

## **Abkari (Amendment) Act, 1997**

**16 of 1997**

### CONTENTS

1. Short Title And Commencement
2. Amendment Of Section 3
3. Amendment Of Section 8
4. Amendment Of Section 29
5. Amendment Of Section 30
6. Amendment Of Section 31
7. Amendment Of Section 34
8. Amendment Of Section 36
9. Substitution Of Section 40
10. Substitution Of Section 41
11. Amendment Of Section 43
12. Amendment Of Section 44
13. Substitution Of Section 50
14. Amendment Of Section 55
15. Omission Of Section 55A
16. Amendment Of Section 55B
17. Amendment Of Section 56
18. Amendment Of Section 56A
19. Amendment Of Section 57
20. Amendment Of Section 58
21. Amendment Of Section 58A
22. Amendment Of Section 58B
23. Amendment Of Section 59
24. Amendment Of Section 60
25. Amendment Of Section 61
26. Amendment Of Section 63
27. Amendment Of Section 64
28. Omission Of Section 67
29. Omission Of Section 67A
30. Amendment Of Section 68
31. Repeal And Saving

## **Abkari (Amendment) Act, 1997**

**16 of 1997**

An Act further to amend the Abkari Act 1 of 1077 WHEREAS it is expedient further to amend the Abkari Act 1 of 1077, for the purposes hereinafter appearing; Be it enacted in the Forty-eighth

year of the Republic of India as follows:-

### **1. Short Title And Commencement :-**

(1) This Act may be called the Abkari (Amendment) Act, 1997.

(2) It shall be deemed to have come into force on the 3<sup>rd</sup> day of June, 1997.

### **2. Amendment Of Section 3 :-**

In section 3 of the Abkari Act 1 of 1077 (hereinafter referred to as the principal Act), for clause (17A), the following clause shall be substituted, namely:-

"(17A) "transit" means to move from one place in a State to another place in that State or to any other State through the territory of the State of Kerala.

Explanation.-In this clause "State" means a State other than the State of Kerala and includes a Union Territory."

### **3. Amendment Of Section 8 :-**

Section 8 of the principal Act shall be renumbered as sub-section (1) of that section and,--

(a) in sub-section (1) as so renumbered for the word, 'transit' the words 'without permit transit' shall be substituted;

(b) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

"(2) If any person contravenes any provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees one lakh."

### **4. Amendment Of Section 29 :-**

In section 29 of the principal Act, clause (o) of sub-section (2) shall be omitted.

### **5. Amendment Of Section 30 :-**

In section 30 of the principal Act, the words and figures "Section 55 or section 57 or section 58 of" shall be omitted.

### **6. Amendment Of Section 31 :-**

In section 31 of the principal Act,--

- (a) the words and figures "section 8 or section 15C or section 55 or section 55B or section 56A or section 57 or section 58 or section 58A or section 58B of" shall be omitted;
- (b) the proviso shall be omitted.

#### **7. Amendment Of Section 34 :-**

In section 34 of the principal Act,--

(a) in sub-section (1),-

(i) for the words "officer of the Excise Department or the Police Department", the words "Abkari Officer" shall be substituted.

(ii) for the words and figures "section 8 or section 15C or section 55 or section 55B or section 56A or section 57 or section 58 or section 58A or section 58B", the words "this Act" shall be substituted.

(b) for sub-sections (2) and (3), the following sub-section shall be substituted, namely:-

"(2) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply, in so far as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act."

#### **8. Amendment Of Section 36 :-**

In section 36 of the principal Act, for the words and figures "Code of Criminal Procedure, 1898" the words, figures and brackets "Code of Criminal Procedure,, 1973 (Central Act 2 of 1974)" shall be substituted.

#### **9. Substitution Of Section 40 :-**

For section 40 of the principal Act, the following section shall be substituted, namely:-

"40. Procedure on arrest and seizure.-(1) (a) Any officer arresting a person under section 31. section 34 or section 35 shall inform him of the grounds for such arrest.

(b) Where an Abkari Officer arrests without warrant any person other than a person suspected of, or accused of, any non-bailable offence under this Act, such officer shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

(2) Every person arrested under section 30 shall be produced before, and the article seized under that section shall be forwarded to, without unnecessary delay, the Magistrate or the Commissioner,

as the case may be, by whom the warrant was issued.

(3) Every person arrested under section 31 or section 34 or section 35 shall be produced before, and articles seized under section 31 or section 34 shall be forwarded to, without unnecessary delay,--

(a) to the officer in charge of the nearest Police Station; or

(b) to the officer empowered under section 5A, or to the Abkari Inspector.

(4) The authority or officer before whom any person is produced under sub-section (2) or sub-section (3) shall, take expeditious steps as provided in section 41.

(5) The authority or officer to whom any article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take necessary steps in accordance with law for disposal of such article."

### **10. Substitution Of Section 41 :-**

For section 41 of the principal Act, the following sections shall be substituted, namely:-

"41. Disposal of persons arrested.-

(1) Where any person accused of, or suspected of, the commission of an offence punishable with imprisonment which may not extend to three years under this Act is arrested or brought in accordance with the provisions of section 40, he may be released on bail, if sufficient bail be tendered for his appearance before the concerned Abkari Inspector or the Magistrate, as the case may be.

(2) Where a person accused of, or suspected of the commission of an offence punishable with imprisonment which may extend to three years or more under this Act is arrested or brought in accordance with the provisions of section 40, he shall without any delay be produced before the Magistrate, who shall take such measures as may be necessary to proceed against such person in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

41A. Offences to be cognizable and non-bailable.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of three years or more under this Act shall be released on bail or on his own bond unless-

(i) the Public Prosecutor or the Assistant Public Prosecutor, as the

case may be, has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), or any other law for the time being in force on granting of bail."

### **11. Amendment Of Section 43 :-**

In section 43 of the principal Act, for the words and figures "Code of Criminal Procedure, 1898" the words, figures and brackets "Code of Criminal Procedure, 1973 (Central Act 2 of 1974)" shall be substituted.

### **12. Amendment Of Section 44 :-**

In section 44 of the principal Act, for the words and figures "in the manner provided in section 40", the words "under this Act," shall be substituted.

### **13. Substitution Of Section 50 :-**

For section 50 of the principal Act, the following sections shall be substituted, namely:-

"50. Report of Abkari Officer gives jurisdiction to a competent Magistrate.-(1) Every investigation into the offence under this Act shall be completed without unnecessary delay.

(2)As soon as investigation into the offences under this Act is completed , the Abkari Officer shall forward to a Magistrate, empowered to take cognizance of the offence on a police report, a report in accordance with sub-section (2) of section 173 of the Code of Criminal Procedure, 1973 (Central Act of 2 1974).

50A. Procedure to be adopted on receipt of report.-Upon receipt of a final report from the Abkari Officer, the Magistrate shall inquire into such offence and commit to Court of Session if the offence is exclusively triable by Court of Session or try the person accused thereof in like manner as if a case is instituted upon a police report as provided in the code of Criminal Procedure 1973 (Central Act 2

of 1974).".

#### **14. Amendment Of Section 55 :-**

In section 55 of the principal Act,--

- (a) the words, "or of any licence or permit obtained under this Act" shall be omitted;
- (b) for the words "shall on conviction before a Magistrate to be punished" the words "shall be punishable" shall be substituted;
- (c) in clause (1) for the words "two years and with fine which shall not be less than twenty-five thousand rupees; and" the words "ten years and with fine which shall not be less than rupees one lakh, and" shall be substituted.

#### **15. Omission Of Section 55A :-**

Section 55A of the principal Act shall be omitted.

#### **16. Amendment Of Section 55B :-**

In section 55B of the principal Act, for the words "on conviction before a Magistrate, be liable to imprisonment for a term which may extend to six months or with fine which may extend to three thousand rupees", the words "on conviction before a competent court be liable to imprisonment for a term which may extend to five years and with fine which shall not be less than twenty-five thousand rupees" shall be substituted.

#### **17. Amendment Of Section 56 :-**

In section 56 of the principal Act, clause (c) shall be omitted.

#### **18. Amendment Of Section 56A :-**

In section 56A of the principal Act,-

- (a) in sub-section (1), in clause (b), for the words "on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months or with fine which may extend to three thousand rupees or with both, the words "on conviction before a competent court, be punished with imprisonment for a term which may extend to five years and with fine which shall not be less than fifty thousand rupees" shall be substituted;
- (b) in sub-section (2), for the words "five hundred rupees", words "five thousand rupees" shall be substituted.

### **19. Amendment Of Section 57 :-**

In section 57 of the principal Act, for the words "on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees or with both", the words "on conviction before a competent court, be punished for each such offence with imprisonment for a term which may extend to five years or with fine which may extend to fifty thousand rupees or with both" shall be substituted.

### **20. Amendment Of Section 58 :-**

In section 58 of the principal Act, for the words "shall on conviction before a Magistrate be punished with fine which shall not be less than rupees fifteen thousand and with imprisonment for a term which may extend to one year", the words "shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees on lakh" shall be substituted.

### **21. Amendment Of Section 58A :-**

In section 58A of the principal Act, for the words "on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months or with fine which may extend to three thousand rupees, or with both", the words "on conviction before a competent court be punished with imprisonment which may extend to five years or with a fine which may extend to fifty thousand rupees or with both" shall be substituted.

### **22. Amendment Of Section 58B :-**

In section 58B of the principal Act for the words "on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year or with fine which may extend to three thousand rupees or with both", the words "on conviction before a competent court, be punished with imprisonment for a term which may extend to three years and with fine which may extend to twenty-five thousand rupees" shall be substituted.

### **23. Amendment Of Section 59 :-**

In section 59 of the principal Act, for the words "on conviction

before a Magistrate, be punished for each such offence with fine which may extend to five hundred rupees or with imprisonment for a term which may extend to six months or with both", the words "on conviction before a competent court be punished for each such offence with imprisonment for a term which may extend to three years or with fine which may extend to twenty-five thousand rupees or with both" shall be substituted.

#### **24. Amendment Of Section 60 :-**

In section 60 of the principal Act for the words "on conviction before a Magistrate, be punished with fine which may extend to two hundred rupees", the words "on conviction before a competent court be punished with fine which may extend to ten thousand rupees or with imprisonment for a term which may extend to one year or with both" shall be substituted.

#### **25. Amendment Of Section 61 :-**

In section 61 of the principal Act for the words "on conviction before a Magistrate, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months or with both," the words "on conviction before a competent court, for every such offence, be punished with fine which may extend to twenty-five thousand rupees or with imprisonment for a term which may extend to three years or with both" shall be substituted.

#### **26. Amendment Of Section 63 :-**

In section 63 of the principal Act, for the words "which may extend to two thousand rupees", the words "which may extend to five thousand rupees or with imprisonment for a term which may extend to two years or with both" shall be substituted.

#### **27. Amendment Of Section 64 :-**

In section 64 of the principal Act,--

(a) for the words and figures "section 55", the words and figures, "section 55, section 55B, section 56A, section 57, section 58, section 58A and section 58B" and for the words and figures "section 55 or section 56 or section 57 or section 58", the words and figures "section 8 or section 55 or section 55B or section 56 or 56A or section 57 or section 58 or section 58A or section 58B" shall,



respectively, be substituted;  
(b) the proviso shall be omitted.

**28. Omission Of Section 67 :-**

Section 67 of the principal Act shall be omitted.

**29. Omission Of Section 67A :-**

Section 67A of the principal Act shall be omitted.

**30. Amendment Of Section 68 :-**

In section 68 of the principal Act, for the words and figures "Code of Criminal Procedure, 1898", the words, figures and brackets "Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall be substituted

**31. Repeal And Saving :-**

(1) The Abkari (Amendment) Ordinance, 1997 (13 of 1997), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been 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.