

KARNATAKA EXCISE ACT, 1965

21 of 1966

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STATEMENT OF OBJECTS AND REASONS [KARNATAKA ACT No. 21 OF 1966] Karnataka Gazette, dated 21-6-1962 After reorganisation of the States on 1st November, 1956, there are different Acts in force in the New Mysore State viz., in Old Mysore Area and Hyderabad Karnataka area and Madras Karnataka Area respectively as noted below. 1. The Mysore Excise Act, 1901 (Act No. V of 1901). 2. The Hyderabad Abkari Act, 1316 (No. 1 of 1316 F). 3. The Madras Abkari Act, 1886 (Madras Act I of 1886). The existence of different sets of laws in different areas causes considerable administrative and procedural difficulties and also in convenience in the proper implementation of Excise Acts on a uniform basis throughout the State. Therefore, with a view to having a uniform law for the entire New Mysore State, a uniform Excise Bill has been prepared and it replaces the Acts referred to above. [KARNATAKA ACT No. 1 OF 1970] Karnataka Gazette, Extraordinary, dated 10-1-1970 The Karnataka Excise Act, 1965 (Karnataka Act 21 of 1966) does not empower the State Government to delegate its powers under the Act to the Excise Commissioner or to any other officer. It was considered necessary for the effective implementation of the Act to have power enabling the Government to delegate its powers under the Act to the Excise Commissioner or to any other officer. In order to effectively prevent commission of certain offences, it was considered necessary to provide the minimum punishment for such offences. It was also considered necessary to prohibit the sale or supply of consumption of any intoxicant in a hotel, boarding house or refreshment room not licensed under the Act except in a place used for lodging of persons in such hotel or boarding house or refreshment room. In the light of the experience gained in the working of the Act, it was also considered necessary to make certain other amendments. For this purpose, the Karnataka Excise (Amendment) Ordinance, 1969, was promulgated. The Bill seeks to replace the Ordinance. [KARNATAKA ACT No. 1 OF 1971] Karnataka Gazette, Extraordinary, dated 11-9-1970 A large number of licensees dealing in Indian made Foreign Liquor have challenged the validity of levy and collection of litre fee on Indian made Liquors, on the ground that the Karnataka Excise Act, 1965 does

not specifically empower the Government to levy litre fees. It was considered necessary to make specific provision to levy excise duty in the form of litre fees with retrospective effect. At present there is an Enforcement Branch in the Excise Department, with a Deputy Commissioner and a number of Excise Officers. They have been detecting cases of illicit manufacture, sale, transport, possession, import and export of liquors. It was considered necessary to give statutory status to the Intelligence Bureau so that the work of the Officers could be carried on in a more effective manner under the authority of law. In order to ensure expeditious disposal of the trial of offences under the Act, it was considered necessary to provide that offences under the Act should be tried summarily. As the Houses of Legislature were not in Session and the matter was urgent, the Karnataka Excise (Second Amendment) Ordinance, 1970 was promulgated on the 7th August, 1970, for the purposes indicated above and for making some other provisions found necessary for carrying on the administration of the Excise Department effectively. This Bill is intended to replace the ordinance. [KARNATAKA ACT No. 61 OF 1976] Karnataka Gazette, Extraordinary, dated 8-11-1976 Under Section 67 of the Karnataka Excise Act, 1965, the State Government may exempt or reduce the excise duty leviable under Section 22 of the said Act on any liquor sold for use or consumption by the members of the Armed Forces of the Union. In exercise of these powers, Government has reduced the excise duty leviable on RUM manufactured in the State and sold for use or consumption by the Armed Forces of the Union and exported outside the State to twenty-five paise per proof litre. Representations have been made to Government from certain para-military Units for granting them concessional rate of export duty on supplies of RUM. Some of these para-military Units are subject to Army Act and are being deployed in the Border areas in high altitudes and in times of operation, they are also engaged in operational duty along with the Army in the forward areas. Para-military Units cannot however be regarded as Armed Forces and granted the concessional rate of excise duty on RUM unless Section 67 of the Karnataka Excise Act, 1965 is amended. Considering these facts, the issue of RUM at the concessional rate of export duty to para-military Units is justified. Hence, for this purpose Section 67 of the Karnataka Excise Act had to be amended. As the Karnataka Legislative Assembly was not in session and as the matter was urgent, the Karnataka Excise (Amendment) Ordinance, 1976 was promulgated. This Bill seeks to replace the said

Ordinance. [KARNATAKA ACT No. 32 OF 1982] Karnataka Gazette, Extraordinary, dated 10-3-1981 Consequent on the new Code of Criminal Procedure, 1973 (Central Act 2 of 1974), coming into force with effect from 1st April, 1974 the nomenclature and relevant sections referred to in the Karnataka Excise Act has to be substituted. At present under Section 67 the State Government is empowered to exempt or reduce either prospectively or retrospectively the excise duty payable under Section 22 of any liquor sold to certain categories of institutions. The Accountant General has argued that licence fee is not in the nature of excise duty or countervailing duty and therefore exemption cannot be granted with retrospective effect to the licence fee. Therefore it is proposed to take the power to exempt licence fee also in respect of certain categories of institutions by amending clause (a) of Section 67 of the said Act. Hence the Bill. [KARNATAKA ACT No. 28 OF 1987] Karnataka Gazette, Extraordinary, dated 2-9-1987 It is considered necessary to amend the Karnataka Excise Act, 1965 to provide that no licence to manufacture or to bottle, or to manufacture and bottle arrack for sale shall be granted to persons who are not the holders of distillery licence, under Section 16. As the Karnataka Legislative Council was not in session and the matter was urgent the Karnataka Excise (Amendment) Ordinance, 1987 (Karnataka Ordinance 2 of 1987) was promulgated. This Bill seeks to replace the said Ordinance. [KARNATAKA ACT No. 36 OF 1987] Karnataka Gazette, Extraordinary, dated 2-9-1987 It is considered necessary to amend the Karnataka Excise Act, 1965 (Karnataka Act No. 21 of 1966) to provide for stringent measures to prevent illegal import, export, transport, manufacture and possession of intoxicants. Provision is also proposed for closure of liquor shops in the event of outbreak of infectious diseases. As the existing punishment provided under Sections 32 and 34 is inadequate, a provision is made to enhance the same. Similarly, the fee for compounding of offences under Section 45 is also enhanced. Section 55 is amended to provide for the investigation of offences arising under Sections 38 and 38-A by the Excise Officers. Provision is further made for confiscation by the Excise Officers of the vehicles involved in a commission of offences under the Act. Provision is also made for appeal and revision against the order of confiscation. The jurisdiction of Criminal Courts is taken away from adjudicating the matters pertaining to confiscation of properties. The remaining amendments are consequential in nature. As the Karnataka Legislative Council was not in session and the matter

was urgent, the Karnataka Excise (Second Amendment) Ordinance, 1987 (Karnataka Ordinance No. 4 of 1987) was promulgated. This Bill seeks to replace the said Ordinance. [KARNATAKA ACT No. 21 OF 1998] Karnataka Gazette, Extraordinary, dated 25-3-1998 Certain posts of Deputy Commissioner of Excise have been recently upgraded as Joint Commissioner of Excise. The Joint Commissioner of Excise is required to exercise statutory powers under the Karnataka Excise Act, 1965. But, the definition of "Excise Officer" does not include Joint Commissioner of Excise. The term "Joint Commissioner of Excise" is also not defined in the Act. Therefore, it is considered necessary to amend the Karnataka Excise Act, 1965. (i) to define the term "Joint Commissioner of Excise"; (ii) to bring the Joint Commissioner of Excise within the definition of Excise Officer; and (iii) to enable the Joint Commissioner of Excise to exercise certain statutory powers.

CHAPTER 1

Preliminary

1. Short title, extent, commencement and application :-

- (1) This Act may be called the Karnataka Excise Act, 1965.
- (2) It extends to the whole of the State of Karnataka.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,

- (1) "Beer" includes ale, stout and porter;
- (2) "To bottle" means to transfer liquor from a cask or other vessel to a bottle, jar, flask ¹[polythene sachet] or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not, and includes re-bottling;
- (3) "Cultivation" includes the tending or protection of a plant during growth and does not necessarily imply raising it from seed;
- (4) "Denatured" means subjected to a process prescribed for the purpose of rendering unfit for human consumption;
- ²[(5) "Deputy Commissioner" means the Deputy Commissioner of the revenue district;]

3[(5-A) "Deputy Commissioner of Excise" means a Deputy Commissioner of Excise appointed under Section 4-A;]

(6) "Excisable article" means,

(a) any liquor;

(b) any intoxicating drug;

(c) opium; or

(d) other narcotic drugs, narcotics and non-narcotic drugs which the State Government may by notification declare to be an excisable article;

(7) "Excise Commissioner" means the officer appointed as Excise Commissioner under Section 3;

(8) "Excise duty" and "countervailing duty" means any such excise duty or countervailing duty, as the case may be, as is mentioned in Entry 51 of List II of the Seventh Schedule to the Constitution;

4[(9) 'Inspector of Excise' means an Inspector of Excise appointed under Section 6;]

(10) "Excise Officer" means the Excise Commissioner, **5**[a Joint Excise Commissioner] a Deputy Commissioner, **6**[a Deputy Commissioner of Excise] or any officer or other person lawfully appointed or invested with powers under **7**[Section 5, Section 5-A or Section 6;]

8[(11-A) "Excise tree" includes the Gulmohwa, cocoanut, palm, palmyra, date, bagani or doddasal tree or any other tree, the fermented or unfermented juice of which contains alcohol and from which toddy or any other liquor can be prepared;]

(12) "Export" means to take out of the State otherwise than from a customs station as defined under Section 2 of the Customs Act, 1962 (Central Act 52 of 1962);

(13) "Foreign liquor" includes all liquors other than Indian liquor;

(14) "Import" except in the phrase "import into India" means to bring into the State otherwise than from a Customs station as defined under Section 2 of the Customs Act, 1962 (Central Act 52 of 1962);

9[(15) "Indian Liquor" means liquor produced, manufactured or compounded in India in the same manner as Gin, Brandy, Whisky or Rum imported into India, and includes 'milk punch' and other liquors consisting of or containing spists;]

(16) "Intoxicant" means any liquor as defined in clause (18) or any intoxicating drug as defined in clause (17);

(17) "Intoxicating drug" means,

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant including all forms known as bhang, siddi, 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 substance which the State Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf or manufactured drug as defined under Section 2 of the Dangerous Drugs Act, 1930 (Central Act 2 of 1930);

10[(17-A) "Joint Commissioner of Excise" means a Joint Commissioner of Excise appointed under Section 4-A.]

(18) "Liquor" includes

(a) spirits of wine, denatured spirits, wine, beer, toddy and all liquids consisting of or containing alcohol **11**[or wash;] and

(b) any other intoxicating substance, which the State Government may by notification, declare to be liquor for the purposes of this Act;

(19) "Manufacture" includes every process whether natural or artificial by which any fermented, spirituous or intoxicating liquor or intoxicating drug is produced or prepared and also re-distillation and every process for the rectification of liquor;

12[(19-A) "Material" includes mhowra flower, molasses, wash,

rotten jaggery, grapes, cashewnut fruits, and such other substances as the State Government may by notification specify;

(19-B) "Mhowra flower" means the flower of passialati folia (Ippe) but does not include the berry or seed of the mhowra tree;

(19-C) "Molasses" means the heavy, dark-coloured residual syrup drained away in the final stage of the manufacture of jaggery 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;]

(20) "Notification" means a notification published in the official Gazette;

(21) "Place" includes a house, building, shop, booth, tent, vessel, raft and vehicle;

(22) "Police station" includes any place which the State Government may, by notification, declare to be a police station for the purpose of this Act;

(23) "Prescribed" means prescribed by rules made under this Act;

(24) "Rectification" includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith;

13[(24-A) "Rotten jaggery" means jaggery which is unfit for human consumption or the consumption of which is injurious to health;

Explanation. 'jaggery' shall be deemed to be unfit for human consumption or the consumption of it shall be deemed to be injurious to health if it is of dark brown colour with strong smell or if on chemical analysis it is found to contain more than fifteen percent of reducing sugar or less than seventeen per cent of total sugar;]

(25) "Sale" or "selling" includes any transfer otherwise than by way of gift;

(26) "Spirit" means any liquor containing alcohol and obtained by distillation whether it is denatured or not;

14[(26-A) "Sub-Inspector of Excise" means an officer appointed as Sub-Inspector of Excise under Section 6;]

(27) "Toddy" means fermented or unfermented juice drawn
15[from an excise tree;]

16[(28) x x x x x;]

(29) "Transport" means to move from one place to another within the State, whether the intervening area lies wholly within the State or not;

17 [(30) "Wash" includes fermented wort and a dilute solution of sugar from which spirit is distilled.]

1. Inserted by Act No. 1 of 1994 and shall be deemed to have come into force w.e.f. 1-7-1993.

2. Clause (5) substituted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

3. Clause (5-A) inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

4. Clause (9) substituted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

5. Inserted by Act No. 21 of 1998, w.e.f. 28-5-1998.

6. Inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

7. Substituted for the words and figures "Section 5 or 6" by Act No. I of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

8. Clause (11 -A) inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

9. Clause (15) substituted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

10. Clause (17-A) inserted by Act No. 21 of 1998, w.e.f. 28-5-1998.

11. Inserted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

12. Clauses (19-A), (19-B) and (19-C) inserted by Act No. I of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

13. Clause (24-A) and Explanation thereto inserted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

14. Clause (26-A) inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

15. Substituted for the words "from a toddy tree" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

16. Clause (28) omitted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

17. Clause (30) inserted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

CHAPTER 2

Establishment and Control

3. Appointment of Excise Commissioner :-

(1) The State Government may appoint, by notification, an officer not below the rank of a Deputy Commissioner, as Excise Commissioner for the State of Karnataka, who, subject to the general or special orders of the State Government in this behalf, shall be the chief controlling authority in all matters connected with the administration of this Act.

(2) The Excise Commissioner shall exercise all the powers of the Deputy Commissioner in respect of the administration of this Act and shall have the control of the administration of the Excise Department.

4. Deputy Commissioner :-

(1) The Deputy Commissioner shall within the limits of his jurisdiction, exercise such powers and perform such duties and functions as are assigned by or under the provisions of this Act to a Deputy Commissioner subject to such control as the State Government may from time to time direct.

(2) For the purposes of this Act, all Deputy Commissioners shall be subordinate to the Excise Commissioner.

4A. A Joint Commissioner of Excise and Deputy Commissioner of Excise :-

¹²(1) The State Government may appoint, by notification, as many as ³[Joint Commissioners of Excise or Deputy Commissioners of Excise] as it thinks fit, for such area or areas as may be specified in the notification.

(2) ⁴[A Joint Commissioner of Excise or a Deputy Commissioner of Excise] appointed under sub-section (1), shall exercise such powers and perform such duties and functions assigned to ⁵[a Joint Commissioner of Excise or a Deputy Commissioner of Excise] under this Act, as may be specified by the State Government in the notification, and thereupon the ⁶[Joint Commissioner or Deputy Commissioner] shall not be competent to exercise the powers or

perform the duties and functions so specified.

(3) ⁷ [A Joint Commissioner of Excise or a Deputy Commissioner of Excise] shall be subordinate to the Excise Commissioner and shall be subject to the control of the Excise Commissioner and the State Government.]

1. Section 4-A inserted by Act No. 1 of 1971 and shall be deemed to have come into force w e.f 7-8-1970.

2. Substituted for the words "Deputy Commissioner of Excise" by Act No. 21 of 1998 w e f 28-5-1998.

3. Substituted for the words "Deputy Commissioners of Excise" by Act No. 21 of 1998, w.e.f. 28-5-1998.

4. Substituted for the words "A Deputy Commissioner of Excise" by Act No. 21 of 1998 w e f 28-5-1998.

5. Substituted for the words "a Deputy Commissioner of Excise" by Act No. 21 of 1998, w.e.f. 28-5-1998.

6. Substituted for the words "Deputy Commissioner" by Act No. 21 of 1998, w.e.f. 28-5-1998.

7. Substituted for the words "A Deputy Commissioner of Excise" by Act No. 21 of 1998, w e f 28-5-1998.

5. Appointment of Superintendents of Excise and Deputy Superintendents of Excise :-

1(1) The State Government may appoint an officer as **2**[Superintendent of Excise] for a district or part of a district to exercise all or any of the powers and to perform all or any of the duties of a Deputy Commissioner in respect of the administration of this Act, either concurrently with or in subordination to the Deputy Commissioner subject to such control as the State Government may direct.

(2) The State Government may appoint such number of **3** [Deputy Superintendents of Excise] for a district or part of a district as it thinks fit to exercise such powers and perform such duties as the State Government directs.

1. Substituted for the words "District Excise Officers and Assistant District Excise Officers" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words "District Excise Officer" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

3. Substituted for the words "Assistant District Excise Officers" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

5A. Constitution of an Intelligence Bureau and appointment

of Superintendents and Deputy Superintendents of Excise (Intelligence Bureau) :-

1(1) There shall be an Intelligence Bureau headed by the Excise Commissioner and consisting of a **2** [Joint Commissioner of Excise or a Deputy Commissioner of Excise] and such number of Superintendents of Excise (Intelligence Bureau) and Deputy Superintendents of Excise (Intelligence Bureau) as may be appointed by the State Government under sub-section (2) and such other officers as may be appointed by the Excise Commissioner with the prior approval of the State Government.

(2) The State Government may appoint,

(i) an officer as Superintendent of Excise (Intelligence Bureau) for a district or part of a district or for more than one district;

(ii) an officer as Deputy Superintendent of Excise (Intelligence Bureau) for a district or part of a district or for more than one district, to exercise the powers relating to detection, investigation and trial of offences under the Act, and to perform such duties and functions of an Excise Officer as the Excise Commissioner may direct subject to such rules as may be prescribed.]

1. Section 5-A inserted by Act No. I of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words "a Deputy Commissioner of Excise" by Act No. 21 of 1998, w.e.f. 28-5-1998.

6. Appointment of [Inspectors of Excise, Sub-Inspectors of Excise] and other subordinate officers :-

1(1) The State Government may appoint **2**[Inspector of Excise, Sub-Inspector of Excise] to exercise the powers and to perform the duties in connection with detection, investigation and trial of offences under this Act.

(2) The State Government may appoint subordinate officers of such classes and with such designations, powers and duties under this Act as it may think fit.

(3) The State Government may, by notification direct that all or any of the powers and duties assigned to **3**[Inspector of Excise, Sub-Inspector

(4) The State Government may, by notification, delegate its powers

under sub-sections (1), (2) and (3) to the Excise Commissioner, ⁴[Joint Commissioner] the Deputy Commissioner, ⁵ [the Superintendent of Excise or the Deputy Superintendent of Excise] as the case may be.

1. Substituted for the words "Excise Inspectors" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.
2. Substituted for the words "Excise Inspector" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.
3. Substituted for the words "Excise Inspector" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.
4. Inserted by Act No. 21 of 1998, w.e.f. 28-5-1998
5. Substituted for the words "the District Excise Officer or the Assistant District Excise Officer" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

7. Delegation of powers :-

¹(1) The State Government may by notification delegate to the Excise Commissioner or to any other Excise Officer any of its powers under this Act except the powers under Sections 67 and 71.

(2) The State Government may by notification delegate subject to such conditions and restrictions as may be specified therein any of the powers conferred by or under this Act on the Excise Commissioner ² [or the Joint Commissioner of Excise] or the Deputy Commissioner, to any Excise Officer.]

1. Section 7 substituted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.
2. Inserted by Act No. 21 of 1998, w.e.f. 28-5-1998

CHAPTER 3

Import, Export and Transport

8. Import of intoxicant :-

(1) No intoxicant shall be imported except under a permit granted by the Deputy Commissioner on payment of such countervailing duty and fees, as may be levied under this Act and on such other terms as may be prescribed:

Provided that the Deputy Commissioner may, subject to such restrictions and conditions as may be prescribed to ensure the collection of the countervailing duty, permit the import of any intoxicant without the payment of the countervailing duty:

Provided further that no countervailing duty shall be payable on

any intoxicant which, being liable to the payment of duty under the Indian Tariff Act, 1934 or any other law, for the time being in force, relating to the duties of customs on goods imported into India, it has been dealt with according to such law.

(2) A permit granted under sub-section (1), may be cancelled by the Deputy Commissioner for breach of any of the terms subject to which it was granted or for any other reason to be recorded in writing.

9. Export of intoxicant :-

(1) No intoxicant shall be exported except under a permit granted by the Deputy Commissioner on payment of such fee as may be levied under this Act and on such terms as may be prescribed:

Provided that no intoxicant produced or manufactured in India shall, save as provided in Section 66, be permitted to be exported unless the excise duty or countervailing duty to which such intoxicant is liable, has been paid.

(2) A permit granted under sub-section (1) may be cancelled by the Deputy Commissioner for breach of any terms subject to which it was granted or for any other reason to be recorded in writing.

10. Prohibiting of transport of intoxicant :-

The State Government may, by notification, prohibit the transport of intoxicants or any kind of intoxicants from any local area into any other local area.

11. Transport of intoxicant :-

No intoxicant exceeding such quantity as may be prescribed either generally or for any local area, shall be transported, except under a permit issued under Section 12.

12. Permits for transport :-

(1) The Deputy Commissioner or any other person duly empowered by the State Government in that behalf may issue a permit for the transport of intoxicants.

(2) A permit under sub-section (1) may be either a general permit for definite periods and kinds of particular intoxicants or a special permit for specified occasions and particular consignments only: Provided that a general permit shall be granted only to persons licensed under this Act and may cover any quantity of liquor

transported at any one time not exceeding the quantity specified in the permit.

(3) Every permit under this section shall specify:

(a) the name of the person authorised to transport intoxicants;

(b) the period for which the permit is to be in force;

(c) the quantity and description of intoxicants for which it is granted; and

(d) any other particulars which may be prescribed.

(4) A permit granted under this section shall extend to and include servants and other persons employed by the grantee and acting on his behalf.

CHAPTER 4

Manufacture, Possession and Sale

13. Manufacture, etc., of excisable article prohibited except under a licence :-

(1) No person shall-

(a) manufacture or collect an intoxicant; or

(b) cultivate hemp plant; or

(c) tap a toddy producing tree or draw toddy from any tree; or

(d) construct or work a distillery or brewery; or

(e) bottle liquor for sale; or

(f) use, keep, or have in his possession, any materials, still, utensils, implement or apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy, except under the authority and subject to the terms and conditions of a licence granted by the Deputy Commissioner in that behalf or under the provisions of Section 18.

(2) A licence granted under this Section shall extend to and include servants and other persons employed by the licensee and acting on his behalf.

14. Possession of excisable articles in excess of the quantity prescribed :-

(1) The State Government may, by notification, prescribe a limit of quantity for the possession of any intoxicant: Provided that different limits may be prescribed for different qualities of the same article.

(2) No person shall have in his possession any quantity of any intoxicant in excess of the limit prescribed under sub-section (1), except under the authority and in accordance with the terms and conditions of

(a) a licence for the manufacture, cultivation, collection, sale or supply of such article, or

(b) a permit granted by the Deputy Commissioner in that behalf.

15. Sale of excisable articles without licence prohibited :-

(1) No intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf:

Provided that, subject to such restrictions and conditions as the Excise Commissioner may by general or special order specify,

(a) a person having the right to the toddy drawn from any tree may sell such toddy without a licence to a person licensed to manufacture or sell toddy under this Act;

(b) a cultivator or owner of any plant from which an intoxicating drug is produced may sell without a licence those portions of the plant from, which the intoxicating drug is manufactured or produced to any person licensed under this Act to sell, manufacture or export the intoxicating drugs or to any officer, whom the Excise Commissioner may generally or specially authorise.

(2) A licence for sale under sub-section (1), shall be granted

(a) by the Deputy Commissioner, if the sale is within a district, or

(b) by the Excise Commissioner, if the sale is in more than one district:

Provided that subject to such conditions as may be determined by the Excise Commissioner, a licence for sale granted under the Excise law in force in any other State may be deemed to be a licence granted under this Act.

(3) Nothing in this section shall apply to the sale of any liquor

lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.

(4) Notwithstanding anything contained in sub-sections (1) and (2), no club shall supply liquor to its members on payment of a price or of any fee or subscription except under the authority of and subject to the terms and conditions of a licence granted in that behalf by the Excise Commissioner and on payment of such fees according to a scale of fees to be fixed by the State Government in this behalf.

16. Establishment of distilleries and warehouses :-

(1) The Excise Commissioner may, with the previous sanction of the State Government,

(a) establish a distillery, in which spirit may be manufactured under licence granted under Section 13 on such conditions as the State Government may impose;

(b) discontinue any distillery so established;

(c) license, on such conditions as the State Government deems fit to impose, the construction and working of a distillery or brewery;

(d) licence a private bonded warehouse;

(e) establish or licence a warehouse wherein intoxicants may be deposited and kept without payment of duty; and

(f) discontinue any warehouse so established.

(2) A warehouse established under sub-section (1), shall be for general accommodation to warehouse intoxicants subject to duty pending removal for local consumption or for export.

(3) Without the sanction of the State Government, no intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage established or licensed under this Act, unless the duty, if any, imposed under this Act has been paid or a bond has been executed for the payment thereof.

16A. Licence to manufacture, bottle or manufacture and bottle arrack for sale :-

¹(1) Notwithstanding anything contained in this Act, no licence,

(a) to manufacture: or

(b) to bottle, or

(c) to manufacture and bottle arrack for sale shall ² [be granted to any person, other than a company or agency owned or controlled by the State Government or a State Government Department.]

(2) The Excise Commissioner may, subject to sub-section (1) and to such rules as may be prescribed and with the prior approval of the State Government, grant licence for any specified area or areas to any person,

(a) to manufacture; or

(b) to bottle; or

(c) to manufacture and bottle arrack for sale.]

1. Section 16-B inserted by Act No. 1 of 1994 and shall be deemed to have come into force w.e.f. 1-7-1993.

2. Sub-section (1-A) and the proviso inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

16B. Licence granted for manufacture and bottling of arrack cease to be valid :-

1 (1) Notwithstanding anything contained in this Act or in any judgment, decree or order of any Court, every licence granted to

(i) manufacture arrack; or

(ii) bottle; or

(iii) manufacture and bottle arrack;

Provided that nothing contained in this section shall affect any obligation or liability incurred in respect of such licence before the first day of July, 1993.

(2) When a licence ceases to be valid under sub-section (1), a part of the licence fee proportionate to the un-expired portion of the term of the licence and the deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount due from him to the State Government.]

1. Section 16-B inserted by Act No. 1 of 1994 and shall be deemed to have come into force w.e.f. 1-7-1993.

17. Power to grant lease of right to manufacture etc :-

(1) The State Government may lease to any person, on such conditions and for such period as it may think fit, the exclusive or other right.

(a) of manufacturing or supplying by wholesale or of both or;

(b) of selling by wholesale or by retail; or

(c) of manufacturing or supplying by wholesale, or of both and of selling by retail, any indian liquor or intoxicating drug within any specified area.

1[(1 -A) No lease granted under sub-section (1) shall be transferred: Provided that the State Government may grant permission to the lessee to transfer the lease or a part thereof, in favour of any other person subject to such terms and conditions (including the transferee entering into an agreement of lease with the State Government) as may be prescribed.]

(2) The licensing authority may grant to a lessee **2**[under sub-section (1), or a transferee under sub-section (1-A)] a licence in the terms of his lease; and when there is no condition in the lease, which prohibits sub-letting may, on the application of the lessee, grant licences to any sub-lessee approved by such authority.

3 [(3) A lease referred to in sub-section (1) or sub-section (1A) may be determined,

(a) If any duty or fee payable by the lessee is not duly paid; or

(b) in the event of breach of any term or condition of the lease by the lessee or any of his servants or any person acting on behalf of or under the express or implied permission of the lessee; or

(c) if the lessee becomes incapable of carrying on the business; or

(d) if the conditions' of the lease provide for determination at will:

Provided that no such determination shall be made unless the person affected has had a reasonable opportunity of showing cause against such determination.

(4) Where a lease is determined under clause (a), (b) or (c) of sub-section (3), the State Government may direct the Deputy Commissioner, to take the right under his management and to lease it again by re-sale, or otherwise; and if on such management or re-sale, the amount realised is less than the amount payable

under the lease which was determined, the loss shall be payable by the person whose lease was determined.]

1. Sub-section (1-A) and the proviso inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words, brackets and figure "under sub-section (1)" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

3. Sub-sections (3) and (4) inserted by Act No. I of 1971 and shall be deemed to have come into force w.e.f..7-8-1970.

18. Lessees permission to draw toddy :-

Where a right to manufacture toddy has been leased under Section 17, the State Government may declare that the written permission of the lessee to draw toddy shall have the same force and effect as a licence under Section 13 from the Deputy Commissioner for that purpose.

19. Duties of licensees with regard to measurement and testing :-

Every person, who manufactures or sells any intoxicant under a licence granted under this Act shall be bound

(a) to provide himself with such measures, weights and instruments as the Excise commissioner may prescribe and to keep the same in good condition and on the licensed premises; and

(b) on the requisition of the Excise Officer duly empowered in that behalf, at any time to measure, weigh or test any intoxicant in his possession in such manner as the said Excise Officer may require.

20. Prohibition of employment of children and of women :-

(1) No person who is licensed to sell any intoxicant for consumption on his premises shall, during the hours in which such premises are kept open for persons, employ or permit to be employed, either with or without remuneration, any children under such age as the State Government may, by rule, prescribe in this behalf, in any part of such premises in which such excisable article is consumed by the public.

(2) No person who is licensed to sell any intoxicant for consumption at his premises shall, without the previous permission in writing of the Deputy Commissioner, during the hours in which such premises are kept open for persons, employ or permit to be employed, either with or without remuneration, any women in any part of such premises in which such excisable article is consumed by the public.

(3) Every permission granted under sub-section (2) shall be endorsed on the licence and may be modified and withdrawn.

21. Closing of shops for the preservation of public peace etc. :-

1(1) The District Magistrate may, by notice in writing to the licensee require that any shops in which any intoxicant is sold shall be closed at such times and for such period as he may think necessary for the preservation of the public peace **2** [or the prevention of the spreading of any infectious diseases.]

(2) If any riot or any unlawful assembly is apprehended or occurs in the vicinity of any such shop, any Magistrate or any Police Officer not below the rank of a Sub-Inspector, who is present, may require such shop to be kept closed for such period as he may think necessary:

Provided that where a riot or unlawful assembly so occurs, the licensee shall in the absence of such Magistrate or Officer, close the shop without any order and keep it closed during the continuance of such riot or unlawful assembly.

1. Inserted by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

2. Inserted by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

CHAPTER 5

Excise Duty and Countervailing duty

22. Excise duty or countervailing duty on excisable articles :-

(1) An excise duty at such rate or rates as the State Government may prescribe, shall be levied on any excisable article manufactured or produced in the State under any licence or permit granted under this Act.

(2) A countervailing duty at such rate or rates as the State Government may prescribe shall be levied on any excisable article manufactured or produced in India outside the State and imported into the State under a licence or permit granted under this Act.

(3) The rates prescribed under sub-sections (1) and (2) may be different for different kinds of excisable articles and may also be different when levied in the different ways specified in Section 23.

23. Ways of levying such duties :-

Subject to such rules regulating the time, place and manner, as may be prescribed, excise duty and countervailing duty under Section 22 shall be levied in one or more of the following ways as may be prescribed, namely:

(a) rateably on the quantity of any excisable article produced in or manufactured in or issued from a distillery, brewery, manufactory or warehouse, or imported into the State;

¹ [(aa) by fees (called litre fees) on the quantity of excisable article imported by any person or received by any person when issued from a distillery, brewery, manufactory or warehouse, as the case may be.

Explanation. In this clause, 'warehouse' includes a place where liquor is kept by a person selling liquor by wholesale.]

(b) in the case of spirit or other liquor produced in any distillery established or any distillery, brewery or manufactory licensed under this Act, in accordance with its quality or strength, or in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as may be prescribed;

(c) in the case of toddy, by tax on each tree from which toddy is drawn;

(d) by fees on licences in respect of the manufacture or sale of any excisable article.

1. Substituted for the words "toddy trees" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

24. Payment of fees for grant of lease :-

¹ Instead of or in addition to any excise duty or countervailing duty leviable under Sections 22 and 23, the State Government may, accept payment of a sum or levy such licence fee or privilege fee as may be prescribed, in consideration of grant of a lease or licence or both, by or under this Act.]

1. Substituted for the words "toddy trees" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

25. Tax for tapping trees from whom leviable :-

When duty is levied by way of tax on ¹[excise trees] under Section

23 and ² [excise trees] are tapped without licence, the tax due shall be recoverable primarily from the tapper or in default by him, from the occupier, if any, of the land, or if the trees do not belong to the occupier of the land, or if the land is not occupied, from the person, if any, who owns or is in possession of the trees, unless he proves that the trees were tapped without his consent.

1. Substituted for the words "toddy trees" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words "toddy trees" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

CHAPTER 6

Licences and Permits

26. Form and conditions of licence, etc :-

(1) Every licence or permit granted under this Act shall be granted on payment of such fees, for such period, and subject to such restrictions and on such conditions, and shall be in such Form and shall contain such particulars, as may be prescribed.

(2) The conditions prescribed under sub-section (1) may include provision of accommodation by the licensee to Excise Officer at the licensed premises or the payment of rent or other charges for such accommodation at or near the licensed premises, and the payment of

27. Power to take security and counterpart agreement :-

Subject to such rules as may be prescribed, any authority granting a licence under this Act may require the licensee

(a) to give security for the observance of the terms of his licence, and

(b) to execute a counterpart agreement in conformity with the tenor of his licence.

28. Technical defects, irregularities and omissions :-

(1) No licence granted under this Act shall be deemed to be invalid by reason merely of any technical defects, irregularity or omission in the licence or in any proceedings taken prior to the grant thereof.

(2) The decision of the Excise Commissioner as to what is a technical defect, irregularity or omission, shall be final.

29. Power to cancel or suspend licence etc :-

(1) Subject to such restrictions as the State Government may prescribe, the authority granting any licence or permit under this Act may cancel or suspend it

(a) if any duty or fee payable by the holder thereof is not duly paid; or

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or

(c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act; or

(d) if the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs Act, 1930, or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, or under the Trade and Merchandise Marks Act, 1958, or under Sections 481, 482, 483, 484, 485, 486, 487, 488 or 489 of the Indian Penal Code or of any offence punishable under Section 112 or 114 of the Customs Act, 1962; or

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other licence or permit granted to such person under this Act or under the Opium Act, 1878.

(3) The holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

30. Power to withdraw Licence :-

(1) Whenever the authority which granted any licence under this Act considers that such licence should be withdrawn for any cause other than those specified in Section 29, it may withdraw the licence on the expiration of not less than thirty days' notice in writing of its intention to do so.

(2) When a licence is withdrawn under sub-section (1), a part of

the licence fee proportionate to the unexpired portion of the term of the licence and the deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount due from him to the State Government.

31. Surrender of licence :-

(1) Any holder of a licence granted under this Act to sell an excisable article may surrender his licence on the expiration of one month's notice in writing given by him to the Deputy Commissioner of his intention to surrender the same and on payment of the fee payable for the licence for the remainder of the period for which it would have been current but for such surrender:

Provided that if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a licence, he may remit the sum so payable on surrender or any portion thereof.

(2) Sub-section (1) shall not apply in the case of any licence granted under Section 17.]

CHAPTER 7

Offences and Penalties

32. Penalty for illegal import, etc :-

(1) Whoever, in contravention of this Act, or any rule, notification or order, made, issued or given thereunder, or of any licence or permit granted under this Act imports, exports, transports, manufactures, collects or possesses any intoxicant, shall on conviction, ¹[be punished for each offence with rigorous imprisonment for a term which may extend to ²[three years and with fine which may extend to five thousand rupees]]

³[Provided that the punishment,

(i) for the first offence shall be not less than ⁴[six months rigorous imprisonment and fine of not less than rupees one thousand;] and

(ii) for the second and subsequent offences shall be not less than ⁵[one year rigorous imprisonment and fine of not less than rupees two thousand] for each such offence.

(2) Whoever in contravention of this Act, or of any rule, notification or order made, issued or given thereunder, or of any licence or permit granted under this Act,

- (a) save in the cases provided for in Section 37, sells any intoxicant; or
- (b) cultivates or fails to take the measures prescribed for checking the spontaneous growth or for the extirpation of the hemp plant; or
- (c) taps or draws toddy from any toddy-producing tree; or
- (d) constructs or works any distillery or brewery; or
- (e) uses, keeps or has in his possession any materials, still utensils, apparatus or implement whatsoever for the purpose of manufacturing any intoxicant other than toddy; or
- (f) removes any intoxicant from any distillery, brewery or warehouse licensed, established or continued under this Act; or
- (g) bottles any liquor;

6[be punished for each offence with rigorous imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:]

7 [Provided that the punishment,

- (i) for the first offence shall be not less than three months' rigorous imprisonment and fine of not less than rupees one hundred; and
- (ii) for the second and subsequent offences shall be not less than six months rigorous imprisonment and fine of not less than rupees one thousand for each such offence]

1. Substituted for the words "be punished with imprisonment for a term which may extend to six months and with fine" by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969

2. Substituted for the words "two years and with fine which may extend to two thousand rupees" by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

3. Proviso to sub-section (1) substituted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969

4. Substituted for the words "three months' rigorous imprisonment and fine of not less than rupees one hundred" by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

5. Substituted for the words "six months rigorous imprisonment and fine of not less than rupees one thousand" by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

6. Substituted for the words "be punished with imprisonment for a

term which may extend to six months or with fine which may extend to one thousand rupees, or with both" by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

7. Proviso to sub-section (2) substituted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

33. Penalty for rendering denatured spirit fit for human consumption :-

Whoever,

(a) renders fit for human consumption any spirit, which has been denatured; or

(b) has in his possession any spirit in respect of which he knows, or has reason to believe that any such offence has been committed or that an attempt to commit such an offence has been made; shall, on conviction, ¹[be punished for each offence with rigorous imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:]

² [Provided that the punishment,

(i) for the first offence shall be not less than six months' rigorous imprisonment and fine of not less than five hundred rupees; and

(ii) for the second and subsequent offences shall be not less than rigorous imprisonment for one year and fine of not less than rupees one thousand, for each such offence.]

Explanation. For the purpose of this section, it shall be presumed, unless the contrary is proved, that any 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.

1. Substituted for the words "be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both" by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

2. Proviso inserted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

34. Penalty for illegal possession :-

Whoever, without lawful authority has in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected, or knowing the prescribed duty not to have been paid

thereon shall on conviction, be punished with imprisonment for a term which may extend to ¹[two years] ²[and with fine which may extend to ³[four thousand rupees.]]

⁴[Provided that the punishment,

(i) for the first offence shall be not less than ⁵[six months imprisonment and fine of rupees one thousand;] and

(ii) for the second and subsequent offences shall be not less than imprisonment for ⁶ [one year and fine of not less than rupees two thousand] for each such offence:

Provided further that the fine inflicted, shall not be less than four times the amount of duty leviable on such intoxicant.]

1. Substituted for the words "six months" by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

2. Substituted for the words "or with fine which may extend to one thousand rupees or with both" by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

3. Substituted for the words "two thousand rupees" by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

4. Proviso substituted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

5. Substituted for the words "three months imprisonment and fine of rupees one thousand" by Act No. 36 of 1987, and shall be deemed to have come into force w.e.f. 10-8-1987.

6. Substituted for the words "six months and fine of not less than rupees one thousand" by Act No. 36 of 1987, and shall be deemed to have come into force w.e.f. 10-8-1987.

35. Penalty for offence not otherwise provided for :-

Whoever does any act in contravention of any of the provisions of this Act, or of any rule, notification or order made, issued or given thereunder, and not otherwise provided for in this Act, shall, on conviction, be punished ¹ [with fine which shall not be less than two hundred rupees and not more than one thousand rupees.]

1. Substituted for the words "with fine which may extend to two hundred rupees" by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

36. Penalty for misconduct of licensee, etc :-

(1) Whoever, being the holder of a licence or permit granted under this Act or being in the employ of such holder and acting on his

behalf,

(a) fails to produce such licence or permit on the demand of any Excise Officer or of any other person duly empowered to make such demand; or

(b) wilfully does or omits to do, anything in breach of any of the conditions of his licence, or permit, not otherwise provided for in this Act; or

(c) save in a case provided for by Section 32 wilfully contravenes any rule made under Section 71; or

(d) permits drunkenness, disorderly conduct or gaming in any place wherein any intoxicant is sold or manufactured; or

(e) permits or suffers persons whom he knows or has reason to believe to have been convicted of any non-bailable offence, or who are reputed prostitutes or habitual offenders, to resort to, or assemble or remain in or on the premises where any excisable article is sold or manufactured; or

(f) sells any intoxicant to a person who is drunk; or

(g) sells or gives any intoxicant to any child apparently under eighteen years of age or permits or suffers such child to remain in or on the premises where any excisable article is sold, or manufactured; or

(h) in contravention of Section 20 employs or permits to be employed on any part of his licensed premises referred to in that section any child or woman; shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

(2) Where any holder of a licence or permit under this Act or any person in his employ or acting on his behalf is charged with permitting drunkenness on the premises of such holder, and it is proved that any person was drunk on such premises, it shall, lie on the person charged to prove that the holder of the licence and the persons employed by him took all reasonable steps for preventing drunkenness on such premises.

37. Penalty for adulteration etc., by licensed vendor or manufacturer :-

(1) Whoever, being the holder of a licence for the sale or

manufacture of any intoxicant under this Act, or a person in the employ of such holder mixes or permits to be mixed with the intoxicant sold or manufactured by him, any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under this Act, when such admixture does not amount to an offence of adulteration under Section 272 of the Indian Penal Code, shall on conviction be punished with imprisonment for a term which may extend to three months and with a fine ¹[which shall, not be less than one thousand rupees and not more than two thousand rupees.]

(2) Whoever, being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or a person in the employ of such holder,

(a) sells or keeps or exposes for sale as foreign liquor, liquor which he knows or has reason to believe to be Indian Liquor; or

(b) marks any bottle or the cork of any bottle, case, package, or other receptacle containing Indian liquor or uses any bottle, case, package or other receptacle containing Indian liquor, with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, when such act shall not amount to the offence of using a false trade mark with intention to deceive or injure any person under Section 482 of the Indian Penal Code; or

(c) sells or keeps or exposes for sale any Indian liquor in a bottle, case, package or other receptacle with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other

²[two years and with fine which may extend to one thousand rupees.]

³ [Provided that the punishment,

(i) for the first offence shall be not less than three months' imprisonment and fine of not less than rupees two hundred; and

(ii) for the second and subsequent offences shall be not less than imprisonment for six months and fine of not less than rupees five hundred, for each such offence.]

1. Substituted for the words "which may extend to five hundred

rupees" by Act No. I of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

2. Substituted for the words "three months or with fine which may extend to five hundred rupees, or with both" by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

3. Proviso to sub-section (2) added by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

38. Penalty for consumption in Chemists shop, etc :-

(1) A chemist, druggist, apothecary or keeper of a dispensary, who allows any intoxicant which has not been bonafide medicated for medicinal purposes to be consumed on his business premises by any person shall on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both.

(2) Any person not employed as aforesaid, who consumes any such intoxicant on such premises shall, on conviction, be punished with fine which may extend to two hundred rupees.

38A. Penalty for allowing premises, etc., to be used for the purpose of committing an offence under this Act :-

¹ Whoever, being the owner or occupier or having the use or care or management or control, of any place, room, enclosure, space, vessel, vehicle, or place knowingly permits it to be used for the purpose of commission by any other person of an offence punishable under Sections 32, 33, 34, 36 and 37 shall, on conviction, be punished as if he has committed the offences punishable under the respective sections.]

1. Section 38-A inserted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

39. Manufacture, sale or possession by one person on account of another :-

(1) Where any intoxicant has been manufactured or sold or is possessed by any person on account of any other person and such other person knows or has reason to believe that such manufacture or sale was or that such possession is, on his account, the article shall, for the purposes of this Act, be deemed to have been manufactured or sold by or to be in the possession of such other person.

(2) Nothing in sub-section (1) shall absolve any person who manufactures, sells or has possession of any intoxicant on account

of another person from liability to any punishment under this Act for unlawful manufacture, sale or possession of such article.

40. Presumption as to commission of offence in certain cases :-

In prosecutions under Section 32 and Section 34, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that Section in respect of

(a) any intoxicant; or

(b) any still, utensil, implement or apparatus whatsoever in the manufacture of any intoxicant other than toddy; or

(c) any materials which have undergone any process towards the manufacture of an intoxicant or from which an intoxicant has been manufactured,

for the possession of which he is unable to account satisfactorily.

41. Criminal liability of licensee for acts of servants :-

Where any offence under Section 32, Section 33, Section 34, Section 36 or Section 37 is committed by any person in the employ and acting on behalf of the holder of a licence or permit granted under this Act, such holder shall also be punishable as if he had committed himself the said offence, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence: Provided that no person other than the actual offender shall be punishable under this section with imprisonment, except in default of payment of fine.

42. Enhanced punishment after previous conviction :-

If any person, after having been previously convicted of an offence punishable under ¹[x x x x x] Section 38 or under the corresponding provisions of any enactment repealed by this Act, subsequently commits and is convicted of an offence punishable under ²[the said section] he shall be liable to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this Section shall prevent any offence which might otherwise have been tried summarily under ³ [Chapter XXI of the Code of Criminal procedure, 1973] from being so tried.

1. The words and figures "Section 32, Section 33, Section 34, Section 37 or" omitted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

2. Substituted for the words "any of these sections" by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.
3. Substituted for the words and figures "Chapter XXII of the Code of Criminal Procedure, 1898" by Act No. 32 of 1982, w.e.f. 4-9-1982.

42A. Security for abstaining from commission of certain offences :-

1(1) Whenever any person is convicted of an offence punishable under Section 32, Section 33, Section 34, Section 36 or Section 37 and the court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of such offence, the court may, at the time of passing sentences on such person, order him to execute a bond in the prescribed form for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks it to fit.

(2) The provisions of the **2** [Code of Criminal Procedure, 1973], 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 the said 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 appeal or revision.]

1. Section 42-A inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words and figures "Code of Criminal Procedure, 1898" by Act No, 32 of 1982, w.e.f. 4-9-1982.

43. Liability of certain things to confiscation :-

Whenever an offence has been committed, which is punishable under this Act, the following things shall be liable to confiscation namely,

(1) any intoxicant, materials, still, utensil, implement or apparatus in respect of, or by means of which, such offence has been committed;

(2) any intoxicant lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any intoxicant liable to confiscation under clause (1); and

(3) any receptacle, package, or covering in which anything liable to confiscation under clause (1) or clause (2); is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same: ¹ [x x x x x.]

1. Proviso to sub-section (3) omitted by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

43A. Confiscation by Excise Officers in certain cases :-

¹ (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any thing liable for confiscation under Section 43 is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay, produce the same before an officer not below the rank of a Superintendent of Excise authorised by the Government in this behalf by notification (hereinafter referred to as the authorised officer).

(2) On production of the seized property under sub-section (1), the authorised officer, if satisfied that an offence under this Act has been committed may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of such property.

(3) When making an order of confiscation under sub-section (2), the authorised officer may also order that such of the properties to which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed.

(4) Where the authorised officer after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction.

(5) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses, relating thereto, shall, where the order of confiscation made under this section is set aside or annulled by an order under Section 43-D or 43-E, be paid to the

owner thereof or to the person from whom it was seized as may be specified in such order.

1. Sections 43-A to 43-G inserted by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

43B. Issue of show-cause notice before confiscation under Section 43-A :-

(1) No order confiscating any property shall be made under Section 43-A unless the person from whom the same is seized,

(a) is given a notice in writing informing him the grounds on which it is proposed to confiscate such property;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, cart, vessel or other conveyance shall be made under Section 43-A, if the owner of the animal, cart, vessel or other conveyance proves to the satisfaction of the authorised officer that it was used in carrying the liquor or intoxicant or the material, still, utensil, implements or apparatus or the receptacle, package or covering without the knowledge or connivance of the owner himself, his agent, if any, and the person incharge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

43C. Order of confiscation when an offender is not known or cannot be found etc :-

When an offence under 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 authorised officer may order such confiscation:

Provided that no such order shall be made until the expiration of one month, from the date of seizing the goods intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and the evidence, if any, which they produce, in support of their claims.

43D. Revision :-

Any Excise Officer not below the rank of a Deputy Commissioner of Excise specially empowered by the State Government in this behalf, may, before the expiry of thirty days from the date of order of the authorised officer under Section 43-A or 43-C suo-motu call for and examine the records of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit after giving the person against whom such order is made an opportunity of being heard.

43E. Appeal :-

Any person aggrieved by an order passed under Section 43-A, 43-C or 43-D may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which such order relates has been seized and the Sessions Judge shall, after giving an opportunity to the appellant to be heard pass such orders as he deems fit and such order shall be final.

43F. Award of confiscation not to interfere with other punishments :-

The award of any confiscation under sub-section (2) of Section 43-A or Section 43-C or Section 43-D or Section 43 E shall not prevent infliction of any other punishment to which the person affected thereby is liable under this Act.

43G. Bar of jurisdiction in certain cases :-

whenever any liquor, intoxicant, material, still, .utensil, implements or apparatus or any receptacle, package or covering in which such liquor, intoxicant, material, still, utensil, implement or apparatus found or any animal, cart, vessel or other conveyance is used in committing any offence, is seized and detained under the provisions of this Act, the authorised officer appointed under Section 43-A or the officer specially empowered under Section 43-D or the Sessions Judge hearing an appeal under Section 43-E, shall have, and notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or any other law for the time being in force, any other officer or Court, Tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property]

44. . :-

1 x x x x x.]

1. Section 44 omitted by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

45. Compounding of offences :-

(1) The Excise Commissioner, the Deputy Commissioner, or any Excise Officer specially empowered in that behalf may accept from any person whose licence or permit is liable to be cancelled or suspended under clause (a) or clause (b) of sub-section (1) of Section 29 or who is reasonably suspected of having committed an offence under sub-section (2) of Section 32, Section 33, Section 34, Section 35, Section 36 or sub-section (2) of Section 37, a sum of money ¹ [not less than five thousand rupees but which may extend to twenty-five thousand rupees] in lieu of such cancellation or suspension or by way of compensation for the offence which may have been committed, as the case may be; and in all cases in which any property has been seized as liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer.

(2) On the payment by such person of such sum of money or such value or both, as the case may be, such person, if in custody, shall be set at liberty and all the property seized may be released and no proceeding shall be instituted against such person in any Criminal

1. Substituted for the words "not exceeding five thousand rupees and subject to such minimum as may be prescribed" by Act No. 12 of 1999, w.e.f. 29-4-1999

45A. Imposition of penalty by Excise Officers :-

¹(1) If a holder of a licence or permit granted under this Act or an employee of such holder contravenes any of the conditions of the licence, permit or of any rule made under this Act, the Deputy Commissioner, or any other Excise Officer authorised by the State Government in this behalf, may impose a penalty ² [not less than five thousand rupees but which may extend to twenty-five thousand rupees.]

(2) No order imposing a penalty on any person shall be made under sub-section (1) unless the holder of the licence or permit or the employee concerned,

(a) is given a notice in writing informing him of the grounds on which it is proposed to impose the penalty.

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter.

(3) No person on whom a penalty is imposed under sub-section (1) shall be liable for prosecution in respect of the same facts for any offence under this Act.]

1. Section 45-A inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words "not exceeding five thousand rupees" by Act No. 7 of 1997, w.e.f. 1-4-1997.

46. Penalty on Excise Officer making vexatious search, seizure detention or arrest :-

Any Excise Officer or other person who vexatiously and without reasonable ground for suspicion

(a) enters or searches or causes to be entered or searched any closed place under colour of exercising any power conferred by this Act, or

(b) seizes the moveable property of any person on the pretext of seizing or searching for any article liable to confiscation under this Act, or

(c) searches, detains or arrests any person, or

(d) in any other way exceeds his lawful powers under this Act, shall, on conviction be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

47. Penalty for Excise officer refusing to do duty :-

Any Excise Officer, who, without lawful excuse shall cease or refuse to perform, or withdraws himself from the duties of his office, unless expressly allowed to do so in writing by the Excise commissioner, or unless he shall have given to his official superior officer two months' notice in writing of his intention to do so, or who shall be guilty of cowardice, shall, on conviction, be punished with imprisonment, which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

48. Penalty for vexatious delay :-

Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to the nearest Excise Officer or to the Officer in charge of the nearest police station, as required by sub-section (2) of Section 59 any person arrested, shall, on conviction, be punished, with fine which may extend to two hundred rupees.

49. Penalty for abetment of escape of persons arrested etc :-

Any officer or person who unlawfully releases or abets the escape of any person arrested under this Act or abets the commission of any offence against this Act, or 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 contravened or the excise revenue may be defrauded and any officer of any other Department referred to in Section 50 who abets the commission of any offence against this Act in any place, shall, on conviction, for every such offence, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

CHAPTER 8

Detection, Investigation and Trial of Offences

50. Landholders, Officers and others to give information :-

(1) Whenever any intoxicant is manufactured or collected, or any hemp-plant is cultivated, in or on any land or building, in contravention of this Act,

(a) all owners and occupiers of such land or building or their agents, and,

(b) (i) village officers or servants including members of the village police,

(ii) chairman, members and officers of the village panchayat, and

(iii) all officers (other than Excise Officers), employed in the collection of revenue or rent of land on behalf of the State Government, or a local authority in the locality in which such land or building is situate,

(2) Every Excise Officer shall be bound to give immediate information either to his immediate official superior or to an Excise Inspector, of all breaches of any of the provisions of this Act, which

may come to his knowledge under sub-section (1) or otherwise.

(3) All such officers, chairmen, members or servants as are referred to in sub-section (1) shall be bound,

(a) to take all reasonable measures in their power to prevent the commission of such breaches which they may know, or have reason to believe are about or likely to be committed; and

(b) to assist the Excise Commissioner in carrying out the provisions of this Act.

51. Power to enter and inspect places of manufacture and sale :-

The Excise Commissioner or a Deputy Commissioner or any Excise Officer not below such rank as may be prescribed or any Police Officer duly empowered in that behalf may

(a) enter and inspect, at any time, by day or by night, any place in which any licensed manufacturer manufactures or stores any intoxicant; and

(b) enter and inspect at any time within the hours during which sale is permitted and at any other time during which the same may be open, any place in which any intoxicant is kept for sale by any person holding a licence under this Act; and

(c) examine the accounts and registers, and examine, test, measure or weigh any materials, stills, utensils, implements, apparatus, or intoxicant found in such place.

52. Power to arrest without warrant, to seize articles liable for confiscation and to make searches :-

(1) Any Officer of the State Government ¹[employed in the Excise Department, or any Officer of the Police or Revenue Department empowered by the State Government in this behalf] subject to such restrictions as may be prescribed, ²[x x x x x] may,

(a) arrest without warrant any person ³ [for] an offence punishable, under Section 32, Section 33, Section 34, Section 36 or Section 37;

(b) seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force, relating to excise revenue; and

(c) detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be.

(2) When any person is accused or is reasonably suspected of committing an offence under this Act, other than an offence under Section 32, Section 33, Section 34, Section 36 or Section 37 and on demand of any such Officer as aforesaid, refuses to give his name and residence or gives a name and residence which such Officer has reason to believe is false, he may be arrested by such Officer, in order that his name and residence may be ascertained.

1. Substituted for the words "employed in the Excise, Police or Revenue Department of the State" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. The words "any other person duly empowered" omitted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

3. Substituted for the words "found committing" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

53. Power of Magistrate to issue a warrant :-

If a Magistrate, upon information and after such enquiry (if any) as he thinks necessary, has reason to believe that an offence under Section 32, Section 33, Section 34, Section 36, or Section 37 has been, is being, or is likely to be, committed, he may issue a warrant,

(a) for the search of any place in which he has reason to believe that any intoxicant, still, utensil, implement, apparatus or materials which are used for the commission of such offence or in respect of which such offence has been, is being, or is likely to be, committed, are kept or concealed; and

(b) for the arrest of any person whom he has reason to believe to have been, to be, or to be likely to be, engaged in the commission of any such offence.

54. Power to search without warrant :-

Whenever the Excise Commissioner or a Deputy Commissioner or any Police Officer not below the rank of an Officer-in-charge of a Police Station or any Excise Officer not below such rank as may be prescribed, has reason to believe that an offence under Section 32, Section 33, Section 34, Section 36 or Section 37 has been, is being, or is likely to be, committed, and that a search warrant

cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, after recording the grounds of his belief,

(a) at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and

(b) 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 such offence as aforesaid.

55. Power of Excise Officers in matters of investigation :-

(1) Any ¹[Inspector of Excise or a Sub-Inspector of Excise] or any Excise Officer not below such rank and within such specified area as the State Government may, by Notification prescribe, may as regards offences under Section 32, Section 33, Section 34 ²[Section 35, Section 36, Section 37, Section 38 or Section 38-A] exercise powers conferred on an Officer-in-charge of a Police station by the provisions of the ³[Code of Criminal Procedure, 1973:]

Provided that any such power shall be subject to such restrictions and modifications, if any, as the State Government may prescribe.

(2) For the purposes of Section 156 of the said Code, the area in regard to which an ⁴ [Inspector of Excise or a Sub-Inspector of Excise or an Excise Officer] is empowered under sub-section (1), shall be deemed to be a Police Station and such officer shall be deemed to be the Officer-in-charge of such station.

1. Substituted for the words "Excise Inspector" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words and figures "Section 36 or Section 37" by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.

3. Substituted for the words and figures "Code of Criminal Procedure, 1898" by Act No 32 of 1982, w.e.f. 4-9-1982.

4. Substituted for the words "Excise Inspector" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

56. Report by Investigating Officer :-

If, on any investigation by an ¹[Inspector of Excise, a Sub-Inspector of Excise] or an Excise Officer empowered under sub-section (1) of Section 55, it appears that there is sufficient evidence to justify the prosecution of the accused, the

Investigating Officer shall submit a report (which shall, for the purposes of Section 190 of the ² [Code of Criminal Procedure, 1973] be deemed to be a Police Report) to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on Police Reports.

1. Substituted for the words "Excise Inspector" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.
2. Substituted for the words and figures "Code of Criminal Procedure, 1898" by Act No. 32 of 1982, w.e.f. 4-9-1982.

57. Report by Excise Officers :-

Where any Excise Officer below the rank of ¹[a Sub-Inspector of Excise] makes any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter,

(a) make a full report of all the particulars of the arrest, seizure or search to his immediate official superior ²[;]

(b) unless bail be accepted under Section 59 take or send the person arrested ³[x x x x x] with all convenient despatch, to a Magistrate for trial or adjudication ⁴[; and]

⁵ [(c) make a report of such seizure and take or send the things seized, with all convenient despatch, to the authorised officer]

1. Substituted for the words "an Excise Inspector" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.
2. Substituted for the punctuation mark "," and the word "and" by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.
3. The words "or the thing seized" omitted by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.
4. Substituted for the punctuation mark "." by Act No. 36 of 1987 and shall be deemed to have come into force w.e.f. 10-8-1987.
5. Clause (c) inserted by Act No. 36 of 1987 and shall be deemed to have come into force w.e f 10-8-1987.

58. Arrest, search, etc., how to be made :-

Any person arrested under this Act shall be informed, as soon as may be, of the grounds for such arrest and save as in this Act otherwise expressly provided, the provision of the ¹[Code of Criminal Procedure, 1973] relating to arrests, detention in custody, searches, summonses, warrants of arrests, search warrants, the production of persons arrested and the disposal of things seized, shall apply, as far as may be, to all action taken in these respects under this Act:

2 [Provided that no search shall be deemed to be irregular by reason only of the fact that witness for the search are not inhabitants of the locality in which the place searched is situated.]

1. Substituted for the words and figures "Code of Criminal Procedure, 1898" by Act No. 32 of 1982, w.e.f. 4-9-1982.

2. Proviso inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

59. Security for appearance in case of arrest without warrant :-

(1) The State Government may, by notification, empower any Excise Officer to release on bail persons arrested under this Act, otherwise than on a warrant.

(2) When a person is arrested under this Act, otherwise than on a warrant, by a person or officer who is not authorised to release arrested persons on bail, he shall be produced before or forwarded to-

(a) the nearest Excise Officer who has authority to release arrested persons on bail; or

(b) the nearest officer in charge of the police station whoever is nearer.

(3) Whenever any person arrested under this Act, otherwise than on a warrant, is prepared to give bail, and is arrested by or produced in accordance with sub-section (2) before an officer who has authority to release arrested persons on bail, he shall be released on bail or at the discretion of officer releasing him; on his own bond.

(4) The provisions of ¹ [Sections 441 to 446 and Section 449 of the Code of Criminal Procedure, 1973] shall apply, so far as may be, in every case, in which bail is accepted or, bond taken under this section.

1. Substituted for the words and figures "Sections 499 to 502, Section 513, Section 514 and Section 515 of the Code of Criminal Procedure, 1898" by Act No. 32 of 1982, w.e.f. 4-9-1982.

59A. Certificate of Inspectors of Excise to be evidence :-

¹ Any document purporting to be a certificate under the hand of an Inspector of Excise who has undergone the prescribed training in the examination and analysis of intoxicants and materials and who

is authorised by the State Government in this behalf, in respect of any matter or thing submitted to him for examination or analysis and report may be used as evidence of the facts stated in such certificate, in any proceedings under this Act; but the Court may, if it thinks fit, and shall on the application of the prosecution or the accused person summon and examine any such Inspector of Excise as to the subject matter of his certificate.]

1. Section 59-A inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

60. Procedure for Prosecution :-

No Magistrate shall take cognizance of an offence punishable,

(a) under Section 35 or Section 38 except on the complaint or report of the Deputy commissioner or of an Excise Officer authorised by the Deputy Commissioner in this behalf; or

(b) under any other section of this Act other than Section 46 or Section 48, except on his own knowledge or suspicion or on the complaint or report of an Excise or Police Officer.

60A. Procedure to be followed by Magistrate :-

¹ In all trials for offences under this Act, the Magistrate shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 for the trial of summary cases in which an appeal lies:

Provided that if in respect of any case, the Magistrate for reasons to be recorded in writing, decides that it is not desirable to follow such procedure, he shall follow the procedure prescribed in Chapter XX or Chapter XXI of the said Code, according as the case is a summons case or a warrant case.]

1. Section 60-A inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

CHAPTER 9

Appeals and Revision

61. Appeals :-

(1) Any person aggrieved by an order passed by any officer other than the Excise Commissioner or the Deputy Commissioner under this Act may, within sixty days from the date of communication of such order, appeal to the Deputy Commissioner.

(2) Any person aggrieved by an order passed by the Deputy Commissioner under this Act, may, within ninety days from the

date of communication of such order, appeal to the Excise Commissioner.

(3) Any person aggrieved by an order passed by the Excise Commissioner under sub-section (2) may, within ninety days from the date of communication of such order, appeal to the Karnataka Revenue Appellate Tribunal.

(4) Subject to the foregoing provisions, appeals under this section, shall be subject to the rules which the State Government may make in this behalf.

62. Revision :-

The State Government may call for and examine the records of any proceedings before any officer including those relating to the grant or refusal of a licence, or permit, for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed in, and as to the regularity of such proceedings and may either annul, reverse, modify or confirm such order or pass such other order as it may deem fit:

Provided that no order shall be annulled, reversed or modified except after giving a reasonable opportunity of being heard to the person affected by that order.

CHAPTER 10

Miscellaneous

63. Recovery of Government dues :-

(1) The following moneys, namely:

(a) all excise revenue;

(b) any loss that may accrue when in consequence of default, a lease under Section 17 has been taken under management by the Deputy Commissioner, or has been re-sold by him; and

(c) of amounts due to the Government by any person on account of any contract relating to the excise revenue, may be recovered from the person primarily liable to pay the same or from his surety, if any, as if they were arrears of land revenue.

(2) When a lease has been taken under management by the Deputy Commissioner, or has been re-sold by him, the Deputy Commissioner may recover, in the manner authorised by sub-section (1), any money due to the defaulter by any lessee or

assignee.

64. Government lien on property of defaulters :-

In the event of default by any person licensed or holding lease under this Act, all his distillery, brewery or warehouse or shop or premises, fittings or apparatus, and all stocks of intoxicants or materials for the manufacture of the same held in or upon any distillery, brewery, warehouse or shop or premises, shall be liable to be attached in satisfaction of any claim for excise revenue, or in respect of any losses incurred by the State Government through such default and to be sold to satisfy such claim which shall be a first charge upon the sale proceeds.

65. Recovery of dues by lessee under Section 17 :-

Any person to whom a lease has been granted in accordance with the provisions of Section 17, may, in a case where sub-letting is not forbidden by the terms of the lease, proceed against any person holding under him for the recovery of any money due in respect of such sub-lease as if it were an arrear of rent recoverable under the law for the time being in force with regard to land-lord and tenant:

Provided that nothing in this section shall affect the right of any such grantee to recover any such money by a civil suit.

66. Refund in cases of exported liquor :-

Where excise duty has been levied in respect of the manufacture or production of any liquor in the State and such liquor is subsequently exported to any other State in India and is subjected to excise or countervailing duty in that State, the Excise Commissioner may on production of proof of such payment of duty, grant refund of duty already paid to such extent as the State Government may prescribe:

Provided that where the State Government so directs, the Excise Commissioner may, permit during such period or periods as may be specified in such direction, the export of any liquor on which excise duty is payable, on the furnishing of adequate security for payment of the excise duty due thereon; and, on production of proof of payment of countervailing duty on such liquor in any other State, give rebate to the extent prescribed under this section and collect the balance of the excise duty.

67. Power of State Government to exempt, etc :-

The State Government may, by notification, and subject to such

restrictions and conditions as may be specified in such notification,

(a) exempt or reduce ¹[whether prospectively or retrospectively] the excise duty levied under Section 22 ²[or the licence fee payable by or under this Act, in respect of any liquor sold],

(i) for use or consumption by the members of ³[the Armed Forces (including Para-Military Units)] of the Union; ⁴[x x x x x;]

(ii) for use for bonafide medicinal, Scientific, industrial or such like purpose; ⁵[or]

⁶[(iii) to any industrial concern or class or classes of industrial concerns;]

⁷ [(b) exempt, any intoxicant from any of the provisions of this Act, other than those of Chapter V, in any specified area or for any specified period or occasion.]

1. Inserted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f, 23-12-1969.

2. Substituted for the words "on any liquor sold" by Act No. 32 of 1982, w.e.f. 4-9-1982.

3. Substituted for the words "the Armed Forces" by Act No. 61 of 1976 and shall be deemed to have come into force w.e.f. 7-9-1976.

4. The word "or" omitted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

5. Added by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

6. Item (iii) inserted by Act No. 1 of 1970 and shall be deemed to have come into force w.e.f. 23-12-1969.

7. Clause (b) substituted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

68. Protection of action taken under this Act :-

No suit or other legal proceeding shall lie against the State Government or any Excise Officer or any other person empowered to exercise powers or to perform the functions under this Act for anything in good faith done or intended to be done under this Act.

68A. Suits or prosecution in respect of acts done under colour of duty not to be entertained without sanction of the State Government :-

¹ (1) In any case of alleged offence or of wrong alleged to have been done by any Excise Officer, by any act done under colour or in excess of any such duty or authority under this Act, or wherein it

shall appear to the court that offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained except with the previous sanction of the State Government.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrongdoer one month's notice atleast of the intended suit with sufficient description of the wrong complained of, failing which such suit shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if so, what tender or amends has been made by the defendant. A copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.]

1. Section 68-A inserted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

68B. Bar of jurisdiction of Civil Courts :-

¹ No Civil Court shall have jurisdiction in respect of any matter which any excise officer or other authority empowered by or under this Act has to determine and no injunction shall be granted by any Court in respect of any action taken or to be taken by such excise officer or authority in pursuance of any power conferred by or under this Act.

1. Sections 68-B to 68-D inserted by Act No. 2 of 1995, w.e.f. 25-2-1995.

68C. Injunction not to be granted in respect of recovery of excise dues :-

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Central Act V of 1908) or in any other law for the time being in force, no Court shall grant any permanent or temporary

(i) the recovery of any sum or fee or both levied in consideration of grant or lease of any exclusive or other right under this Act, or the rules made thereunder or any fee, duty or countervailing duty and including licence fee and litre fee or any other fee levied under this Act or the rules made thereunder;

(ii) the grant of any exclusive or other right under Section 17

(2) All interim orders issued or made by such Court whether in the nature of temporary injunction or otherwise, restraining any proceeding referred to in clauses (i) and (ii) of sub-section (1) which is being or about to be taken shall stand dissolved or vacated, as the case may be.

68D. Excise revenue to be paid irrespective of pendency of any Writ Petition, Suit, etc :-

Notwithstanding that a writ petition has been preferred before the High Court or a suit or other proceeding has been instituted in any Court or any appeal has been filed before any Court, the Karnataka Appellate Tribunal or the Excise Commissioner or a revision has been filed before the State Government, any sum due to the State Government under this Act as a result of demand or order made or passed by any officer or authority empowered in this behalf by or under this Act shall be payable in accordance with such demand or order.]

69. Limitation of suits :-

No suit shall lie against the State Government, or against an Excise Officer, other than a suit by the State Government, in respect of anything done or alleged to have been done in pursuance of this Act, unless the suit is instituted within six months from the date of the act complained of.

70. Offences by Companies etc :-

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is

attributable to any neglect on the part of any Director, Manager, Secretary, or other Officer of the company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section.

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director", in relation to a firm, means a partner in the firm.

71. Power to make Rules :-

(1) The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules,

(a) prescribing the powers and duties of Excise Officers;

1[(b) x x x x x;]

(c) prescribing the time and manner of presenting appeals and the procedure for dealing with appeals;

(d) regulating the import, export, transport, manufacture, cultivation, collection possession supply or storage of any intoxicant and may, by such rules, among other matters,

(i) regulate the tapping of toddy-producing trees, the drawing of toddy from such trees, the marking of the same, and the maintenance of such marks;

(ii) declare the process by which spirit shall be denatured and the denaturation of spirit ascertained; and

(ii) cause spirit to be denatured through the agency or under the supervision of its own Officers;

(e) regulating the periods and localities in which, and the persons or classes of persons to whom, licences for the wholesale or retail sale of any intoxicant may be granted and regulating the number of such licences which may be granted in any local area;

(f) prescribing the procedure to be followed and the matters to be

ascertained before any licence for such sale is granted for any locality;

(g) regulating the time, place and manner of payment of any duty or fee and the taking of security for the due payment of any duty or fee;

(h) prescribing the authority by which, the form in which and the terms and conditions on and subject to which any licence or permit shall be granted, and may, by such rules, among other matters,

(i) fix the period for which any licence or permit shall continue in force;

(ii) prescribe the scale of fees, or the manner of fixing the fees payable in respect of any lease, licence or permit, or the storing of any excisable article;

(iii) prescribe the amount of security to be deposited by the holders of any licence or permit for the performance of the conditions of the same;

(iv) prescribe the accounts to be maintained and the returns to be submitted by licence holders;

(v) prohibit or regulate the transfer of licences; and

(vi) prescribe the ages under which it shall be unlawful to employ children and to sell or give to children excisable articles;

(i) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use;

(j) regulating disposal of confiscated articles;

(k) regulating the grant of expenses to witnesses and to persons charged with offences under this Act, and subsequently released or acquitted;

(l) regulating the power of Excise Officers to summon witnesses;

(m) prescribing the rent payable to the Government in respect of ² [excise trees] from which toddy is drawn;

(n) any other matter that may be prescribed under this Act.

(3) A rule under this Act may be made ,with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement laid before both Houses of the State

Legislature. Subject to any modification made under sub-section (4), every rule made under this Act shall have effect as if enacted in this Act.

(4) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the sessions immediately following, both houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

1. Clause (b) omitted by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

2. Substituted for the words "toddy trees" by Act No. 1 of 1971 and shall be deemed to have come into force w.e.f. 7-8-1970.

72. Repeal and Savings :-

The following enactments, namely:

(a) The Mysore Excise Act, 1901 (Mysore Act V of 1901);

(b) The Abkari Act, 1316 F. (Hyderabad Act 1 of 1316 F) and the Intoxicating Drugs Act, 1333 F, (Hyderabad Act IV of 1333 F);

(c) The Madras Abkari Act, 1886 (Madras Act 1 of 1886), shall stand repealed:

Provided that Section 6 of the Mysore General Clauses Act, 1899 (Mysore Act 3 of 1899) shall be applicable in respect of such repeal, and Section 8 and Section 24 of the said Act shall be applicable as if the said enactments were enactments within the meaning of the said Act and had been repealed and reenacted by this Act.