

Madras Prohibition (Amendment) Act, 1958

08 of 1958

[30 April 1958]

CONTENTS

1. Short title and commencement
2. Amendment of section 2, Madras Act X of 1937
3. Amendment of section 3, Madras Act X of 1937
4. Substitution of new section for section 4, Madras Act X of 1937
5. Amendment of section 5, Madras Act X of 1937
6. Amendment of section 6, Madras Act X of 1937
7. Insertion of new section 6-A in Madras Act X of 1937
8. Amendment of section 11, Madras Act X of 1937
9. Amendment of section 14, Madras Act X of 1937
10. Insertion of new sections 15-A, 15-B and 15-C in Madras Act X of 1937
11. Amendment of section 19, Madras Act X of 1937
12. Amendment of sections 21 and 22, Madras Act X of 1937
13. Amendment of section 23, Madras Act X of 1937
14. Substitution of new section for section 26, Madras Act X of 1937
15. Amendment of section 30, Madras Act X of 1937
16. Amendment of section 32, Madras, Act X of 1937
17. Insertion of new section 41-A in Madras Act X of 1937
18. Insertion of new sections 52-A, 52-B, 52-C and 52-D in Madras Act X of 1937
19. Amendment of section 53, Madras Act X of 1937
20. Amendment of section 54, Madras Act X of 1937
21. Addition of Schedule II in Madras Act X of 1937

Madras Prohibition (Amendment) Act, 1958

08 of 1958

[30 April 1958]

PREAMBLE

An Act further to amend the Madras Prohibition Act, 1937.

Whereas it is expedient further to amend the Madras Prohibition Act, 1937 (Madras Act X of 1937), for the purposes hereinafter appearing;

Be it enacted in the Ninth Year of the Republic of India as follows:--

1. For Statement of Objects and Reasons, see Fort St. George Gazette Extraordinary, dated the 13th February 1958, Part IV-A, page 33.

1. Short title and commencement :-

(1) This Act may be called the Madras Prohibition (Amendment) Act, 1958.

(2) It shall come into force in any local area in the State of Madras on such ¹date as the State Government may, by notification, appoint.

1. Came into force on the 4th day of June 1958 throughout the State.

2. Amendment of section 2, Madras Act X of 1937 :-

In section 2 of the Madras Prohibition Act, 1937 (Madras Act X of 1937) (hereinafter referred to as the principal Act), for the words " the Schedule " wherever they occur, the word and figure " Schedule I " shall be substituted.

3. Amendment of section 3, Madras Act X of 1937 :-

In section 3 of the principal Act--

(a) in clause (9)--

(i) after the word " toddy ", the word " arrack " shall be inserted;

(ii) for the words " methylated spirits ", the words " denatured spirits " shall be substituted;

(iii) the following Explanation shall be added at the end, namely:--

Explanation:-- Denatured means subjected to a process prescribed by the State Government by notification for the purpose of rendering unfit for human consumption.";

(b) after clause (11), the following clauses shall be inserted, namely:--

" (11-A) molasses means the heavy dark coloured residual syrup drained away in the final stage of the manufacture of gur or sugar containing, in solution or suspension sugars which can be fermented and includes any product formed by the addition to such syrup of any ingredient which does not substantially alter the character of such syrup; but does not include any article which the State Government may, by notification, declare not to be molasses, for the purposes of this Act;

(11-B) neera or padani means juice drawn from a coconut,

palmyra, date or any other kind of palm tree into receptacles treated so as to prevent any fermentation and not fermented; " ;

(c) for clause (17), the following clause shall be substituted, namely:--

" (17) spirits means any alcohol and includes any liquor containing alcohol and obtained by distillation, whether such liquor is denatured or not;

Explanation:-- Denatured means subjected to a process prescribed by the State Government by notification for the purpose of rendering unfit for human consumption. " ;

(d) clause (18) shall be omitted.

4. Substitution of new section for section 4, Madras Act X of 1937 :-

For section 4 of the principal Act, the following section shall be substituted, namely:--

" 4. Prohibition of the manufacture of, traffic in, and consumption of, liquor and intoxicating drugs.--

(1) Whoever--

(a) imports, exports, transports or possesses liquor or any intoxicating drug; or

(b) manufactures liquor or any intoxicating drug; or

(c) except in accordance with the rules made by the State Government in that behalf, cultivates the hemp plant (*Cannabis sativa*); or collects any portion of such plant from which an intoxicating drug can be manufactured; or

(d) taps any toddy-producing tree or permits or suffers to be tapped any toddy-producing tree belonging to him or in his possession; or

(e) draws toddy from any tree or permits or suffers toddy to be drawn from any tree belonging to him or in his possession; or

(f) constructs or works any distillery or brewery; or

(g) uses, keeps or has 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 keeps or has in his possession any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured; or

(h) bottles any liquor for purposes of sale; or

(i) sells liquor or any intoxicating drug; or

(j) consumes or buys liquor or any intoxicating drug; or

(k) allows any of the acts aforesaid upon premises in his immediate possession,

shall be punished--

(i) in the case of an offence falling under clause (b), clause (f), clause (g), clause (k) or clause (i), or an offence falling under clause (k) in so far as it relates to an act specified in any of the clauses aforesaid, with imprisonment for a term which may extend to two years and with fine which may extend to five thousand rupees, but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees, in the case of an offence falling under clause (b), clause (f), clause (h) or clause (i) or an offence falling under clause (k) in so far as it relates to an act specified in any of the clauses aforesaid;

(ii) in any other case with imprisonment for a term which may extend to one year and with fine which may extend to two thousand rupees, but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and such fine shall not be less than five hundred rupees, in the case of the offence of import, export or transport of liquor or any intoxicating drug falling under clause (a):

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 their 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 sub-section (1) 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 or any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured, for the possession of which he is unable to account satisfactorily, and

(b) that a person accused of any offence under clause (k) of sub-section (1) 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 or any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured."

5. Amendment of section 5, Madras Act X of 1937 :-

In section 5 of the principal Act, for the words " with imprisonment which may extend to two years or with fine which may extend to five thousand rupees or with both ", the following shall be substituted, namely:--

" with imprisonment for a term which may extend to two years and with fine which may extend to five thousand rupees, 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 seven hundred and fifty rupees for a first offence;

(ii) such imprisonment shall not be less than nine months and such fine shall not be less than one thousand rupees for a second offence; and

(iii) such imprisonment shall not be less than one year and such fine shall not be less than one thousand five hundred rupees for a third and subsequent offences."

6. Amendment of section 6, Madras Act X of 1937 :-

In section 6 of the principal Act--

(a) the word " commending " shall be omitted; and

(b) for the words " with fine which may extend to one thousand rupees ", the following shall be substituted, namely:--

" with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both ".

7. Insertion of new section 6-A in Madras Act X of 1937 :-

After section 6 of the principal Act, the following section shall be inserted, namely:--

" 6-A. Control and regulation of molasses--

(1) Except as otherwise provided in sub-sections (2) and (3) no person shall import, export, transport, sell or have in his possession any quantity of molasses.

(2) The State Government may, by general or special order, authorise any officer to grant licences for the import, export, sale or possession of molasses.

(3) The State Government may also authorise any officer to grant permits for the transport of molasses."

8. Amendment of section 11, Madras Act X of 1937 :-

In section 11 of the principal Act, for the words " with fine which may extend to two hundred rupees ", the following shall be substituted, namely:--

" with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both ".

9. Amendment of section 14, Madras Act X of 1937 :-

In section 14 of the principal Act, sub-section (2) shall be renumbered as sub-section (3) and the following shall be inserted as sub-section (2), namely:--

" (2) Where during the trial of a case for an offence against this Act, the Court decides that anything is liable to confiscation under sub-section (1), the Court may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order the confiscation:

Provided that no animal, vessel, cart or other vehicle shall be confiscated, if the owner thereof satisfies the Court that he had exercised due care in preventing the commission of the offence."

10. Insertion of new sections 15-A, 15-B and 15-C in Madras Act X of 1937 :-

After section 15 of the principal Act, the following sections shall be inserted in Chapter II, namely:--

" 15-A. Summary trial of certain offences.--

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Central Act V of 1898), the State Government may confer on--

(i) any Magistrate of the first class, or
(ii) any Magistrate of the second class who has exercised the powers of such Magistrate for not less than one year, or
(iii) any Special Magistrate appointed under section 14 of the said Code, upon whom the powers conferred by section 32 of the said Code on a Magistrate of the first class have been conferred, or
(iv) any Special Magistrate appointed under section 14 of the said Code upon whom the powers conferred by section 32 of the said Code on a Magistrate of the second class have been conferred and who has exercised those powers for not less than one year, power to try summarily in accordance with the provisions contained in sections 262 to 265 of the said Code, all or any of the offences which are punishable under this Act with imprisonment for a period not exceeding six months, or with fine, or with both, but as a result of such trial no sentence except a sentence of fine shall be imposed.

15-B. Enhanced jurisdiction of Magistrates and Special Magistrates.

--

Not with standing anything contained in section 32 of the Code of Criminal Procedure, 1898 (Central Act V of 1898), it shall be lawful for the Magistrates specified in column (1) of the Table below to exorcise the powers specified in the corresponding entry in column (2) thereof, in respect of offences punishable under this Act.

Table.

(1)	(2)
Magistrates of the first class or Special Magistrates appointed under section 14 of the Code of Criminal Procedure. 1898 (Central Act V of 1898), upon whom the powers conferred by section 32 of the said Code on a Magistrate of the first class have been conferred.	Fine exceeding two thousand rupees but not exceeding five thousand rupees.
Magistrates of the second class or Special Magistrates appointed under section 14 of the Code of Criminal Procedure, 1898 (Central Act V of 1898), upon whom the powers conferred by section 32 of the said Code on a Magistrate of the second class have been conferred.	Imprisonment for a term not exceeding one year. Fine not exceeding one thousand rupees.

15-C. Certain offences to be non-bailable.--

The offences specified in sub-section (2) shall be non-bailable and the provisions of the Code of Criminal procedure, 1898 (Central Act V of 1898), with respectto non-bailable offences shall apply to those offences.

(2) The offences referred to in sub-section (1) are--

(a) offences of import, export or transport of liquor or any intoxicating drug under clause (a) of section 4 (1) and offences under clauses (b), (f), (h) and (i) of section 4 (1) and under clause (k) of that section in so far as it relates to an Act specified in any of those clauses; and

(b) offences under section 5.

(3) Nothing contained in sections 27, 28, 29, 32, 38 and 39 shall be construed as enabling a person to be admitted to bail if the offence alleged to have been committed by such person is one referred to in sub-section (2).".

11. Amendment of section 19, Madras Act X of 1937 :-

In section 19 of the principal Act--

(i) in clause (a), for the words " sweet toddy ", the words " neera or padani " shall be substituted; and

(ii) in clause (b), for the word " toddy ", the words "neera or padani " shall be substituted.

12. Amendment of sections 21 and 22, Madras Act X of 1937 :-

In sections 21 and 22 of the principal Act, for the word and figures " section 18 ", the word, figures and letter " section 6-A, 18 " shall be substituted.

13. Amendment of section 23, Madras Act X of 1937 :-

In section 23 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:--

" (2) The State Government may cancel or suspend any such licence or permit for any of the aforesaid reasons.

(3) Before any licence or permit is cancelled or suspended under sub-section (1) or sub-section (2) the holder of the licence or permit shall be given an opportunity to state his objections within a reasonable time, not ordinarily exceeding fourteen days, and any representation made by him in this behalf shall be duly taken into consideration before final orders are passed.".

14. Substitution of new section for section 26, Madras Act X of 1937 :-

For section 26 of the principal Act, the following section shall be substituted, namely:--

" 26. Prohibition Committees.--

(1) The State Government may, for the whole of the State of Madras and the Collector of a district may, for such area in the

district as the State Government may, by general or special order, determine in this behalf, constitute prohibition committees to assist them or him in carrying out the objects of this Act.

(2) Every member of a prohibition committee shall observe the working of this Act and report thereon and on every matter connected therewith at the prescribed intervals and at any other time he thinks fit, to the State Government in case he is a member of the prohibition committee constituted by the State Government, and to the Collector in case he is a member of the prohibition committee constituted by the Collector.

(3) Every member of a prohibition committee shall be entitled to give information at any police station regarding the commission or suspected commission of any offence against this Act in the area of the committee concerned, and the officer in charge of such station shall take action on such information and investigate the case in the manner laid down in the Code of Criminal Procedure, 1898 (Central Act V of 1898).".

15. Amendment of section 30, Madras Act X of 1937 :-

In section 30, clause (c), of the principal Act, the words, figure and letter " section 4-A or " shall be omitted.

16. Amendment of section 32, Madras, Act X of 1937 :-

In section 32, of the principal Act--

(i) in clause (a), the word, figure and letter " section 4-A " shall be omitted;

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

" Provided further that where any toddy or wash or any sonti soru is seized under this section by any officer or person, such officer or parson may destroy or cause to be destroyed on the spot, the toddy, wash or sonti soru and send the pots or other receptacles in which the toddy, wash or sonti soru was kept to the Police or Prohibition Officer or Magistrate having jurisdiction to inquire into the case, with a report attested by two or more witnesses specifying the quantity of toddy, wash or sonti soru seized and destroyed and the number of the pots and other receptacles sent.

Explanation.--For the purposes of this section,--

sonti soru means a liquid prepared from rice or starch which is in the process of vinous or alcoholic fermentation or in which such fermentation has ceased; and

" wash " means a mixture of water and saccharine materials which

is in the process of vinous or alcoholic fermentation or in which such fermentation has ceased ".

17. Insertion of new section 41-A in Madras Act X of 1937

:-

After section 41 of the principal Act, the following section shall be inserted, namely:--

41-A. 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 section 4 (1) (j) 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 State Government and request the medical officer to furnish a certificate on his finding whether such person has consumed any liquor or intoxicating drug or is, in a state of intoxication or not.

(2) Any 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 State 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 him-self 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 XLV 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 section 4 (1) (j) 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 State 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 XLV 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."

18. Insertion of new sections 52-A, 52-B, 52-C and 52-D in Madras Act X of 1937 :-

After section 52 of the principal Act, the following sections shall be inserted, namely:--

" 52-A. Security for abstaining from commission of certain offences.--

(1) Whenever any person is convicted of an offence punishable under clause (b) or clause (d) or clause (e) or clause (i) of section 4 (1) and the court convicting him is of opinion that such person habitually commits or attempts to commit, or abets the commission of any such offence and that it is necessary to require such person to execute a bond for abstaining from the commission of any such offence, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offence during such period, not exceeding three years, as it thinks fit to fix.

(2) The bond shall be in the form contained in Schedule II, and the provisions of the Code of Criminal Procedure, 1898 (Central Act V of 1898), shall in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

52-B. Power to release certain offenders on probation of good conduct.--

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Central Act V of 1898), or the Madras Probation of Offenders Act, 1936 (Madras Act III of 1937), when any person is found guilty of--

(a) any offence punishable under section 4-A, 6, 11 or 24, or
(b) the commission, attempt to commit, or abetment of the commission of, any of the acts making up any such offence as is referred to in clause (a), when such commission attempt or abetment is punishable under section 12, or
(c) any breach of any of the conditions subject to which the exemption under section 16 or 17-A is notified and no previous conviction for any offence under this Act is proved against him, the Court by which he is found guilty may, instead of sentencing him at once to any punishment release him on his entering into a bond, with at least one surety to appear and receive sentence when called upon at any time during such period not exceeding five years as the Court may direct and in the meantime to abstain from committing any offence under this Act:

Provided that the Court shall not direct the release of an offender under this section, unless it is satisfied that the offender or his surety or one of his sureties has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Where the offender referred to in sub-section (1) is under twenty-four years of age, the Court may make a supervision order directing that such offender shall be under the supervision of such probation officer appointed under the Madras Probation of Offenders Act, 1936 (Madras Act III of 1937), as may be named in the order during the period specified there in and imposing such other conditions for securing such supervision as may be specified in the order:

Provided that the period so specified shall not extend beyond the date on which, in the opinion of the Court, the offender will attain the age of twenty-five years.

(3) A Court making a supervision order under sub-section (2) shall require the offender, before he is released to enter into a bond, with at least one surety, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants and any other matters as the Court may, having regard to the particular circumstances of the case, consider fit to impose for preventing a commission of any offence under this Act by the offender.

(4) A Court making a supervision order shall furnish to the offender and the surety or sureties a notice in writing stating in simple terms the conditions of the bond.

(5) An order under this section may be made by any Appellate Court or by the High Court when exercising its powers of revision.

52-C. (1) Procedure in case of offender failing to observe conditions of bond--

(1) If the Court before which the offender is bound by his bond under section 52-B to appear for sentence when called upon, or any Court which could have dealt with the offender in respect of his original offence, has reason to believe that the offender has failed to observe any of the conditions of the bond executed by him, it may issue a warrant for his apprehension, or may, if it thinks fit, issue a summons to the offender and his surety or sureties requiring him or them to attend before it at such time as may be specified in the summons.

(2) The Court before which the offender is so brought or appears may either remand him to custody until the case is concluded, or admit him to bail with at least one surety, to appear on the date of hearing.

(3) If the Court after hearing the case is satisfied that the offender has failed to observe any of the conditions of the bond executed by him, it may forthwith sentence him for the original offence.

(4) An order under this section may be made by any Appellate Court or by the High Court when exercising its powers of revision.

52-D. Provision as to bonds.--

The provisions of sections 122, 126, 126-A, 406-A (b) and (c), 514, 514-A, 514-B and 515 of the Code of Criminal Procedure, 1898 (Central Act V of 1898), shall, so far as may be, apply in the case of sureties given under this Act."

19. Amendment of section 53, Madras Act X of 1937 :-

In section 53 of the principal Act, for the words " Nothing contained in this Act , the words " Save as expressly provided in this Act, nothing contained therein " shall be substituted.

20. Amendment of section 54, Madras Act X of 1937 :-

In section 54 of the principal Act--

(a) in sub-section (2)--

(i) in clause (k), the word " and " at the end shall be omitted; and

(ii) after clause (1), the following clauses shall be added, namely:--

" (m) for the prevention of the use of medicinal or toilet preparations for any purpose other than medicinal or toilet purposes and for the regulation of the use of any liquor or drug

exempted from all or any of the provisions of this Act;
 (n) for the proper collection of duty on all kinds of liquor or drugs;
 (o) for all matters expressly required or allowed by this Act to be proscribed." ;
 (b) after sub-section (2), the following sub-section shall be added, namely:--
 (3) All rules made under this Act shall, as soon as possible after they are made, be placed on the table of both the Houses of the Legislature and shall be subject to such modifications by way of amendments or repeal as the Legislative Assembly may make within fourteen days on which the House actually sits either in the same session or in more than one session..

21. Addition of Schedule II in Madras Act X of 1937 :-

The Schedule to the principal Act shall be numbered as Schedule I and after the Schedule as so numbered, the following Schedule shall be added, namely:--

**" SCHEDULE II.
 BOND TO ABSTAIN FROM THE COMMISSION OF OFFENCES
 UNDER THE MADRAS PROHIBITION Act, 1937.
 (See section 52-A.)**

Whereas I, (name), inhabitant of (place), have been called upon to enter into a bond to abstain from the commission of any offence under sections 4 (1) (b), 4 (1) (d), 4 (1) (e) and 4 (1) (i) of the Madras Prohibition Act, 1937, for the term of, I hereby bind myself not to commit any such offence during the said term and, in case of my making default therein, I hereby bind myself to forfeit to the State of Madras, the sum of rupees Dated this	day of	19
		(Signature)
Where a bond with sureties is to be executed, add-- We do hereby declare ourselves sureties for the above-named that he will abstain from the commission of any offence under sections 4 (1) (b), 4 (1) (d), 4 (1) (e), 4 (1) (i) of the Madras Prohibition Act, 1937, during the said term, and in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to the State of Madras, the sum of rupees Dated this	day of	19.
		(Signature)

