20. *Deletion of sections 116 and 116A of Bom. XXV of 1949.*- In the principal Act, sections 116 and 116A shall be deleted.
21. *Amendment of section 117 of Bom. XXV of 1949.*- In the principal Act, in section 117, for the portion beginning with the words “Save as otherwise” and ending with the words and figures “Code of Criminal Procedure, 1898”, the following portion shall be substituted, V of 1898.
namely:-
“All investigations, arrests, detention in custody and searches shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.”. 2 of 1974.
22. *Deletion of section 118 of Bom. XXV of 1949.*- In the principal Act, section 118 shall be deleted.
23. *Amendment of section 120 of Bom. XXV of 1949.*- In the principal Act, the existing section 120 shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:-
“(2) Whoever assaults or obstructs any officer or person from discharging his duties or exercising his powers under this Act, shall on conviction, be punished with imprisonment which may extend to five years and with fine which shall not be less than five lakh rupees.”.
24. *Amendment of section 128 of Bom. XXV of 1949.*- In the principal Act, in section 128, in sub-section (2), for the words and V of 1898.
figures “the Code of Criminal Procedure, 1898”, the words and figures 2 of 1974.
“the Code of Criminal Procedure, 1973” shall be substituted.

25. *Amendment of section 129 of Bom. XXV of 1949.*- In the principal Act, in section 129, in sub-section (2), for the words and figures “the Code of Criminal Procedure, 1898”, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted.
26. *Amendment of section 131 of Bom. XXV of 1949.*- In the principal Act, in section 131, for the words and figures “the Code of Criminal Procedure, 1898” occurring at two places, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted.
27. *Amendment of section 141 of Bom. XXV of 1949.*- In the principal Act, in section 141, in sub-section (1), for the words and figures, “under sections 65”, the words, figures and letter “under sections 65, 65A,” shall be substituted.
28. *Amendment of section 146A of Bom. XXV of 1949.*- In the principal Act, in section 146A, in sub-section (2), for the words and figures “the Code of Criminal Procedure, 1898”, the words and figures “the Code of Criminal Procedure, 1973” shall be substituted.

STATEMENT

The State of Gujarat has been a dry State since its inception in 1960 and since then all successive governments have adhered to the policy of prohibition and have implemented the same vigorously. The State Government is also fully committed to the said policy and does not intend to let it up in any manner whatsoever. This State Government is also committed to the ideals and principles of Mahatma Gandhi and firmly intends to eradicate the menace of the drinking of liquor. This Government is well aware of the ill-effects of the habit of drinking, particularly amongst the down trodden.

It has come to the notice of the State Government that with the increase of facilities in transportation and communication, it has become rather easier for the bootleggers and offenders to indulge in transportation of liquor from other States to this State and from one place to another within the State. In order to implement the policy of prohibition more strictly and more vigorously, it is inevitable that the transportation of liquor is restricted to the greatest extent. It is also inevitable that other activities relating to liquor like manufacturing, bottling, selling, buying are also restricted as far as possible.

The present Prohibition Act as applicable in the State of Gujarat was enacted in the year 1949. The punishments provided for different offences under this Act are not deterrent enough to create a fear in the minds of the offenders and as a result of which the offenders continue to indulge in the offences under the Act without much fear and the offences under the Act have been increasing to the extent to which the State Government can not keep its eyes closed. To curb this menace, the State administration and the police force are taking all necessary steps but it appears that it has also become absolutely necessary that those who contravene the provisions of the Act are awarded more deterrent punishments than the present ones.

It is, therefore, considered necessary to increase the quantum of punishment provided under the said Act and as such relevant sections are amended accordingly to achieve the object. An opportunity is also

taken to amend the reference of the Code of Criminal Procedure, 1898 in the Act to that of the Code of Criminal Procedure, 1973 and certain sections are also deleted taking into consideration the non-applicability of the same.

As the Legislative Assembly of the State of Gujarat is not in session, the Gujarat Prohibition (Amendment) Ordinance, 2016 is promulgated to achieve the aforesaid objects.

Dated the 19th December, 2016.

O. P. KOHLI
Governor of Gujarat.

By order and in the name of the Governor of Gujarat,

M. S. DAGUR
Additional Chief Secretary to Government.

Government Central Press, Gandhinagar