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PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT PROHIBITION (AMENDMENT) BILL, 2017.

GUJARAT BILL NO. 6 OF 2017.

A BILL

further to amend the Gujarat Prohibition Act, 1949.

It is hereby enacted in the Sixty-eighth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Prohibition (Amendment) Act, 2017. Short title and commencement.
- (2) It shall be deemed to have come into force on the 19th December, 2016.

Amendment of
section 2 of
Bom. XXV of
1949.

2. In the Gujarat Prohibition Act, 1949 (hereinafter referred to as "the principal Act"), in section 2,-

Bom. XXV of
1949.

(i) in clause (23), for sub-clause (a), the following sub-clause shall be substituted, namely:-

"(a) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be called;";

(ii) 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.

Amendment of
section 65 of
Bom. XXV of
1949.

3. 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."

4. In the principal Act, after section 65, the following new section shall be inserted, namely:-

Insertion of a
new section
65AA in Bom.
XXV of 1949.

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

"65AA. Notwithstanding anything contained in section 65, whoever sells, buys, possesses or transports any intoxicant which is less than the 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.”.

5. 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.”.
6. 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.
7. 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.
8. 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 rupees one lakh rupees.”.
9. 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

**Amendment
of section 66
of Bom. XXV
of 1949.**

**Amendment
of section 67
of Bom. XXV
of 1949.**

**Amendment
of section 67-
1A of Bom.
XXV of 1949.**

**Amendment
of section 68
of Bom. XXV
of 1949.**

**Amendment
of section 85
of Bom. XXV
of 1949.**

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.”.

Amendment
of section 91
of Bom. XXV
of 1949.

10. 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.

Deletion of
section 92 of
Bom. XXV of
1949.

11. In the principal Act, section 92 shall be deleted.

Amendment
of section 93
of Bom. XXV
of 1949.

12. In the principal Act, in section 93, 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.

Amendment
of section 97
of Bom. XXV
of 1949.

13. 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.”.

Amendment
of section
102 of Bom.
XXV of
1949.

14. In the principal Act, in section 102, in sub-section (1), 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.

Amendment
of section
104 of Bom.
XXV of
1949.

15. 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.

Amendment
of section
104A of
Bom. XXV
of 1949.

16. In the principal Act, in section 104A, for the words and figures “section 562 of the Code of Criminal Procedure, 1898”, the words and figures “section 360 of the Code of Criminal Procedure, 1973” shall be substituted. V of 1898.
2 of 1974.

17. In the principal Act, section 115 shall be deleted.
- Deletion of section 115 of Bom. XXV of 1949.
18. 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. Amendment of section 115A of Bom. XXV of 1949.
2 of 1974.
19. In the principal Act, sections 116 and 116A shall be deleted.
- Deletion of sections 116 and 116A of Bom. XXV of 1949.
20. 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, namely:-
- V of 1898. Amendment of section 117 of Bom. XXV of 1949.
2 of 1974. "All investigations, arrests, detention in custody and searches shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973."
21. In the principal Act, section 118 shall be deleted.
- Deletion of section 118 of Bom. XXV of 1949.
22. 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:-
- Amendment of section 120 of Bom. XXV of 1949.
- "(2) Whoever assaults or obstructs any officer or person with a view to preventing him 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."
23. In the principal Act, in section 128, 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. Amendment of section 128 of Bom. XXV of 1949.
2 of 1974.

- Amendment of section 129 of Bom. XXV of 1949.** 24. 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. V of 1898. 2 of 1974.
- Amendment of section 131 of Bom. XXV of 1949.** 25. 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. V of 1898. 2 of 1974.
- Amendment of section 141 of Bom. XXV of 1949.** 26. 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,65AA,” shall be substituted.
- Amendment of section 146A of Bom. XXV of 1949.** 27. 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. V of 1898. 2 of 1974.
- Guj. Ord. 7 of 2016.** 28. (1) The Gujarat Prohibition (Amendment) Ordinance, 2016 is hereby repealed. **Repeal and savings.**
- (2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

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. This 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 downtrodden.

It has come to the notice of the State Government that with the improved facilities of transportation and communication, it has become rather easier for the bootleggers and offenders to indulge in transportation of the 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 and 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 consequence the offenders continue to indulge in the offences under the Act without much fear and the offences under the Act have been increasing to such an extent that 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 proposed to be amended accordingly to achieve the object.

As a reference to the cannabis or hemp is also made in the Narcotic Drugs and Psychotropic Substances Act, 1985, the provision of section 2 (23)(a) of the Gujarat Prohibition Act, 1949 is proposed to be suitably amended so as to be in conformity with the former.

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 proposed to be deleted in view of their inapplicability.

As the Legislative Assembly of the State of Gujarat was not in session at that time, the Gujarat Prohibition (Amendment) Ordinance, 2016 was promulgated on the 19th December, 2016 to amend the said Act of 1949 to achieve the aforesaid object. This Bill seeks to replace the said Ordinance by an Act of the State Legislature.

PRADEEPSINH JADEJA,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of legislative powers in the following respects:-

Clause 4.- New section 65AA proposed to be inserted by this clause empowers the State Government to specify, by notification in the *Official Gazette*, the quantity of any intoxicant, buying, sale, possession or transportation of which, by any person, shall be punishable as mentioned therein.

Clause 15.- The first proviso to section 104 of the Act proposed to be amended by this clause empowers the State Government to specify, by notification in the *Official Gazette*, the sum of money which may be accepted from such person by way of composition for the offences committed under section 69,70 or 108 of the Act.

The delegation of legislative powers, as aforesaid, is necessary and is of a normal character.

Dated the 14th February, 2017.

PRADEEPSINH JADEJA.

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

K. M. LALA,

Gandhinagar,

Secretary to the Government of Gujarat,

Dated the 14th February, 2017. Legislative and Parliamentary Affairs Department.