

THE KERALA PROHIBITION BILL

A bill to effectively implement a comprehensive policy of Prohibition of all intoxicating substances as a paramount policy of the State.

BE it enacted in the Fifty-ninth Year of the Republic.

CHAPTER I PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Prohibition Act ———

(2) It extends to the whole of the State of Kerala.

(3) The provisions of this Act shall come into force either wholly or partly on the dates notified by the Government in the Official Gazette.

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

(1) “To Bottle” means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle for the purpose of sale whether any process of manufacture be employed or not and includes re-bottling;

(2) “Buy” or “Buying” includes any receipt including gift;

(3) “Commissioner” means the officer appointed under clause (a) of Section 34;

(4) “Cultivation” includes the tending or protecting of a plant during growth and does not necessarily imply raising it from seed;

(5) “Export” means.—To take out of the State otherwise than across customs frontier as defined by the State Government;

(6) “Import” means.—To bring into the State otherwise, than across a customs frontier as defined by the State Government.

(7) “Intoxicating” means.—

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

(ii) *Charas*, that is, the resin 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 therefrom; and

(iv) any other intoxicating or narcotic or psychotropic substance like pan parag, pan masala etc., which State Government 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 (Central Act 2 of 1930);

- (8) “Liquor” includes toddy, spirits of wine, methylated spirits, spirits, wine, beer and all liquid consisting of or containing alcohol;
- (9) “Local Authority” means all Corporations, Municipalities and Panchayats of three different types functioning under the Kerala Panchayat Raj Act;
- (10) “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;
- (11) “Collector” means the District Collector or any person appointed under clause (b) of Section 34 to exercise all or any of the powers or to perform all or any of the duties of a Collector under this Act;
- (12) “Notification” means a notification by State Government published in the Kerala Government Gazette;
- (13) “Public Place” includes among others hotel, motel, restaurants, coffee house or tea house, club or association of persons including those of men, women and juveniles, hospitals or other institutions where medical facilities of any type are provided, professional offices, legal, medical or educational or financial institutions, societies, co-operative or otherwise, sports organizations, parks, stadiums or places of amusements or theatres, lodges, hostels etc.;
- (14) “Police Station” includes any place which State Government may, by notification, declare to be a police station for the purposes of this Act;
- (15) “Prohibition Officer” means a Commissioner, a Collector or any officer or other person lawfully appointed or invested with powers under Section 34;
- (16) “Rectification” includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith;
- (17) “Sale” or “Selling” includes any transfer including gifts;
- (18) “State” means the State of Kerala;
- (19) “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 State Government by notification for the purpose of rendering unfit for human consumption;
- (20) “Sweet Toddy” means unfermented juice drawn from coconut, palmyra, date or any other kind of palm tree into receptacles freshly coated internally with lime or otherwise treated so as to prevent any fermentation;
- (21) “Toddy” means the fermented or unfermented juice drawn from coconut, palmyra, date or any other kind of palm tree;
- (22) “Transport” means to move from one place to another within the State;
- (23) “Tourist” means a person who is not a citizen of India and who is either born or brought up or domiciled in any country outside India, but who visits India on a tour for a temporary period.

CHAPTER II

PROHIBITIONS AND PENALTIES

3. *Prohibition of the manufacture or, traffic in, and consumption of, liquors and, intoxicating drugs.*—No one shall except as permitted in this Act and the Rules and regulations framed under this Act:

- (a) Import, export, transport or possess liquor or any intoxicating drug;
- (b) Manufacture any liquor or intoxicating drug;
- (c) Construct or work any distillery or brewery;
- (d) Cultivate the hemp plant or collect any portion of such plant from which an intoxicating drug can be manufactured;
- (e) Tap any toddy producing tree or permit or suffer to be tapped any toddy producing tree belonging to him or in his possession for drawing toddy;
- (f) Use, keep or have in his possession any materials, still, utensil implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug; or
- (g) Bottle any liquor for the purpose of sale; or
- (h) Sell liquor or any intoxicating drug; or
- (i) Consume or buy liquor or any intoxicating drug; or
- (j) Alter or attempt to alter any denatured spirituous preparation by dilution with water or by any method whatsoever, with the intention that such preparation may be used for human consumption as an intoxicating liquor or keep in his possession any denatured spirituous preparation in respect of which he knows or has reason to believe that such alteration or attempt has been made;
- (k) Open or keep or use any place as a common drinking house; or have the care, management or control of, or in any manner assist in conducting the business of, any place opened, or kept or used as a common drinking house;
- (l) Allow any of the acts aforesaid upon any premises in his immediate possession.

4. *Prohibition of public places being used as drinking places.*—No one shall keep, store, serve or otherwise distribute alcohol or any substance containing alcohol, pan masala, pan parag, narcotic drugs and substances containing narcotic drugs and psychotropic substances.

5. *No shop shall store, sell or give by way of gift or prize any of the substances of which sale, purchase or use is prohibited under this Act.*—No shop, stationary or mobile, wholesale or retail shall store or sell or give by way of gift or prize any of the substances of which sale, purchase or use is prohibited by this Act.

6. *Prohibition of soliciting use of liquor or any intoxicant or doing any act calculated to incite or encourage any member of public to commit an offence under this Act.*—No person shall

- (a) Solicit the use of, or offer any liquor or intoxicant substance; or
- (b) Do any act which is calculated to incite or encourage any member of the public or a class of individuals or the public generally to commit any offence under this Act or to

commit a breach of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorization granted thereunder.

7. Prohibition of advertisements relating to intoxicants etc.—(1) No person shall print or publish in any newspaper, news-sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter.—

(a) Which solicits the use of or offers any intoxicant;

(b) Which is calculated to encourage or incite any individual class of individuals or the public generally to commit an offence under this Act, or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorization granted, thereunder.

(2) Save as otherwise provided in sub-section (3), nothing in this section shall apply to—

(a) Catalogues or price lists which may be generally or specially approved by the Commissioner in this behalf;

(b) Any advertisement or other matter contained in any newspaper, newssheet, book, leaflet, booklet or other publication printed and published outside the State;

(c) Any advertisement or other matter contained in any newspaper printed, and published in the State before such date as the State Government may by notification in the Official Gazette, specify; and

(d) Any other advertisement or matter which the State Government may, by notification in the Official Gazette, generally or specially exempt from the operation of this section.

(3) Notwithstanding anything contained in sub-section (2), the State Government may, by notification in the Official Gazette, prohibit within the State the circulation, distribution or sale of any newspapers, news-sheet, book, leaflet, booklet or other publication printed and published outside the State which contains any advertisement or matter,—

(a) Which solicits the use of or offers any intoxicant or hemp; or

(b) Which is calculated to encourage or incite any individual or class of individuals or the public generally to commit any offence under this Act or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder, or the conditions of any licence, permit, pass or authorization granted thereunder.

8. Provisions in this chapter not to apply to certain articles and substances.—Nothing in this Chapter 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 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:

Provided that such article corresponds with the description and limitations mentioned in Section 59A.

9. *Punishment for offences falling under clauses (b) and (l) of Section 3.*—Whoever contravenes the provisions in clause (b) and (l) of Section 3 in so far as it relates to an act specified in the other clauses of Section 3 of the Act shall be committing an offence and shall be punished with imprisonment for a term of 2 years and with a fine which extend to Rs.10,000 but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court.

(A) Such imprisonment shall not be less than six months and such fine shall not be less than Rs. 2,000 for first offence.

(B) Such imprisonment shall be rigorous imprisonment and shall not be less than one year and such fine shall not be less than Rs. 3,000 for a second or subsequent offences.

10. *Punishment for offences falling under clauses (b), (h) (i) of Section 3.*—Whoever contravenes the provision in clauses (b) (h) and (i) of Section 3 shall be committing an offence and shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to Rs. 5,000 but in the absence of special and adequate reasons to be mentioned in the judgment of the court:—

(A) Such imprisonment shall not be less than three months and such fine shall not be less than Rs. 2,000.

(B) Such imprisonment shall be rigorous imprisonment and shall not be less than one year and the fine shall not be less than Rs. 3,000 for a second and subsequent offences.

11. *Punishment for offences falling under other clauses of Section 3.*—(1) Whoever contravenes the provisions in the other clauses of Section 3 shall be committing an offence and shall be punished with imprisonment for a term which may extend to one year or with fine which may extent to Rs. 5000 or with both but in the absence of special and adequate reasons to the contrary to be stated in the judgment of the court:—

(A) Such imprisonment shall not be less than three months and such fine shall not be less than Rs. 1,000 for first offence.

(B) Such imprisonment shall be rigorous imprisonment and shall not be less than six months and such fine shall not be less than Rs. 2,000 for a second and subsequent offences:

Provided that nothing contained in this sub-section shall apply—

(i) to any act done under and in accordance with, the provisions of this Act or the terms of any rule, notification, order, licence or permit issued thereunder, or

(ii) to the possession, sale, purchase, use or consumption of duty-paid medicinal or toilet preparations for bona fide medicinal or toilet purposes.

(2) It shall be presumed until the contrary is shown—

(a) that a person accused of any offence under clauses (a) to (j) of Section 3 has committed such offence in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug for the possession of which he is unable to account satisfactorily; and

(b) that a person accused of any offence under Clause (1) of Section 3 has committed such offence if an offence is proved to have been committed in premises in his immediate possession in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug, or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug:

Provided that mere possession of an implement that may be used for tapping will not give rise to the presumption under this sub-section in respect of an area where tapping of sweet toddy may by notification be permitted.

12. *Punishment for being found in a state of intoxication.*—Whoever is found in a state of intoxication in any public place and whoever not having been permitted to consume any liquor or intoxicating drug in pursuance of this Act, is found in a state of intoxication in any private place, shall be punished with imprisonment which may extend to six months, or with fine which may extend Rs. 2,000 or with both.

13. *Punishment for rendering or attempting to render denatured spirits fit for human consumption.*—Whoever renders or attempts to render fit for human consumption any spirit or preparation containing spirit, whether manufactured in the State or not, which has been denatured or any preparation containing such spirit or has in his possession, any spirit or preparation containing spirit in respect of which he knows or has reason to believe that any such attempt has been made, shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to Rs. 5,000, but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court:—

(i) Such imprisonment shall not be less than six months and such fine shall not be less than Rs. 2,000 for a first offence;

(ii) Such imprisonment shall not be less than nine months and such fine shall not be less than Rs. 3,000 for a second offence; and

(iii) Such imprisonment shall not be less than one year and such fine shall not be less than Rs. 3,500 for a third and subsequent offences.

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

14. *Punishment for violating prohibition in Section 7 (1) & (3).*—Whoever violates the prohibition contained in sub-sections (1) & (3) of Section 7 shall be committing an offence and shall be punished with imprisonment which may extend to six months or with fine which may extend to Rs. 1,000 or with both.

15. *Punishment for vexatious delay.*—Any officer or person exercising powers under this Act, who vexatiously and willfully delays forwarding to a Prohibition Officer or to the

Officer in-charge of the nearest Police Station as required by Section 42, any person arrested or any article seized under this Act, shall be punished with fine which may extend to Rs. 500.

16. *Punishment for abetment or escape of persons arrested, etc.*—Any Officer or person exercising powers under this Act who—

(a) Unlawfully releases or abets the escape of any person arrested under this Act, or abets the commission of any offence against this Act; or

(b) Acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken; and Any other Officer of Government or of a local authority who abets the commission of any offence against this Act;

Shall be punished with imprisonment which may extend to six months, or with fine which may extend to Rs. 1,000 or with both.

17. *Things Liable to Confiscation.*—In any case in which an offence has been committed against this Act, the liquor, drug, materials, still, utensil, implement, or apparatus in respect or by means of which the offence has been committed shall be liable to confiscation along with the receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same.

18. (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 Collector or other Prohibition Officer in-charge of the District or area or by any other officer authorized by State Government in that behalf, who may order such confiscation:

Provided that no such order shall be made until the expiration of fifteen days 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 produce in support of their claims.

19. *Offences under Act to be cognizable.*—All offences under this Act shall be cognizable and the provisions of the Code of Criminal Procedure for the time being in force with respect to cognizable offences shall apply to them.

CHAPTER III

EXEMPTIONS AND LICENCES

20. *Power to notify exemptions.*—(1) State Government may, by notification and subject to such conditions as they think fit, exempt any specified liquor or intoxicating drug, or articles 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. However, before issuing such exemption Government shall obtain certificates from the experts in the respective fields recognized by the Government regarding such requirement.

(2) When issuing a notification under sub-section (1) State Government shall have power to provide that a breach of any of the conditions subject to which the exemption is notified shall be punished with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.

21. *Exemption regarding tapping for sweet toddy, etc.*—State Government shall have the power to exempt from the operation of all or any of the provisions of this Act, by notification, the tapping of any class of trees for sweet toddy, the possession, transport and sale of such toddy and the manufacture therefrom of jiggery or other non-intoxicating product in any local area.

22. *Licences for tapping for sweet toddy, etc.*—Subject to the control, of State Government the Collector or any Officer empowered by him may issue—

(a) licences for the tapping of any trees for sweet toddy for consumption thereof without fermentation or for the manufacture of jaggery therefrom; or

(b) Permit for the possession, transport or sale of such toddy.

23. *Prescriptions for intoxicating liquor.*—(1) No person other than a registered medical practitioner, shall issue any prescription for any intoxicating liquor.

(2) No registered medical practitioner shall prescribe such intoxicating, liquor, unless he believes in good faith after careful medical examination of the person for whose use such prescription is sought, that the use of such intoxicating liquor by such person is necessary, and will afford relief to him from some known ailment.

(3) A registered medical practitioner shall state, in every prescription for intoxicating liquor issued by him, the name and address of the person to whom issued, the date of issue, directions for use, and the amount and frequency of the dose, and shall preserve a copy of the prescription for one year from the date of issue. On the copy so preserved he shall state the purpose or ailment for which the intoxicating liquor is prescribed.

(4) Any violation of the provisions in this section shall be an offence punishable with an imprisonment for 3 months or a fine of Rs. 5,000 for the first time and for a second time or thereafter imprisonment for a period of 6 months or a fine of Rs. 50,000.

24. *Tourist's permit.*—(1) The State Government may, by rules or an order in writing, authorize an Officer to grant tourist's permit to consume, to use and buy foreign liquor to a person who is a tourist.

(2) A tourist's permit may be granted for the period of the tourist's intended stay in the State but shall in no case be granted for a period exceeding one month.

(3) Such permits shall be available at such places as may be fixed by the Commissioner in this behalf.

25. *Exemption of members of Armed Forces.*—(1) The Government may, by notification and subject to such conditions as they think fit, exempt members of the armed forces of the Union or of any other armed forces raised or maintained by the Union or attached to or operating with any of its armed forces and the members of the medical or other staff attached to any of the forces aforesaid from all or any of the provisions of this Act.

(2) When issuing a notification under sub-section (1) State Government shall have power to provide that a breach of any of the conditions subject to which the exemption is notified shall be punished with imprisonment which may extend to six months or with fine which may extend to Rs.1,000 or with both.

26. *Granting of licences or permits.*—(1) Any hotel, club, bar or other institution or business place may apply as provided in the Rules for licence for storing, consuming, selling or otherwise distributing any of the above contraband substances to the local authority within whose jurisdiction the applicant carries on its activity.

(2) The Local Authority within whose jurisdiction such activity is to take place may on being satisfied that no abuse or misuse of contraband substances beyond permissible limits or in accordance with medical prescription may grant an appropriate licence for such operation as is permitted under the Act.

(3) The licence shall be for a limited period and a fee prescribed as per Rules may be levied in that behalf.

(4) On the expiry of the period, the authority may extend or reduce the period of the licence.

27. *Appeal against refusal of licence or arbitrary levy of fee.*—In case of refusal of the licence or arbitrary levy of fee or abuse of power in choosing the licensee, an appeal shall lie to the nearest Judicial Magistrate in accordance with the Rules.

28. *Form and conditions of licences and permits.*—Every licence or permit granted under this Act or shall—

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

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

29. *Counterpart agreement to be executed by licensee.*—Every person taking out any licence or permit under the Act may be required to execute a counterpart agreement in conformity with the tenor of his licence or permit and to give such security for the performance of his agreement as the Collector may require.

30. *Power to cancel or suspend licences and permits.*—(1) The Collector may cancel or suspend any such licence or permit—

- (a) if any fee payable by the holder thereof be 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, of any 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 any cognizable and non-bailable 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 licence or permit is granted ceases to exist.

31. *Penalty for breach of the conditions of licences and permits.*—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, of any of 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 punished with imprisonment 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 or without the permission of the holder of the licence or permit, be liable to the same punishment.

32. *Permits and licences to be non-transferable.*—Permits and licences granted under the Act shall be non-transferable.

33. *Exclusive privilege of Government to import etc., intoxicants, etc., and fees levied include rent or consideration for grant of such privilege to person concerned.*—Notwithstanding anything contained in this Act, the State Government shall have the exclusive right or privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, possessing or using any intoxicant, hemp or toddy, and whenever under this Act or any licence, permit, pass, thereunder any duty or fees are levied and collected for any licence, permit, pass, authorization or other permission given to any person for any such purpose, such fees shall be deemed to include the rent or consideration for the grant of such right or privilege to that person by or on behalf of the State Government.

CHAPTER IV

ESTABLISHMENT AND CONTROL

34. *Appointment of officers and withdrawal of powers.*—State Government may, from time to time, by notification—

- (a) appoint any officer to exercise all the powers of a Commissioner under this Act in all local areas in which it is in force and to have the control of the administration of the provisions of this Act in such areas;
- (b) appoint any person other than the District Collector to exercise within a district all or any of the powers and to perform all or any of the duties of a Collector under this Act, either concurrently with or to the exclusion of the District Collector, subject to such control as the Government may, from time to time, direct;
- (c) withdraw from the Commissioner or the Collector any or all of the powers conferred on him by this Act;
- (d) appoint, paid or honorary officers with such designations, powers, and duties as State Government may think fit;
- (e) order that all or any of the powers and duties assigned to any person under clause (d) shall be exercised and performed by any existing Government official or any other person; and
- (f) delegate to any Prohibition Officer all or any of their powers under this Act.

35. *Power of Government to authorize officers to admit persons arrested to bail.*—State Government may, by notification and subject to such conditions as may be prescribed in such notification, empower all or any of the officers or classes of officers or persons mentioned in Section 30 throughout the State of Kerala or in any local area, to admit a person arrested under that Section to bail or to appear, when summoned or otherwise directed before a Police or Prohibition Officer or Magistrate having jurisdiction to inquire into the offence for which such person has been arrested, and may cancel or vary such notification.

CHAPTER V POWERS, DUTIES AND PROCEDURE OF OFFICERS, ETC.

36. *Issue of search warrants.*—If any Collector, Prohibition Officer or Magistrate upon information obtained and after such inquiry as he thinks necessary, has reason to believe that an offence under sub-section (1) of Section 3 has been committed, he may issue a warrant for the search for any liquor, intoxicating drug, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been committed. Any person who has been entrusted with the execution of such a warrant may detain and search, and if he thinks proper, arrest any person found in the place searched, if he has reason to believe such person to be guilty of any offence under this Act:

Provided that every person arrested under this Section shall be admitted to bail by the person arresting if sufficient security be tendered for his appearance either before a

Magistrate or before a Police or Prohibition Officer, as the case may be. Before issuing such warrant, the Collector, Prohibition Officer or Magistrate shall examine the informant on oath and the examination shall be reduced into writing and be signed by the informant, and also by the Collector, Prohibition Officer or Magistrate.

37. Powers of entry and search without warrant.—Whenever a Collector, any Prohibition Officer not below such rank as State Government may determine, any Police Officer not below the rank of Inspector, any officer in charge of a Police Station, or any officer authorized by Government in this behalf has reason to believe that an offence falling under Section 3 has been committed and that the delay occasioned by obtaining a search warrant under Section 36 will prevent the execution thereof, he may after recording his reasons and the ground of his belief, at any time by day or night enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and may detain and search and if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Act:

Provided that every person arrested under this Section shall be admitted to bail by such officer as aforesaid if sufficient security be tendered for his appearance either before a Magistrate or before a Police or Prohibition Officer, as the case may be.

38. Powers of entry and inspection.—The Collector, any Prohibition Officer not below such rank as the Government may determine, or any police or any officer authorized by the Government in this behalf, may enter and inspect, at any time by day or by night, any place in which it is reasonably suspected.—

(a) That any toddy is drawn or the manufacture of any other liquor or of any intoxicating drug is carried on, or

(b) That any liquor or intoxicating drug is kept for sale or stored, or

(c) That an offence under Section 10 has been, or is being committed;

And may examine, test, measure or weigh any material, still, vessel, implement, apparatus, liquor or intoxicating drug found in such place.

39. Power to use force in case of resistance to entry.—If any officer empowered to make an entry under Sections 37 & 38 cannot otherwise make such entry it shall be lawful for him to break open any outer or inner door or window and to remove any other obstacles to his entry into any such place.

40. Arrest of offenders and seizure of contraband liquor and articles without warrant.—Any Prohibition Officer, any officer of the Police Department and any other person authorized in that behalf—

(a) may arrest without warrant any person found committing an offence punishable under Section 3;

(b) may seize and detain any liquor, drug or other article which he has reason to believe to be liable to confiscation under this Act; and

(c) may search any person, vessel, vehicle, animal, package receptacle or covering upon whom or in or upon which, he may have reasonable cause to suspect any such liquor, drug or other article to be, or to be concealed:

Provided that if the officer or person making the arrest under this Section be not empowered under Sections 36, 37 and 40 to admit to bail, the person arrested shall be forthwith forwarded to an officer so empowered if such an officer is known to be within a distance of five miles from the place where such arrest took place. And it shall be the duty of such officer empowered as aforesaid to admit such person to bail if sufficient security be tendered for his appearance before a Police or Prohibition Officer or Magistrate having jurisdiction to inquire into the case.

42. *Arrest of persons refusing to give name or giving false name.*—Any person, who may be accused or reasonably suspected of committing an offence against this Act, and who on demand made by any Prohibition Officer or any officer of the Police Department or by any person authorized in that behalf refused to give his name and residence or who gives a name or residence which such officer or person has reason to believe to be false, may be arrested by such officer or person in order that his name and residence may be ascertained.

43. *Searches how to be made.*—All searches under the provisions of this Act shall be made in accordance with the provisions of the Code of Criminal Procedure for the time being in force.

44. *Duty of officials of all departments and local authorities to assist.*—Officials of all departments of State Government and of all local authorities shall be legally bound to assist any Prohibition or Police Officer in carrying out the provisions of this Act.

45. *Offences to be reported, etc.*—Any person or a group of persons, or any organization non-governmental or otherwise and every official employed by State Government or by any local body, other than a Police or Prohibition Officer, shall be bound to give immediate information at the nearest police station or to a Prohibition Officer, of all breaches of any of the provisions of this Act either committed or likely to be committed which may come to his knowledge; and all such officials shall be bound to take all reasonable measures in their power to take follow up actions for the breach committed and to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

46. *Landholders and others to give information.*—All landholders, proprietors, tenants, sub-tenants and cultivators who own or hold land or house-property on or in which there shall be any tapping for toddy or manufacture of liquor or intoxicating drugs shall in the absence of reasonable excuse be bound to give notice of the same to a Magistrate or to a

Prohibition Officer or to an officer of the Police or Land Revenue Department immediately the same shall have come to their knowledge.

47. Persons arrested how to be dealt with.—(1) When any person is arrested under the provisions of Sections 36, 37, 40 and 46 the person arresting him shall, unless bail shall have been accepted under the provisions of Sections 32, 33 or 36 forthwith forward him to the nearest police station or to a Prohibition Officer with a report of the circumstances under which such arrest was made.

Procedure of Police Station Officer.—(2) On any of such person being brought to a Police Station as aforesaid, the officer in charge thereof shall either admit him to bail to appear when summoned, before himself, or before the Prohibition Officer, if any, or any Police Officer within the limits of the jurisdiction of which Prohibition or Police Officer the offence with which he is charged is suspected to have been committed, or in default of bail, shall forward him in custody to such officer.

Procedure of Police or Prohibition Officer empowered to inquire.—(3) On any such person being brought in custody before a Prohibition or Police Officer as aforesaid or appearing before such officer on bail or when such officer as aforesaid has himself made the arrest, such officer shall hold such enquiry as he may think necessary and shall either release such person, or forward him in custody to or admit him to bail to appear before the Magistrate having jurisdiction to inquire into or try the case:

Provided that if such inquiry is not commenced and completed on the day on which such person is arrested by or is brought or appears before such officer, he shall, if sufficient bail be tendered for the appearance of the person arrested, admit such person to bail to appear on any subsequent day before himself or any other officer having jurisdiction to inquire into the case.

48. Persons arrested to be admitted to bail.—It shall be the duty of any officer arresting any person under the powers conferred by Section 36 or 37 and of any officer in charge of a police station or any Police or Prohibition Officer before whom a person arrested is brought or appears under the provisions of Section 47 to release such person on bail if sufficient bail be tendered for his appearance before a Police or Prohibition Officer or before a Magistrate as the case may be.

49. Bond of accused and sureties.—(1) Before any person is released on bail, a bond in such sufficient but not excessive sum of money as the officer admitting him to bail thinks proper shall be executed by such person and by one or more sureties, conditioned that such person shall attend in accordance with the terms of the bond and shall continue to attend until otherwise directed by the Police or Prohibition Officer before whom he was bailed to attend, or by the Magistrate, as the case may be:

Provided that the officer admitting any such person to bail may in his discretion dispense with the requirement of a surety or sureties to the bond executed by such person.

(2) State Government shall from time to time determine the form of the bond to be used in any local area.

50. Procedure in case of default of person admitted to bail to appear before Prohibition Officer.—When by reason of default of appearance of a person bailed to appear before a Police or Prohibition Officer such Officer is of opinion that proceedings should be had to compel payment of the penalty or penalties mentioned in the bond of the person bailed or of the surety or sureties, he shall forward the bond to the Magistrate having jurisdiction to inquire into or try the offence of which the person bailed was accused, and the Magistrate shall proceed to enforce the payment of the penalty or penalties in the manner provided by the Code of Criminal Procedure, for the time being in force, for the recovery of penalties in the like case of default of appearance by a person bailed to appear before his own Court.

51. Obtaining of medical certificates in the case of persons found in a state of intoxication.—(1) Any officer authorized to arrest a person for an offence punishable under clause (i) of section 3 in so far as it relates to consumption of liquor or any intoxicating drug, who has reason to believe that any person has consumed liquor or any intoxicating drug, may produce such person for examination, before any medical officer authorized by the Government and request the medical officer to furnish a certificate on his finding whether such person has consumed any liquor or intoxicating drug.

(2) Any such medical officer before whom such person is produced shall be bound to examine such person and furnish to the officer by whom such person has been produced a certificate as to the state of such person, and if any form has been prescribed for the purpose, in such form.

(3) If the person produced is a woman, the examination shall be carried out by a woman medical officer authorized by the Government.

(4) Any person who has been produced before a medical officer in pursuance of this section shall allow himself to be examined by the medical officer.

(5) If any person who under this section is required to undergo medical examination resists or refuses to allow himself to be produced before or to be examined by the medical officer, it shall be lawful to use all means necessary to secure the production and examination of such person.

(6) Resistance to production or refusal to allow examination under this section shall be deemed to be an offence under Section 186 of the Indian Penal Code (Central Act 45 of 1860).

(7) In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under clause (i) of Section 3 if he having been produced before a medical officer under this section had resisted or had refused to allow himself to be examined by such medical officer.

(8) Any document purporting to be a certificate signed by a medical officer authorized by the Government may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code (Central Act 45 of 1860), but the court may at the instance of the accused order the attendance for cross-examination of the medical officer who issued the certificate.

52. Power of Police or Prohibition Officers to summon witnesses.—Any Police or Prohibition Officer holding an inquiry in the manner provided in Section 47 may summon any person to appear before himself to give evidence on such inquiry or to produce any document relevant thereto which may be in his possession or under his control:

Provided that no such officer shall so summon any person to appear before him if the journey to be made for complying with such summons exceeds ten miles by road or fifty miles by rail or such other limits as State Government may fix.

53. Term of summons.—Every summons issued under Section 52 shall state whether the person summoned is required to give evidence or to produce a document, or both, and shall require him to appear before the said officer at a stated time and place.

54. Examination of witnesses.—Persons so summoned shall attend as required and shall answer all questions relating to such inquiry put to them by such officer. Such answer shall be reduced to writing and shall be signed by such officer.

55. When attendance of witnesses to be dispensed with and procedure in such cases.—It shall be lawful for a Police or Prohibition Officer, 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, to proceed to the residence of such person and there to 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, and the provisions of Section 54 shall apply to such answers.

56. Power of Police or Prohibition Officer to summon suspected persons.—Any Police or Prohibition Officer may, after recording his reasons in writing, summon any person to appear before him whom he has good reason to suspect of having committed an offence under this Act. On such person appearing before such officer, the procedure prescribed by Sections 47 to 55 shall become applicable.

The Officer may also, if he considers it necessary for the investigation of the case, exercise the powers conferred by Sections 52 to 55 before summoning the person suspected.

57. Law relating to criminal courts as to summoning of witnesses to apply.—The law for the time being in force as to summonses and compelling the attendance of persons summoned in criminal courts shall, so far as the same may be applicable, apply to any courts shall, so far as the same may be applicable, apply to any summons issued by a Police or Prohibition Officer and to any person summoned by him to appear under the provisions of this Act.

58. Report of Police or Prohibition Officer to give jurisdiction to competent Magistrate.—When a Police or Prohibition Officer forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits any such person to bail to appear before such Magistrate, such officer shall also forward to such Magistrate, a report setting forth the name of the accused person and the nature of the offence with which he is charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner as if complaint had been made before him as prescribed in the Criminal Procedure, for the time being in force.

59. Powers of Police and Prohibition Officers to cause attendance of witnesses before Magistrate.—When a Police or Prohibition Officer forwards in custody any person accused of an offence against this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits him to bail to appear before such Magistrate, such officer shall exercise all the powers such Magistrate, such officer shall exercise all the powers conferred by the Code of Criminal Procedure, for the time being in force.

60. Procedure after arrest.—Any person arrested for an offence under this Act shall be informed, as soon as may be, of the grounds for such arrest and shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; and no such person shall be detained in custody beyond the said period without the authority of the Magistrate.

61. Police to take charge of articles seized.—All officers in charge of police stations shall take charge of and keep in safe custody pending the orders of a Magistrate or of a Prohibition Officer all articles seized under this Act which may be delivered to them, and shall allow any Prohibition Officer who may accompany such articles to the police station or who may be deputed for the purpose by his superior officer, to affix his seal to

such articles and to make samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

62. *Power of District Magistrate to transfer cases.*—The District Magistrate shall have power to transfer any case under this Act pending inquiry or trial before any Magistrate or Officer in the District to any other Magistrate or officer therein.

63. *Operation of the Code of Criminal Procedure.*—Save as expressly provided in this Act, nothing contained therein shall affect the operation of the Code of Criminal Procedure, for the time being in force.

CHAPTER VI MISCELLANEOUS

64. *Treatment of alcoholics and drug addicts.*—(a) Government shall take steps to encourage Medicare persons to treat addicts by providing appropriate training and necessary support;

(b) Government shall establish centers for retrieving persons addicted to alcohols and other drugs through more humane systems of treatment rendered by specialists in the field;

(c) The government shall also establish a research centre at state level to do research to find out more humane way to tackle the problem of addiction of people to alcohol and other drugs.

CHAPTER VII RULES AND NOTIFICATIONS

65. *Power to make rules.*—(1) State 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, State Government may make rules—

(a) For the issue of licences and permits and the enforcement of the conditions thereof;

(b) Prescribing the powers to be exercised and the duties to be performed by paid and honorary Prohibition Officers in furtherance of the objects of this Act;

(c) Prescribing the ways in which the fee under Section 29 may be levied;

(d) Determining the local jurisdiction of Police and Prohibition Officers in regard to inquiries and the exercise of preventive and investigating powers;

(e) Authorizing any officer or person to exercise any power or perform any duty under this Act;

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

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

(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 therefrom;

(i) Declaring how denatured spirit shall be manufactured.

(j) Declaring in what cases or clauses of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act or under any rule made thereunder, or by what authorities such orders may be revised, and prescribing the time and manner of presenting appeals, and the procedure for dealing therewith;

(k) For the grant of batta to witnesses, and of compensation for loss of time to persons released under section 47 (3) on the ground that they have been improperly arrested and to persons charged before a Magistrate with offences under this Act and acquitted;

(l) Regulating the power of Police and Prohibition Officers to summon witnesses from a distance under Section 52 and

(m) For the disposal of articles confiscated and of the proceeds thereof;

(n) For the prevention of the use of medicinal or toilet preparations for any purpose other than medicinal or toilet;

(o) For all matters expressly required or allowed by this Act to be prescribed.

(3) All rules made under this section shall be laid before the Legislative Assembly for not less than fourteen days as soon as possible after they are made and shall be subject to such modifications as the Assembly may make during the session in which they are so laid or the session immediately following.

66. *Publication of rules and notifications.*—All rules made under this Act shall be published in the Kerala Government Gazette and upon such publication, shall have effect as if enacted in this Act.

67. *Effect of the provisions of the Act on the provisions in the Abkari Act.*—Inconsistent provisions in the Kerala Abkari Act to be null and void. On and after the commencement of this Act, the provisions in the Kerala Abkari Act to the extent they are inconsistent with any of the provisions in this Act shall be null and void.

68. *Savings.*—Notwithstanding the provision in clause (1) above any act done any liability incurred or right accrued under any of the provisions of the Abkari Act before the commencement of this Act shall stand unaffected and it will be governed by the relevant provisions of the Abkari Act.

CHAPTER VIII LEGAL PROCEEDINGS

69. *Actions against Government, etc.*—No action shall lie against State Government or against any Prohibition, Police or other officer, for damages in any civil court for any act *bona fide* done or ordered to be done in pursuance of this Act.

70. *Courts to take judicial notice of appointments.*—All courts shall take judicial notice of all notifications and orders conferring powers, imposing duties and making appointments under this Act.

Statement of objects and reasons

India continues to have the largest number of the poor, the illiterate and malnourished in the world. Kerala is no exception though Kerala boasts of 100% literacy. At the same time, it is well-known that liquor consumption in Kerala is very high. A large number of families get ruined day by day. Our drinking habits suggest total foolishness and near madness. Driving under the influence of alcohol and the consequent road accidents and deaths on the roads are frequent occurrences. Even young persons have taken to the habit of drinking. This is the position with regard to drugs as well. Very many deaths have taken place as a result of drinking illicit and spurious drinks manufactured and sold in the state by unsocial elements for making huge profits exploiting the poor victims of drinking habits.

The Constitution of India in the Directive Principles of State Policy which are fundamental in the governance of the country contemplates total prohibition of alcohol and all types of intoxicating substance. The Commission feels that a law prohibiting liquor and similar substances is necessary in the best interests of the people of Kerala. Similar law exists in the State of Gujarat. Hence the parent Bill.
