

# **Formalin Control Act, 2015**

(Act No. V of 2015)

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# Formalin Control Act, 2015

(Act No. V of 2015)

[February 18, 2015]

## **An Act to provide for the controlling the import, production, transportation, storage, sale and utilization of formalin and preventing its illegal use as harmful chemical substance**

Whereas, formalin is a harmful chemical substance to public health; and

Whereas, unauthorized, excessive and unnecessary use of formalin to preserve foods, conserve it or for any other purpose is causing incurable diseases; and

Whereas, overall public health is in danger because of such misuse of formalin; and

Whereas, such misuse of formalin needs to be stopped; and

Whereas, for the protecting public health, it is expedient and necessary to enact provisions to control the import, production, transportation, storage, sale and use of formalin and prohibiting its illegal use as harmful chemical substance;

It is hereby enacted as follows:-

### **Chapter One**

#### **Preamble**

**1. Short title and commencement.-** (1) This Act may be called the Formalin Control Act, 2015.

(2) The Act shall come into force from the date fixed by the Government through notification in the official Gazette,

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

- (1) “offence” means an offence punishable under this Act;
- (2) “formalin” means formalin, formaldehyde, paraformaldehyde or any level of its solution, and any other substance specified by the Government which is used to make formalin;
- (3) “rules” means rules made under this Act;
- (4) “person” includes any person, company, association, partnership business, statutory body or representatives thereof;
- (5) “licence” means licence issued under section 5;
- (6) “licensing authority” means the authority stated in section 5 (1);
- (7) “place” includes any house, establishment, vehicle, whether standing or moving, business institution, industry, airport, seaport, land port, river port, post-office or immigration check post.

**3. Overriding effect of the Act.-** Notwithstanding anything contained contrary to any other law for the time being in force, the provisions of this Act shall have effect.

## **Chapter Two**

### **Licence, etc.**

**4. Requirement for licence in formalin import, production, etc.-** No person can import, produce, carry, storage, sell, use or possess formalin without licence.

**5. Licence, Licensing Authority, etc.-** (1) Licensing Authority shall be-

- (a) the Government, for controlling import and production of formalin;
- (b) the Deputy Commissioner for controlling transportation, storage, sale and use of formalin of concerned district.

(2) Subject to the provisions of this Act, all activities of licensing authority regarding licencing and supervising shall be regulated and conducted as per procedure determined by the Rules.

(3) Notwithstanding anything contained in any other provision of this Act, no person shall be entitled to get or renew licence under this Act if he violates any condition for licence or violates any other condition determined by the Rules and for such violation his licence gets cancelled.

(4) If any person violates any condition of the licence given to him, or gets penalized for any offence under this Act or any other Act, then the licensing authority may, after giving him an opportunity to show-cause, cancel his licence.

(5) Any person aggrieved by any order under sub-section (4) may, within 30 days of receiving such order, subject to the payment of fee prescribed by the Rules,-

- (a) appeal to the Government for reconsideration of such order if it was given by the Government;
- (b) appeal to the Government, if the order was given by Deputy Commissioner.

(6) The decision of the Government in cases mentioned under sub-section (5), shall be final and no question shall be raised in any court against such decision.

(7) If any licensee violates any condition of licence, the licensing authority, with a written order, can suspend his licence temporarily while taking other measures under this Act.

**6. Maintaining log-book, register, etc. and submitting monthly report.-** (1) Every licensee shall maintain record, as per procedure specified by the Rules, about import, production, transportation, storage, purchase, sale, use or possession of formalin and submit a report thereof to the licencing authority in every month.

(2) Every licensee is bound to show, immediately, the records maintained under sub-section (1) to the officers nominated by the licensing authority.

**7. Power to entry, etc.-** Subject to the provisions of this Act and the Rules, The licensing authority or any officer empowered by it with general or special power for this purpose,-

- (a) may enter or inspect any place at any time where formalin has been produced or stored or is being currently produced or stored;
- (b) may enter or inspect any shop dealing in purchase and sale of formalin at any time during its ordinary hours of opening; and
- (c) in places or shops mentioned in sub-section (a) and (b)-
  - (i) may examine the log-book, register and other files;
  - (ii) may examine, determine and measure weight of obtained formalin and equipment, instruments or elements of formalin like substance;
  - (iii) may confine those if the recorded log book, register and other files, used measuring instrument or examining instrument is found faulty after being examined, or obtained formalin and formalin like substance is found exceeding to amount fixed by the Rules.

**8. Power to stop formalin selling shops temporarily, etc.-** (1) If any officer empowered by the licensing authority is satisfied that any formalin selling shop, business establishment or formalin transporting vehicles are necessary to be stopped temporarily, then he may give an order to stop such shop, business and transporting vehicles for not exceeding 15 (fifteen) days.

(2) Order given under sub-section (1) shall be written, and shall mention specific reasons of giving such order.

### **Chapter Three**

#### **Formalin control committee, etc.**

**9. Formalin control committee, etc.-** (1) To fulfill the purposes of this Act, there shall be a formalin control committee in every district and upazila.

(2) The composition, duties and responsibilities, meeting and other ancillary matters of formalin control committee of every district and upazila shall be determined by the Rules.

### **Chapter Four**

#### **Investigation, search, arrest, confiscation, etc.**

**10. Power to investigate.-** (1) The Government may, through general or special order, empower the deputy commissioner, or any officer subordinate to him or any police officer to investigate any offence under this Act.

(2) Investigation officer empowered under sub-section (1) shall have the similar power as officer in charge of the police station.

**11. Power to issue warrant, etc.-** (1) If any officer empowered by the government under this Act, has reason to believe that—

- (a) any person has committed any offence under this Act, or
- (b) any substance related to the offence under this Act, or necessary deeds and documents to prove such offence, or any kind of things are preserved to a place or to any person,

then he may, stating the reasons of such belief, issue warrant to arrest such person or to search such place at any time.

(2) Officer in charge of a police station in which any warrant issued under sub-section (1) has been sent shall execute such warrant.

**12. Power to search without warrant, etc.-** (1) If any officer, empowered by the government through general or special order for this purpose, or police inspector or any superior officer have reason to such belief that, any offence under this Act has been committed or being committed or likely to be committed in any place, he may, stating the reasons of such belief, at any time-

- (a) enter and search such place and if obstructed at the entering, may take necessary measures including breakings the doors and windows to remove the obstruction;
- (b) seize used formalin or other substances relating to the commission of the offence, things confined or confiscated under this Act, and deeds-documents or things facilitating to prove the offence;
- (c) search the body of any person who are present in such place;
- (d) arrest any person whom he suspects as committed or may commit any offence under this Act.

(2) Notwithstanding anything contained in sub-section (1), if any officer empowered under section 10, has reason to believe that if search is not conducted in the place in between the time of sunset and sunrise, the things related to the offence may be spoiled or abolished or the offender may flee, then he may, stating the reasons of such belief, enter and search such place during such time.

**13. Informing senior officer about arrest, etc.-** If any person is arrested or anything is seized under this Act, the arresting or detaining officer, through written report shall immediately inform his senior officer about such arrest and a copy of such report shall be sent to the licensing authority of the concerned locality.

**14. Power to arrest and detain in open place or vehicles.-** If any officer, empowered under section 10, has reason to believe that in any open place or vehicle,-

- (a) formalin to be confiscated or any other substance or any deed-documents facilitating to prove the offence are preserve , then he, stating the reason of such belief, may seize, after searching, such formalin, related substance or deed-documents related thereof;

- (b) such offender who has committed or about to commit any offence is found under this Act, then he, stating the reason of such belief, search such person while detaining him, and may arrest him if formalin or any similar substance or deed-documents mentioned in sub-section (a), is found with him.

**15. Procedure of search, etc.-** Unless there is anything contrary to this Act, in cases of all warrant, search, arrest and detainment issued under this Act, the provisions of the Code of Criminal Procedure, 1898 (Act No. V of 1898) shall be applicable.

**16. Obligation for mutual cooperation.-** All officers mentioned in section 11 (1) shall be obliged to cooperate mutually upon request to execute any provision of this Act.

**17. Transferring investigation of the offence.-** During investigation of any offence under this Act, the investigating agency or, as the case may be, the investigating officer, with the permission of the District Commissioner, shall transfer the investigation to any officer specified by that District Commissioner and the officer to whom the investigation is being transferred, may, if necessary, conduct the investigation from the beginning or from the stage the investigation has been transferred and may undertake proper measures at the end of the investigation.

**18. Provision regarding arrested person and confiscated goods.-** (1) If any person is arrested or any goods is confiscated under this Act, such person or goods shall be sent to the officer in charge of the nearest police station without any delay.

(2) The officer, to whom such person and goods mentioned in the sub-section (1) is sent, shall, as soon as possible, take necessary legal action about such person and goods.

**19. Confiscation, etc.-** (1) If any offence is committed under this Act, the formalin, equipment, machinery, ingredients, storage, container, packet, vehicle or any other object used in or facilitated to commit such offence, shall be subjected to confiscation.

(2) If any formalin, equipment, machinery, ingredients, storage, container, packet, vehicles or any other object to be confiscated mentioned in the sub-section (1) is confiscated, and if-

- (a) no person is found attributed to such objects, then District Magistrate or, as the case may be, the Upazila Nirbahi Officer shall have the capacity to confiscate those with a written order, and
- (b) any offender is found attributed to such objects, then District Magistrate or, as the case may be, the Upazila Nirbahi Officer before confiscating such objects through written order, shall issue a notice as per procedure specified by rules, in order to give a chance to raise any objection and the objection shall be given reasonable opportunity of being heard.

(3) if any person aggrieved by any order given under sub-section (2) may, within 30 (thirty) days of receiving such order-

- (a) if the order is given by the Upazila Nirbahi Officer to the District Magistrate; and
- (b) if the order is given by the District Magistrate or any officer nominated by him prefer an appeal to the Divisional Commissioner.

(4) The decision of the appeal authority mentioned in sub-section (3) shall be final.

(5) Immediately after the confiscation order given on confiscable object under this Act, the object shall be transferred to the officer nominated by the Government and he, as per procedure specified by the rules, shall take measures for the disposal of such things.

## Chapter Five

### Offence and Punishment

#### **20. Punishment for importing, producing and storage of formalin without licence.-**

If any person imports, produces or stores formalin without licence, then such activity of such person shall constitute an offence, and he shall be punished with imprisonment not exceeding imprisonment for life, and in addition, with fine not exceeding Taka 20 (twenty) lac but not less than Taka 5 (five) lac.

**21. Punishment for violating any condition of licence.-** If any person violates any condition of the licence given under this Act, then such activity of such person shall constitute an offence, and he shall be punished with imprisonment not exceeding 7 (seven) years but not less than 3 (three) years, or with fine not exceeding Taka 5 (five) lac but not less than Taka 2 (two) lac, or with both.

**22. Punishment for selling or using formalin without licence.-** If any person sells or uses formalin without licence, then such activity of such person shall constitute an offence, and he shall be punished with imprisonment not exceeding 2 (two ) years but not less than 6 (six ) months, or with fine not exceeding Taka 4 (four) lac but not less than Taka 1 (one) lac, or with both.

**23. Punishment for transporting or possessing formalin without licence.-** If any person transports or possesses formalin without licence, then such activity of such person shall constitute an offence, and he shall be punished with imprisonment not exceeding 2 (two) years but not less than 6 (six ) months, or with fine not exceeding Taka 3 (three) lac but not less than Taka 1 (one) lac, or with both.

**24. Punishment for possessing machinery etc. used to produce formalin.-** If any machinery, equipment or ingredient is found with a person, or to his possession, or from a possessed place of him without licence, then such activity of such person shall constitute an offence, and he shall be punished with imprisonment not exceeding 2 (two) years but not less than 6 (six) months, or with fine not exceeding Taka 2 (two) lac but not less than Taka 50 (fifty) thousand, or with both.

**25. Punishment for allowing to use house or vehicle etc. to commit offence.-** If any person knowingly allows to use his owned or possessed house, land space, vehicle, machinery or equipment to commit an offence under this Act, then such activity of such person shall constitute an offence, and he shall be punished with imprisonment not exceeding 2 (two ) years but not less than 6 (six ) months, or with fine not exceeding Taka 2 (two) lac but not less than Taka 50 (fifty) thousand, or with both.

**26. Punishment for filing false or vexatious cases.-** If any person files any case against another person about an offence under this Act and if having investigation and taking evidence, it is proved that such accusation was false or vexatious, then such activity of such person shall constitute an offence, and he shall be punished with imprisonment not exceeding

1 (one) year but not less than 3 (three ) months, or with fine not exceeding Taka 2 (two) lac but not less than Taka 50 (fifty) thousand, or with both.

**27. Punishment for abetment.-** If any person abets to commit any offence under this Act, then such activity of such person shall constitute an offence, and he shall be punished with the punishment with same penalty for committing the offence.

**28. Punishment for recurring offence.-** If any person repeats any offence after serving the penalty being punished for committing any offence under this Act, then he shall be punished for twice the penalty corresponding to highest punishment of other offences except for offences under section 20.

**29. Realization of fine, etc.-** The money imposed on account of fine under this Act shall be realized as per the existing laws from the person convicted, or from his existing assets, or in case of his death, from the property he left.

**30. Offence committed by companies.-** (1) If any company violates any provision of this Act then it is considered that the proprietor, partner, director, manager, secretary or any other officer or agent of that company has violated the provision, unless he proves that the violation was beyond his knowledge or that he exercised due diligence to prevent such violation.

(2) If the company mentioned in the sub-section (1) is a body corporate, then along with the said person mentioned in the sub-section, such concerned company can also be charged and convicted under the same provision, however, in a criminal case only monetary penalty can be imposed against upon it as per relevant provisions.

**Explanation.-** In this section-

- (a) “company” means public limited company, private limited company, partnership business, statutory government authority, commercial institution and association or organization formed according to the Companies Act 1994, and it also includes shops;
- (b) “director” in cases of commercial institution, means any of its partner and member of the Board of Directors.

**31. Presumption of offence.-** If any equipment or machinery useable to produce formalin without licence, or ingredients or substance necessary for the production of formalin is found with a person or at a place under his control, the court may presume that he has committed an offence under this Act, and the burden of proof claiming his innocence will lay upon him.

**32. Establishing chemical examination lab, appointing examiner and of report.-** (1) to fulfill the purposes of this Act, the Government may establish chemical examination lab to test the types, amount, degree of formalin or any similar element and appoint chemical examiners for such lab.

(2) If it becomes necessary to conduct chemical test of any substance at any stage of proceedings administered under this Act, such substance shall be sent to the chemical examination lab established under sub-section (1).

(3) Any chemical test report signed by the chemical examiner may be used as evidence in the investigation, trial or in any proceeding under this Act.

(4) Until the chemical examination lab is established under this section, the chemical test under this section may be conducted to any examination lab specified by the Government for this purpose.

**33. Inadmissible Claim for compensation, etc.-** Notwithstanding anything contained in any law, if any licensee suffers any loss due to any order given by the licensing authority or any officer empowered, then he cannot claim any compensation or cannot return back any fees paid by him.

**34. Trial of offence.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No. V of 1898),-

- (a) offences under sections 20 and 21 by the Special Tribunal formed under the Special Powers Act, 1974 (Act XIV of 1974); and
- (b) other offences shall be adjudicated by First Class Magistrate or, as the case may be, Metropolitan Magistrate in Metropolitan areas.

**35. Jurisdiction of Mobile Court.-** Notwithstanding anything contrary contained in this Act, all offences under this Act except offences under sections 20 and 21 may be adjudicated being included in the Schedule of the Mobile Court Act, 2009 (Act No. LIX of 2009).

## Chapter Six

### Miscellaneous

**36. Power to make rules.-**(1) To fulfill the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

(2) Without hindering the totality of power under sub-section (1), the Government may make rules regarding any of following subjects, namely:-

- (a) procedure of import, production, transportation, storage, purchase, sale, use and possession of formalin;
- (b) application for licence, giving licence, renewal of licence, prescribing fees for importing, producing, transporting, storage, selling, purchasing, and possessing formalin, etc.;
- (c) procedure of keeping records of import, production, transportation, storage, purchase, sale and possession of formalin;
- (d) procedure of labelling the preserved container and packaging for importing, producing, transporting, storage, selling, purchasing, and possessing formalin;
- (e) procedure of investigation, search, arrest, confiscation and inspection;
- (f) procedure of keeping the accounts and audit of funds;
- (g) determining the acceptable degree of using formalin.

**37. Exemption, etc.-** The Government may, by notification in the official Gazette, exempt any Department, agency or institution from the application of any provision of this Act on conditions mentioned in the Gazette.

**38. Amendment to the Schedule of the Act No. XIV of 1974.-** Following paragraph 5A shall be inserted, after the repealed paragraph 5 of the Schedule of the Special Powers Act, 1974 (Act No. XIV of 1974), namely:-

“5A. Offence punishable under the Formalin Control Act, 2015”.

**39. Publication of authentic English text.-** (1) the Government shall, after the commencement of this Act, by notification in the official Gazette, publish an authentic English text of this Act.

(2) In the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

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