

# ASSAM LIQUOR PROHIBITION ACT, 1952

(Act No. 1 of 1953)

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**An Act to prohibit possession, consumption and manufacture of liquor in and of smuggling thereof into the Barpeta Sub-division and other areas of the State**

Whereas it is expedient to prohibit possession, consumption and manufacture of liquor in and of smuggling thereof into the Barpeta Sub-division and other areas of the State as may be necessary from time to time ;

Be it enacted by the Assam Legislature in the third year of the Constitution of India as follows :

1. Short title, extent and commencement. (1) This Act may be called the Assam Liquor Prohibition Act, 1952.

(2) It extends to the Sub-division of Barpeta.

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(3) The State Government may, by notification in the official Gazette, extend it to any other areas of the State.

(4) It shall come into force in the Sub-division of Barpeta and other areas on such date as the State Government may, by notification in the official Gazette, appoint :

Provided that the State Government may, by notification in the official Gazette, modify or rescind the operation of this Act or of any provision of this Act.

2. Definitions. In this Act, unless there is anything repugnant in the subject or context—

- (1) "buy", with all its grammatical variations, means any receipt for price paid in cash or in kind, and includes any receipt by gift, loan or otherwise ;
  - (2) "State Anti-Drug and Prohibition Council" means the body of non-official residents of the State as may be constituted by the State Government by notification in the official Gazette ;
  - (3) "liquor" means any intoxicating liquor and includes all liquid consisting of or containing alcohol, also tari and pachwai in any form and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act ;
- "Tari" in an unfermented stage and liquor containing 5 per cent of alcohol are exempted from the operation of this Act ;
- (4) "manufacture" includes every process, whether natural or artificial, by which any intoxicant is produced or prepared, also re-distillation and every process for the rectification, flavouring, blending, or colouring of liquor ;
  - (5) "prescribed" means prescribed by rules made under this Act ;
  - (6) "prohibited area" means the area where the Act is enforced ;
  - (7) "Prohibition Officer" means a person appointed under S. 17 (3) of the Act ;
  - (8) "sell" with all its grammatical variations, means any transfer including transfers by a gift or a loan or otherwise.

#### COMMENTS

In sub-S. (2) of S. 2, for the words "State Prohibition Council" the words "State Anti-Drug and Prohibition Council" were substituted *vide* Assam Act No. XII of 1994.

Sub-section (2) of this section was substituted *vide* Assam Act No. V of 1974, dated 11-2-1974, to come into force on the 1st April, 1973, and the original sub-S. (2) read as follows :

" 'Commissioner' means the Excise Commissioner or any other person duly empowered by the State Government to excise some or all of the powers of the Excise Commissioner".

Sub-section (3) and the *Explanation* below it was substituted *vide* Assam Act XIII of 1956, published in the Assam Gazette, dated 2-5-1956, to come into force at once. By this amendment the present *Explanation* was insert-

ed and numbered as *Explanation No. (ii)* and the original *Explanation* was numbered as (i) and by the Assam Act No. XIX of 1956, published in the Assam Gazette dated 14-9-1956 to come into force at once, the original *Explanation No. (i)* was deleted, which read as follows :

“*Explanation.* This definition shall not apply to any toilet preparation or medicine containing alcohol”.

The *Explanation* as appearing and after being inserted *vide* Assam Act XIX of 1956 was further amended *vide* Assam Act III of 1971, published in the Assam Gazette dated 25-1-1971, to come into force at once and the *Explanation* before the present amendment read as follows :

“*Explanation.* Tari in an unfermented stage is not included within the term liquor and is exempted from the operation of this Act”.

Sub-section (7) was substituted *vide* Assam Act No. V of 1971 published in the Assam Gazette dated 11-2-1974, to come into force on 1-4-1973, and the original sub-S. (7) read as follows :

“(7) ‘Prohibition Officer’ means a person appointed under S. 19”.

### 3. Prohibition. No person shall—

- (1) transport, import, or possess liquor ;
- (2) sell or buy liquor ;
- (3) consume liquor except on a permit granted under the provisions of the Act and rules made thereunder ;
- (4) manufacture liquor ; and
- (5) use or keep any material, utensil, implement or apparatus whatsoever for manufacture of liquor :

Provided that for three years from the commencement of the Assam Liquor Prohibition (Amendment) Act, 1956 it shall be lawful for a family of Scheduled Tribes to possess Pachwai to the extent of two-and-a-half seers for the purpose of home consumption.

*Explanation.* The word ‘Family’ means person living together and having a common kitchen.

### COMMENTS

Clause (3) in this section was substituted *vide* Assam Act III of 1971, dated 25-1-1971, to come into force at once and the original Cl. (3) read as follows :

“(3) consume liquor except of a prescription from a registered medical practitioner”.

The proviso and *Explanation* was inserted *vide* Assam Act No. XIII of 1956, published in the Assam Gazette, dated 2-5-1956 to come into force at once.

3-A. Publication or display of advertisement of liquor. No person shall—

- (1) publish or display advertisement of liquor or of any preparation fit for use as intoxicant liquor, in the Newspapers, Periodicals, Journals, Hoardings, Banners, etc., printed and published in and from that area ;
- (2) import/possess any newspaper, Journal, Periodical, etc., if they contain advertisement of liquor or of any preparation fit for use as intoxicating liquor.

**COMMENTS**

Section 3-A was first inserted *vide* Assam Act No. XIX of 1956, published in the Assam Gazette, dated 29-9-1956 to come into force at once and read as follows :

*"3-A. Provision of the Act not to apply to certain articles. Nothing in this Act shall be deemed to apply to—*

- (1) any toilet preparation containing alcohol which is unfit for use as intoxicating liquor ;
- (2) any medicinal preparation containing or solution containing alcohol which is unfit for use as intoxicating liquor ;
- (3) any antiseptic preparation or solution containing alcohol which is unfit for use as intoxicating liquor ;
- (4) any flavouring extract, essence or syrup containing alcohol which is unfit for use as intoxicating liquor".

This section was further amended *vide* Assam Act No. XI of 1963, published in the Assam Gazette, dated 2-5-1963, to come into force at once and finally inserted as S. 3-A *vide* Amendment Act of 1976 and the amended section, as per 1963 Amendment Act read as follows :

*"3-A. Whenever any person is found in a state of drunkenness within a prohibited area, the court shall presume that the person has consumed liquor within the prohibited area."*

As presently appearing it is in the interest of progressive Prohibition Policy of Government necessitating to impose restrictions on the advertisements of liquor in the State.

[It is to mention here that the amended S. 3-A was not specifically deleted by 1976 Amendment Act although again S. 3-A was inserted thereby. What happened to earlier S. 3-A is mystery—VKD].

**3-B. Board of Experts.** (1) For the use of determining whether any of the preparations mentioned in S. 3-A is fit for use or likely to be used as intoxicating liquor the State Government shall constitute a Board of Experts.

(2) The Board of Experts constituted under sub-S. (1) shall be appointed on such terms and conditions and shall consist of such members as may be prescribed. The members so appointed shall hold office during the pleasure of the Governor of Assam,

(3) It shall be the duty of the Board to advise the State Government on the question of whether any article or preparation containing alcohol is fit for use as intoxicating liquor and on such other matters incidental thereto as may be referred to it by the State Government.

3-C. Restrictions on use of medicinal and toilet preparations. On the advice of the Board constituted under S. 3-A, the State Government may by notification in the official Gazette declare any such preparation to be liquor within the definition of the Act and thereupon the State Government may, notwithstanding anything contained in any other provision of the Act, impose such restrictions and in such manner as may be prescribed.

#### COMMENTS

Sections 3-B and 3-C were inserted *vide* Assam Act No. XIX of 1956, published in the Assam Gazette, dated 28-9-1956, to come into force at once.

4. Punishment for contravention. Whoever contravenes the provisions of S. 3 of this Act, shall be punished with imprisonment for a term which may extend to two years but not less than three months and also with fine which may extend to one thousand rupees but not less than one hundred rupees :

Provided that a person, who is under 21 years of age and against whom no previous conviction is proved, may be awarded a sentence of less than three months and a fine less than one hundred rupees for reasons to be recorded in the judgment that in consideration of the age, character and antecedents of the person concerned, a lesser sentence has been awarded.

#### COMMENTS

This section was substituted *vide* Assam Amendment Act, 1963, published in the Assam Gazette dated 2-5-1963 to come into force at once, and the original S. 4 read as follows :

"4. Whoever contravenes the provisions of S. 3 shall be punished with imprisonment of either description for a term which may extend to two years and also with fine which may extend to one thousand rupees."

5. Punishment for allowing premises to be used for the commission of an offence. Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle or place, knowingly permits it to be used for the commission, by any other person, of an offence punishable under this Act or the rules made thereunder, shall be punished with imprisonment for a term which may extend to six months but not less than one month and with fine which may extend to five hundred rupees but not less than fifty rupees :

Provided that a person who is under 21 years of age and against whom no previous conviction is proved, may be awarded a sentence of less than one month and a fine less than fifty rupees for reasons to be recorded in the judgment that in consideration of the age, character and antecedents of the person concerned, a lesser sentence has been awarded.

## COMMENTS

In this section for the words and full stop (.), "of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.", the words "for a term.....but not less than fifty rupees" were substituted and the proviso thereunder was inserted, *vide* Assam Amendment Act, 1963, published in the Assam Gazette dated 2-5-1963, to come into force at once.

**6. Enhanced punishment.** Whenever any person, having been convicted of an offence under sub-S. (1) or sub-S. (2) of S. 3, is again convicted of an offence under either of the aforesaid sub-sections, the imprisonment with which he shall be punished shall be rigorous imprisonment for a term which may extend to four years but not less than six months :

Provided that a person, who is under 21 years of age and against whom no previous conviction is proved, may be awarded a sentence of less than six months for reasons to be recorded in the judgment that in consideration of the age, character and antecedents of the person concerned, a lesser sentence has been awarded.

## COMMENTS

In this section the words "but not less than six months" were inserted and the proviso thereunder also inserted by the Assam Amendment Act, 1963 published in the Assam Gazette dated 2-5-1963 to come into force at once.

**7. Attempts.** Whoever attempts to commit an offence punishable under S. 4, or to cause an offence to be committed, and in such attempt does any act towards the commission of the offence or towards the causing of its commission, shall be punished with the punishment provided for the offence.

**8. Abetments.** Whoever abets an offence punishable under S. 4 or S. 5, shall whether such offence be or be not committed in consequence of such abetment, be punished with the punishment provided for the offence.

**9. Power to issue warrants.** (1) A District Magistrate or a Sub-divisional Magistrate or a Magistrate of the first class, or an Officer of the Excise Department not below the rank of a Superintendent specially empowered by the State Government on his behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act or the rules made thereunder, or for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe any liquor, material, utensil, implement or apparatus, in respect of which an offence punishable under this Act has been committed, is kept or concealed.

(2) The officer to whom a search warrant under sub-S. (1) is addressed shall have all the powers of an officer under S. 10.

**10. Powers of entry, search and seizure, etc.** (1) Any officer of the Departments of Excise and Police not below the rank of Inspector, any officer of the Department of revenue not below the rank of the Sub-Deputy Collector, and any person authorised in this behalf by the State Government who has reason to believe, from personal knowledge or from information received from any person and taken down in writing and attested

by the informant, that any liquor, material, utensil, implement or apparatus in respect of which an offence punishable under this Act or the rules made thereunder has been committed is kept or concealed in any building, vessel, or enclosed place, may, between sunrise and sunset—

- (a) enter into any such building, vessel or place ;
- (b) in case of resistance break open any door and remove any other obstacle to such entry ;
- (c) seize such liquor, material, utensil, implement or apparatus, and any document or other article which may furnish evidence of the commission of the offence ;
- (d) detain, search and arrest any person whom he has reason to believe to have committed an offence against this Act relating to such liquor, material, utensil, implement or apparatus :

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may, after recording the ground of his belief, enter and search such building, vessel or enclosed place at any time between sunset and sunrise.

(2) Where an officer takes down any information in writing under sub-S. (1), or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

**11. Power of seizure and arrest in public places.** Any officer of any of the Departments referred to in S. 10 may within the prohibited area notified under this Act—

- (a) seize, in any public place or in transit any liquor, material, utensil, implement or apparatus in respect of which he has reason to believe an offence punishable under this Act or the rules made thereunder has been committed, and, along with it, any document or other article which may furnish evidence of the commission of the offence, and
- (b) detain, search and arrest any person whom he has reason to believe to have committed an offence against this Act relating to such liquor, material, utensil, implement or apparatus.

**12. Mode of executing warrants, etc.** The provisions of the Code of Criminal Procedure, 1898 shall, in so far as they are applicable, apply to the execution of warrants and making of searches, arrests and seizure under this Act.

**13. Report of arrest and seizure.** Any officer making an arrest or seizure under this Act, shall within twenty-four hours of such seizure and arrest, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

**14. Production of persons arrested.** Every person arrested under any of the provisions of this Act shall be produced before the nearest Magistrate, within twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.

15. Powers to invest Excise Officers. The State Government may invest any officer of the Excise Department, not below the rank of Inspector with the powers of an Officer-in-charge of a Police Station for the investigation of offences under this Act.

16. Jurisdiction to try offences. The provisions of the Code of Criminal Procedure, 1898, shall apply to the trial of offences against this Act and the rules made thereunder.

17. State Anti-Drug and Prohibition Council. (1) The State Government may, by notification in the official Gazette, constitute for the State and for such period as it may deem fit, a State Anti-Drug and Prohibition Council, consisting of two or more non-official residents of the State as may be prescribed by the State Government. The State Government may also, by like notification, dissolve or reconstitute any such council.

(2) The State Anti-Drug and Prohibition Council may, by notification in the official Gazette, constitute for a district or part thereof and for such period as it may deem fit, Prohibition Committees consisting of two or more non-official residents of the district. The State Anti-Drug and Prohibition Council may also, by like notification, dissolve or reconstitute such prohibition committees.

(3) For the purposes of Ss. 10 and 11 of the Act, the State Government may, by notification, in the official Gazette, appoint any member of a Prohibition Committee by virtue of office or otherwise to be a Prohibition Officer and the relation of officers so appointed to the State Anti-Drug and Prohibition Council shall be such as may be prescribed.

(4) The duties to be performed by the State Anti-Drug and Prohibition Council and Prohibition Committees and the relation between the Council and the Committees and the relation of such committees to the Council shall be such as may be prescribed.

#### COMMENTS

In sub-Ss. (1), (2), (3) and (4) of S. 17, for the words "State Prohibition Council" the words "State Anti-Drug and Prohibition Council" were substituted *vide* Assam Act No. XII of 1994.

This section was substituted *vide* Assam Act V of 1974, published in the Assam Gazette, dated 11-2-1974 to come into force from 1-4-1973, and original section read as follows:

"17. (1) The Commissioner, may, by notification in the official Gazette, constitute for any area or any part thereof a 'Prohibition Committee' consisting of two or more non-official residents of such area or part thereof. He may also by like notification dissolve or reconstitute any such committee.

(2) The duties to be performed by a Prohibition Committee and its relation to other such committees and to the Commissioner shall be such as may be prescribed".

18. Punishment for vexatious entry, etc. Any person acting under the powers given by S. 10 or S. 11 who—

- (a) without reasonable grounds of suspicion, enters or searches, or causes to be entered or searched, any building, vessels or place ; or
- (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any liquor or seizing any document or other article liable to seizure under S. 10 or 11 ; or
- (c) vexatiously and unnecessarily detains, searches or arrests any person or fails to produce, within the time specified in S. 14, the person arrested or the article seized before the proper authority ;

shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

19. **Indemnity.** No action shall lie against any officer for damages in any Civil Court for any act done *bona fide* or ordered to be done in pursuance of this Act or the rules thereunder.

20. **Permits.** Notwithstanding anything hereinbefore contained the State Government may prescribe the conditions under which permits may be issued for the use or consumption of foreign liquor to persons on the following amongst other conditions—

- (a) that such person is not a minor ;
- (b) that the health of such person shall be seriously and permanently affected if such person is not permitted to use or consume such liquor ; or
- (c) that such person was either born and brought up or domiciled in any country outside India where such liquor is being generally used or consumed ; or
- (d) that such person belongs to any of the armed forces of India.

21. **Conditions for the issue of licences.** The State Government may prescribe the conditions under which licences may be issued for the manufacture, import, transport, sale or possession of liquor on the ground that such liquor is required by such person for a *bona fide* medicinal, scientific, industrial, religious or such like purpose or for sale to permit holders under S. 20.

#### COMMENTS

This section was substituted by Assam Act XIII of 1956, published in the Assam Gazette, dated 2-5-1956, to come into force at once, whereby the words "religious or such.....under S. 20" were inserted at the end of the original section by deleting the words "or such like purposes".

21-A. **Special permits to foreign dignitaries, etc.** The State Government may grant special permits on such conditions and for such periods as may be prescribed for the use and consumption of foreign liquor in a prohibited area to any person who is—

- (a) a Sovereign or head of a foreign State ;
- (b) an Ambassador, Diplomatic envoy or Counsel, Honorary Counsel of trade, commerce or otherwise representatives of a foreign State ;
- (c) a member of the staff appointed by or serving under any person, specified in Cl. (a) or (b) ; provided that such member is a national of foreign State ;
- (d) the consort on any person specified in Cl. (a), (b), or (c) or any relation of such person (dependent upon him) ; and
- (e) a foreign national employed by or otherwise engaged in any firm or any other concern in the prohibited area.

**21-B. Exemption to tourists.** Notwithstanding anything contained in this Act tourists from any foreign State having all India Tourists' permit may use or consume liquor in the prohibited area without taking any permit under this Act.

**21-C. Permission to use or consume foreign liquor in messes or canteens of Armed Forces.** The State Government may, in such conditions as may be specified by a general or special order, permit—

- (i) the sale of liquor to,
- (ii) the purchase, use or consumption of such liquor in a prohibited area by—
  - (a) the members of the Armed Forces in messes and canteens ; and
  - (b) the crew of war-ships or troop-ships and the members of the armed forces thereon.

**21-D. Regulation of use or consumption of foreign liquor by certain permit holders.** (1) No holder of a permit under any provisions of this Act shall drink in a public place or in the room of a hotel or institution of a prohibited area to which the public may have access.

(2) No holder of a permit granted under Ss. 20, 21-A and 21-C and no tourist entitled to use or consume liquor as provided in S. 21-B, shall allow the use or consumption of any part of the quantity of liquor held by him to any other person not so authorised to use or consume liquor under this Act.

#### COMMENTS

Sections 21-A to 21-D were inserted by Assam Amendment Act, 1963 published in the Assam Gazette dated 2-5-1963, to come into force at once.

**22. Repeal.** The provisions relating to liquor in the Eastern Bengal and Assam Excise Act, 1919 shall stand repealed in respect of the area or areas in which the Act be enforced.

**23. Power to make rules.** (1) The Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules prescribe—

- (a) the duties to be performed by a Prohibition Committee and its relation to the State Prohibition Council and other Committees ;
- (b) any other matter as may, or requires to be prescribed.

(3) In making rules under this section, the State Government may attach a penalty for the breach of any particular rules.

#### COMMENTS,

In sub-S. (2) (a) of this section for the word "Commissioner" the words "State Prohibition Council" were substituted by Assam Act V of 1974, published in the Assam Gazette dated 11-2-1974, to come into force from 1-4-1973.