

Bill No. 266 of 2015

THE INDUSTRIES (DEVELOPMENT AND REGULATION)
AMENDMENT BILL, 2015

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further to amend the Industries (Development and Regulation) Act, 1951.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Industries (Development and Regulation) Amendment Act, 2015. Short title.

65 of 1951.

2. In the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as the principal Act), after section 29D, the following section shall be inserted, namely:— Insertion of new section 29E.

“29E. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any power exercised, or action taken or done or purported to have been taken or done, by the Central Government or, as the case may be, the State Government, shall be deemed to be, and shall always deemed to have Validation.

been, for all purposes, as validly taken or done or omitted to be done, as if the amendment made to the First Schedule by the Industries (Development and Regulation) Amendment Act, 2015 had been in force at all material times and no suit or claim or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority as such.”.

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Amendment of First Schedule. **3.** On and from the date of commencement of the principal Act, in the First Schedule, for the heading “26. FERMENTATION INDUSTRIES:”, the heading “26. FERMENTATION INDUSTRIES (OTHER THAN POTABLE ALCOHOL):” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Industries (Development and Regulation) Act, 1951 was enacted to provide for the development and regulation of certain industries. Section 2 of the said Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule to the Act. Any industry engaged in the manufacture or production of any of the articles mentioned under each heading or sub-headings of the First Schedule to the Act would thus be under the control of the Union. The heading 26 of the First Schedule to the Act provides for Fermentation Industries which includes Alcohol and other products of fermentation industries.

2. According to the distribution of legislative powers contained in the Seventh Schedule to the constitution, entry 8 of List II—State List enumerates the subject matter “Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors” and entry 24 thereof, enumerates the subject matter “Industries subject to the provisions of entries 7 and 52 of List I”. While entry 7 of List I—Union List provides for the subject matter “Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war”, entry 52 thereof, provides for “Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest”. Thus, the authority to regulate the subject matter “intoxicating liquors” appears to vest both with the Union and the States. This has resulted in prolonged litigation.

3. The Supreme Court of India, in the case of Bihar Distillery and another versus Union of India and others (AIR 1997 SC 1208), has held that in the interest of proper delineation of the spheres of the Union and the States, the line of demarcation should be drawn at the stage of clearance or removal of the rectified spirit. Where the removal or clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be with the Union and where the removal or clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be with the States.

4. In the backdrop of the above judgment of the Supreme Court, the Law Commission of India had recommended in its 158th Report that the heading 26 of the First Schedule to the Act be substituted as “Fermentation Industries but not including Alcohol”.

5. The recommendation of the Law Commission of India was examined in depth by the Government. If the subject “Alcohol” is taken out of the First Schedule to the Act, both industrial alcohol and potable alcohol would come under the purview of the State Government which is not in consonance with the judgment of the Supreme Court. Moreover, the effect of implementation of the recommendation of the Law Commission would be that the subject “Alcohol” which covers both industrial alcohol and potable alcohol would no longer be a Central subject.

6. Therefore, it is proposed to amend the First Schedule to the Industries (Development and Regulation) Act, 1951 by substituting the heading 26 thereof, as “26 Fermentation Industries (other than Potable Alcohol)”, so that it would be in conformity with the judgment of the Supreme Court and also ensure that the industries engaged in the manufacture of alcohol meant for potable purposes shall be under the total and exclusive control of States in all respects. The Central Government would continue to be responsible for formulating policy and regulating foreign collaboration (foreign direct investment and foreign technology collaboration agreements) for all products of fermentation industries, including industrial alcohol and potable alcohol.

7. The Bill seeks to achieve the above objectives.

ANNEXURE

EXTRACT FROM THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

(65 OF 1951)

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THE FIRST SCHEDULE

[See sections 2 and 3 (i)]

Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following heading or sub-headings, namely:—

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26. FERMENTATION INDUSTRIES :

(1) Alcohol.

(2) Other products of fermentation industries.

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further to amend the Industries(Development and Regulation) Act, 1951.

(Smt. Nirmala Sitharaman, Minister of State for Commerce and Industry)