

THE BENGAL EXCISE ACT, 1909

[Bengal Act V of 1909]

8th September, 1909.

An Act to consolidate and amend the Excise Law in Bengal.

Whereas it is expedient to consolidate and amend the law in Bengal relating to the import, export, transport, manufacture, possession and sale of intoxicants;

And whereas, the Acts mentioned in Part I of the Schedule having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained under Section 5 of the Indian Councils Act, 1892,
to the passing of this Act :

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Bengal Excise Act, 1909:

(2) It extends to the whole of Bengal; and

(3) It shall come into force on such date as the State Government may, by notification direct.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context:—

(1) "Beer" includes ale, stout, porter and all other fermented liquor whether solidified or not, made from malt and such other substances as the State Government may, by notification, specify in this behalf ;

(2) "Bengal" means the Metropolitan of Fort William in Bengal;

(3) to "bottle" means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not, and includes re-bottling:

(4) "Calcutta district" means—

(a) the area within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal;

(b) the suburbs of Calcutta, as for the time being defined by notification published under Section 1 of the Calcutta Suburban Police Act, 1866 ;

(c) any other areas, in the vicinity of those referred to in sub-clauses (a) and (b), which the State Government may, by notification, declare to be included in the "Calcutta district" :

Provided that the State Government may by notification, declare to be excluded from the "Calcutta district" any area or any part of any area included therein under sub-clause (a), sub-clause (b) or sub-clause (c);

(5) *Collector means*—

(i) in the Calcutta district, the person appointed under section 7, sub-section (2), clause (b) to exercise all the powers and to perform all the duties of the Collector in that district, and

(ii) elsewhere, the chief, officer in charge of the revenue administration of a district;

(6) "denaturant" means any substance prescribed by rule made in this behalf under clause (3) of section 86, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or any other way whatsoever :

(6A) to "denature" means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 86, and "denatured spirit" means spirit so mixed :

(7) "excisable article" means—

(a) any liquor for human consumption, or

(b) any intoxicating drug but does not include medicinal preparations or toilet preparations containing alcohol or any intoxicating drug;

Explanation.—In this clause the expressions "medicinal preparations or toilet preparations" and "toilet preparations" have the same meaning respectively as in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (XVI of 1955):

(7A) "excise duty" and "countervailing duty" means any such excise duty or countervailing duty, as the case may be, as is mentioned in item 40 of list 11 in the seventh schedule to the Government of India Act, 1935 :

(8) "Excise Commissioner" means the officer appointed under section 7, sub-section (2), clause (a);

(9) "Excise officer" means the Collector or any officer or other person appointed or invested with powers under section 7 ;

[10] "Excise revenue" means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to intoxicants ;

[11] "export" means to take out of Bengal otherwise than across a customs frontier as defined by the Central Government;

[12] "import" means to bring into Bengal otherwise than across a customs frontier as defined by the Central Government;

[12A] "intoxicant" means—

[i] any liquor, or

[ii] any substance from which liquor may be manufactured and which is declared by the State Government by notification to be an intoxicant for the purpose of this Act, or

[iii] any intoxicating drug ;

[13] "intoxicating drug" means—[i] the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa L*), including all forms known as *bhanga*, *siddhi* or *ganja* ;

[ii] *char as*, 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 or any fermenting agent which the State Government may specify in this behalf by notification, such substance or agent not being opium, coca-leaf or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930 (now see the Narcotic Drugs and Psychotropic Substances Act, 1985) ;

[14] "liquor" means liquid consisting of or containing alcohol, and includes spirit of wine, spirit, wine, *tari*, *pachwai*, beer and any substance which the State Government, by notification, declare to be liquor for the purposes of this Act;

Explanation.—In this clause "spirit of wine" means plain spirit of or above such strength as the State Government may by notification, specify ;

[15] "manufacture" includes—

[i] every process, whether natural or artificial, by which any intoxicant is produced or prepared (including the tapping of *tari* producing trees and the drawing of *tari* from trees);

[ii] Re-distillation: and

[iii] every process for the rectification, flavouring, blending or colouring of liquor, or for the reduction of liquor, for sale ;

[15A] "notification" means a notification published in the official Gazette :

[16] "*pachwai*" means fermented rice, millet or other grain, whether mixed with any liquid or not, and any liquid obtained therefrom, whether diluted or undiluted, but does not include beer;

[17] "place" includes building, house, shop, booth, vessel,, raft, vehicle and tent ;

[18] expressions referring to 'sale' include any transfer otherwise than by way of gift ;

[19] "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not ;

[20] "*tari*" means fermented or unfermented juice drawn from any cocoanut, palmyra, date or other kind of palm tree and

[21] "transport" means to remove from one place to another within Bengal.

3. Repealed by the Dangerous Drugs Act, 1930.

4. Power to declare what shall be deemed to be "country liquor" and foreign liquor" respectively.—The State Government may, by notification declare what, for the purposes of this Act or any portion thereof, shall be deemed to be 'country liquor' and "foreign liquor" respectively.

5. Definition of retail and wholesale—(1) The State Government may by notification, declare with respect either to the whole of Bengal or to any specified local area, and as regards purchasers generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any intoxicant shall, for the purposes of this Act, be the limit of retail sale.

(2) The sale of any intoxicant in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a sale by wholesale.

6. Saving of certain Acts.—(1) Nothing contained in this Act shall affect the provisions of—

- (a) the Calcutta Suburban Police Act, 1866, or
- (b) the Calcutta Police Act, 1866, or (c) the Customs Act, 1962, or
- (d) The Cantonments Act, 1962, or
- (e) The Indian Tariff Act, 1934. Sub-sec. (2) Omitted by Act 34 of 1965.

CHAPTER II

Establishment, Control, Appeal and Revision

7. Establishment and delegation and withdrawal of powers.—

(1) The administration of the provisions of this Act and the rules thereunder and the collection of the excise revenue within a district shall ordinarily be under the charge of the Collector.

(2) The State Government may, by notification, applicable to the whole of Bengal or to any specified local area,—

(a) appoint an officer who shall, subject to such control as the State Government may direct, have the control of the administration of the provisions of this Act and the rules thereunder and the collection of the excise revenue ;

(aa) appoint one or more persons to be an Additional Excise Commissioners or Additional Commissioners to exercise such powers and perform such duties conferred on the Excise Commissioner by or under this Act as the State Government, may,' by notification, direct and references to the Excise Commissioner in this Act shall in respect of such powers and duties, be deemed to include references to an Additional Excise Commissioner;

(b) appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed on a Collector by or under the Act either concurrently with, or in subordination to, or to the exclusion of, the Collector, and subject to such control as the State Government may direct;

(c) appoint officers for the administration of the provisions of this Act and the rules thereunder, of such classes and with such designation, powers and duties, as the State Government may think fit;

¹ [(cc) appoint scientific experts designated as State Chemical Examiner or State Assistant Chemical Examiner];

(d) order that all or any of the powers and duties assigned by or under this Act or any officer appointed under clause (c) of this sub-section shall be exercised and performed by any servant of the Government or any other person;

(e) delegate to the Commissioner of a Division or the Excise Commissioner all or any of the powers conferred upon the State Government by or under this Act, except the power conferred by section 85 to make rules ;

(f) withdraw from any officer or person all or any of the powers or duties conferred or imposed upon him by or under this Act; and

(g) permit the delegation by the Commissioner of a division, the Excise Commissioner or the Collector to any persons or class of persons specified in

¹ Added by Bengal Excise (Second Amendment) Act,. 1979 (XL of 1979).

such notification, of any powers conferred or duties imposed upon him by or under this Act.

8. Control, appeal and revision.—(1) In doing anything or taking any action under this Act,—

(a) the Collector shall be subject to the control of the Excise Commissioner and of the State Government and, in such matters as the State Government may direct, also of the Commissioner of the Division ; and

(b) the Excise Commissioner shall be subject to the control of the State Government.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rules under section 85, sub-section (2), clause (c).

(3) The State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division or by any officer exercising the powers of an appellate authority under any rule made under section 85, sub-section (2), clause (c).

8 A. Correction of errors.—*Clerical* and arithmetical errors in any order passed under this Act or errors arising therein from any accidental slip or omission may at any time be corrected by the officer by whom or the authority by which the order was passed.

CHAPTER III

Import, Export and Transport

9. Restrictions on import.—No intoxicant shall be imported

(a) the State Government has given permission either general, or special, for its import:

(b) such conditions (if any) as the State Government may impose have been satisfied : and

(c) duty (if any) payable under Chapter V has been paid or a bond has been executed for the payment thereof :

Provided that the State Government may, subject to such conditions (if any) as it thinks fit to impose, exempt any intoxicant from the provisions of this sub-section.

Sub-sections (2) and (3) omitted by Act 34 of 1965.

10. Restriction on export or transport.—No intoxicant shall be exported or transported unless—

(a) the duty (if any) payable under Chapter V has been paid, or a bond has been executed for the payment thereof and

(b) such conditions (if any) as the (State Government may impose, have been satisfied
Provided that the State Government may, subject to such conditions (if any) as it thinks fit to impose, exempt any intoxicant from the provisions of this section.

11. Power to prohibit import, export or transport .—The State Government may by notification,—

(a) prohibit the import or export of any intoxicant into or from Bengal or any part thereof, or

(b) prohibit the transport of any intoxicant either absolutely or in such circumstances as it may, by notification, specify.

12 Passes for import, export or transport.—(1) No intoxicant exceeding such quantity as the State Government prescribe by notification either generally or for any specified local area shall be imported, exported or transported, except under a pass.

(2) The passes required by sub-section (1) may be granted by the Collector.

(3) Such passes may be either general for definite periods and particular kinds of intoxicants, or special for specified occasions and particular consignments only.

CHAPTER IV

Manufacture, Possession and Sale

13. Licence required for manufacture.—(a) No intoxicant shall be manufactured,

(b) no hemp plant (*Cannabis sativa*) shall be cultivated,

(c) no portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced shall be collected,

(d) no liquor shall be bottled for sale,

(e) no distillery or brewery shall be worked, and

(f) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than *tari*, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector :

Provided that any *tari* producing tree may be tapped, *tari* may be drawn from any tree, without a license under this section by the person in possession of the tree—

(i) for the purpose of being used in the manufacture of *gur* or molasses, or

(ia) for the purpose of being used solely for the preparation of food for domestic consumption, and—

- (I) as an intoxicant, or
- (II) for the preparation of any intoxicating article, *or*
- (III) for the preparation of any article for sale, or
- (ii) upto a limit of four litres, for the domestic consumption of the said person.

14. *Drawing or possession of tari in notified areas.*—Notwithstanding anything elsewhere contained in this Act, in any area specified by the State Government by notification in this behalf, -

- (a) no tari producing tree shall be tapped,
- (b) no *tari* shall be drawn from any tree, and
- (c) no person shall have any *tari* in his possession, except under and in accordance with the terms and conditions of a notification issued in this behalf by the State Government or a license granted in that behalf by the Collector.

15. *Establishment of distilleries, breweries, or warehouse.*— (1) The Excise Commissioner may—

- (a) subject to any restrictions imposed by the State Government establish, or authorise the establishment of distilleries or breweries in which liquor may be manufactured under a license granted under section 13 :
- (b) discontinue any such distillery or brewery ;
- (c) establish, or authorise the establishment of warehouses wherein any intoxicant in respect whereof duty payable under section 27 or permit or pass or fee payable under section 38 has not been paid, may be deposited or kept: and
- (d) discontinue any such warehouse.

(2) No distillery, brewery or warehouse as aforesaid shall be established except by, or under the authority of the Excise Commissioner.

16. *License required for depositing or keeping intoxicant in warehouse or other place of storage.*—No person shall, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector, deposit or keep any intoxicant in any warehouse or other place of storage established, authorised or continued under this Act.

17. *Payment of duty on removal from distillery, brewery* warehouse or other place of storage.*—No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorised or continued under this Act, unless the duty or fee (if any) payable under Chapter V or Chapter VI has been paid or a bond has been executed for the payment thereof.

18. Possession of intoxicants not obtained from a licensed vendor.—(1) No person shall have in his possession any intoxicant which has not been obtained from a licensed vendor of the same.

(2) Sub-section (1) shall not apply to—

(a) any intoxicant lawfully deposited or kept in a distillery,, brewery, warehouse or other place of storage licensed, established, authorised or continued under this Act, or

(b) any intoxicant lawfully in the possession of a licensed vendor of the same, or

(c) any intoxicant in the possession of a person who has lawfully imported it or who is authorised by the Collector to possess it, or

(d) any foreign liquor in the possession of common carrier or warehouseman as such or purchased at a sale authorised by clause (a) of proviso (3) to section 20, or

(e) *tari* intended to be used in the manufacture of *gur* or molasses, or

(f) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or

(ff) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—

(i) as an intoxicating article, or

(ii) for the preparation of any article for sale, or

(g) *tari*, up to a limit of four litres, when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or

(h) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which drugs were produced, when such possession is in accordance with the conditions of his license.

19. Possession of intoxicants generally.—(1) No person not being licensed to manufacture, cultivate, collect or sell any intoxicant shall have in his possession any quantity of any intoxicant in excess of such quantity as the State Government has under section 5 declared to be the limit of a retail sale except under a permit granted by the Collector in that behalf.

(2) Save as the State Government may by rule made under section 85 otherwise provide, sub-section (1) shall not apply to,—

- (a) any foreign liquor (other than denatured spirit) which *is* in the possession of any common carrier or warehouseman as such, or
- (b) any foreign liquor which has been purchased by any person for his bonafide private consumption and not for sale, or
- (c) *tari* intended to be used in the manufacture of *gur* or molasses, or
- (d) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—
 - [i] as an intoxicating article, or
 - [ii] for the preparation of any intoxicating article, or
 - [iii] for the preparation of any article for sale.

(3) A person licensed to manufacture, cultivate, collect or sell any intoxicant shall not have in his possession at any place other than that authorised by his license any quantity of any intoxicant in excess of such quantity as the State Government has under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

(4) Notwithstanding anything contained in the foregoing sub-sections, if the State Government thinks fit so to do on the ground of health, morality or public order, it may, by notification, prohibit, either absolutely or subject to such conditions as it may prescribe, the possession in the whole of West Bengal or in any specified local area of any intoxicant by all persons generally or by any specified classes of persons.

20. License required for sale.—No intoxicant, and no portion of the hemp plant, (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and in accordance with the terms and conditions of a licence granted in that behalf by the Collector subject to the provisions of section 37A : Provided as follows :—

(1) a license for sale in more than one district shall be granted only by the Excise Commissioner or by a Collector specially authorised in that behalf by the Excise Commissioner ;

(1A) a licence for sale granted under the Excise Law in force in any other State may, on such conditions as may be determined by the Excise Commissioner, be deemed to be a license granted under this Act;

(2) a cultivator or owner of any hemp plant (*Cannabis sativa*) may sell, without a license those portions of the plant from which an intoxicating drug can be manufactured or pro-

duced, to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorise to purchase or receive the same ;

(3) no license shall be required for any of the following sales, namely :—

[a] the sale of foreign liquor lawfully procured by any person for his private use when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease,

[b] the sale of *tari* lawfully possessed by a person in possession of the tree from which it was drawn to a person licensed under this Act to manufacture or sell *tari*,

[c] the sale of *tari* lawfully possessed and intended to be used in the manufacture of *gur* or molasses, or

[d] the sale of *tari* lawfully possessed and intended to be used in the manufacture of bread to a person holding a permit to use *tari* for the purpose of making bread, or

[e] the sale of *tari* lawfully possessed and intended to be used solely for the preparation of food for domestic consumption and not—

(i) as an intoxicating article, or

(ii) for the preparation of any intoxicating article, of

(iii) for the preparation of any article for sale.

21. Manufacture and sale of liquor in or near cantonments. —Within the limits of any military cantonment, and within such distance from those limits as the Central Government may in any case prescribe, no license for the manufacture or sale of liquor shall be granted except with the previous consent of the Commanding Officer.

22. Grant of exclusive privilege of manufacture and sale, of country liquor or intoxicating drugs.-(1) The State Government may grant to any person on such conditions and for such period as it may think fit the exclusive privilege-

(a) of manufacturing, or supply by wholesale, or

(b) of manufacturing, and supplying by wholesale, or

(c) of selling, by wholesale or retail, or

(d) of manufacturing or supplying by wholesale and selling: retail, or

(e) of manufacturing and supplying by wholesale and selling retail, any country liquor or intoxicating drug within any-specified local area :

Provided that public notice shall be given of the intention to grant any such exclusive privilege and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted.

(2) No grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector or the Excise Commissioner.

23. Transfer of exclusive privilege.—(1) A grantee of an exclusive privilege under section 22 shall not let or assign the same or any portion thereof unless he is expressly authorised by a condition made under that section to do so.

(2) Such letting or assignment shall be made only to a person approved by the Collector or (if the letting or assignment extends to more than one district), the Excise Commissioner.

(3) The lessee or assignee shall not exercise any right as such unless and until the Collector has upon his application, granted him a license to do so.

24. Maintenance and use of measures, weights and instruments by licensed manufacturers and vendors—Every person who manufactures or sells an intoxicant under a license granted under this Act—

(a) shall supply himself with such standard measures, standard weights, measuring instruments and weighing instruments, duly stamped and verified in accordance with the provisions of the "West Bengal Standards of Weights and Measures (Enforcement) Act, 1958, (23 of 1958), and such other instruments as the Excise Commissioner may prescribe and shall keep the same in good condition, and

(b) when such measures, weights and instruments have been so prescribed, shall, on the requisition of any officer referred to in clause (a), clause (b) or clause (c) of section 66, measure, weigh or test any intoxicant in his possession, at such time and in such manner as such officer may require.

25. Employment of children or women by licensed vendors.—

(1) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed either with or without remuneration any person under the age of twenty-one years, in any part of such premises in which such liquor or spirit is consumed by the public.

(2) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration any woman, in any part of such premises in which such liquor or spirit is consumed by the public Sub-Sees.

(3) and (4) omitted by Act 34 of 1965.

26. Power to close shops temporarily.—(1) The District Magistrate, or a Sub-divisional Magistrate, or (in Calcutta) the ²[Chief Metropolitan Magistrate] or the Commissioner of Police may, by notice in writing, to the licensee require that any shop in which any intoxicant is sold, shall be closed at such times or for such period as such Magistrate or Commissioner of Police may think necessary for the preservation of the public peace.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any intoxicant is sold, any Magistrate, or any police officer above the rank of constable, who is present, may require such shop to be kept closed for such period as he may think necessary.

(3) When any Magistrate or police officer makes a direction under sub-section (1) or sub-section (2) he shall forthwith inform the Collector of his action and his reason therefor.

CHAPTER V

Duty

27. Power to impose duty on import, export, transport, and manufacture.—(1) An excise duty or a countervailing duty as the case may be, at such rate or rates as the State Government may direct may be imposed, either generally or for any specified local area, on—

- (a) any excisable article imported, or
- (b) any excisable article exported, or
- (c) any excisable article transported, or
- (d) any excisable article other than *tan* manufactured under any license granted in respect of clause (a) of section 13, or
- (e) any hemp plant [*Cannabis sativa*] cultivated, or any portion of such plant collected, under any license granted in respect of clause (b) or clause (c) of section 13, or
- (f) any excisable article manufactured in any distillery or brewery licensed, established, authorised, or continued under this Act.

Explanation.—Duty may be imposed on any article under this sub-section at different rates according to the purposes for which such article is intended to be used, according to the Places to which such article is to be removed for consumption or according to the varying strengths and quality of such article.

² Substituted by the Bengal Excise (Amendment) Act, 1983 (38 of 1983).

(2) A duty, at such rate or rates at the State Government may direct may be imposed, either generally or for any specified local area on any *tari* drawn under any license granted under section 14.

Sub-section (3¹) Omitted by Bengal Excise (Amendment) Act, 1979 (XII of 1979).

28 Ways of levying such duty.—Subject to any rules made under section 86, clause (1), any duty imposed under section 27 may be levied in any of the following ways :—

- (a) on an excisable article imported,—
 - (i) by payment (upon or before importation) in Bengal or in the State or territory from which the article is brought, or
 - (ii) by payment upon issue for sale from a warehouse established, authorised or continued under this Act;
- (b) on an excisable article exported, by payment in Bengal or in the State or territory to which the article is sent:
- (c) on an excisable article transported—
 - (i) by payment in the district from which the article is sent, or
 - (ii) by payment upon issue for sale from a warehouse established, authorised or continued under this Act :
- (d) on intoxicating drugs manufactured, cultivated or collected—
 - (i) by a rate charged upon the quantity manufactured under a license granted in respect of the provision of section 13, clause (a) or issued for sale from a warehouse established, authorised or continued under this Act, or
 - (ii) by a rate assessed on the area covered by or on the quantity or outturn of, the crop cultivated or collected under license granted in respect of the provision of section 13, clause (b) or clause (c),
- (e) on spirit or beer manufactured in any distillery or brewery licensed, established, authorised or continued under this Act—
 - (i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorized or continued under this Act, or
 - (ii) in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or worth, as the case may be, as the State Government may prescribe, and

(f) on *tari* drawn under a license granted under section 14, sub-section (1) by a tax on each tree from which the drawing of *tari* is permitted :

Provided that, where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of such article from such warehouse :

Provided also that no tax shall be levied in respect of any tree from which *tari* is drawn only for the manufacture of *gur* or molasses and under such special conditions as the Excise Commissioner may prescribe.

29. Payment for grant of exclusive privilege.—Instead of, or in addition to, any duty leviable under this Act, the State Government may accept payment of a sum in consideration of the grant of any exclusive privilege under section 22.

29A. Saving for duties being levied at commencement of the Constitution.—(1) Until provision to the contrary is made by Parliament, the State Government may continue to levy any duty to which this section applies, which it was lawfully levying immediately before the commencement of the Constitution under this Chapter as then in force.

(2) The duties to which this section applies are—

(a) any duty on intoxicants which are not excisable articles within the meaning of this Act,

(b) any duty on an excisable article produced outside India and imported into the State whether across a customs frontier as defined by the Central Government or not,

(c) any duty on medicinal or toilet preparations containing alcohol.

(3) Nothing in this section shall authorise the levy by the State Government- of any duty which, as between goods manufactured or produced in the State and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the State, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

CHAPTER VI

Licences, Permits and Passes

30. Preparation of list of places for which it is proposed to grant licenses for the retail sale of spirit.—Before the expiration of every period for which existing licenses for the retail sale of spirit are in force, the Collector shall prepare a list, in a form prescribed

by the Excise Commissioner, showing what licenses it is proposed to grant for the retail sale of spirit, for consumption on the vendor's premises for the next period of settlement.

31. Publication of such list.—(1) The Collector shall— (a) cause to be conspicuously affixed upon the site of each shop referred to in the said list a notice to the effect that it is proposed to grant a licence for the retail sale thereat, or in the vicinity, during the next period of settlement, of spirit for consumption on the vendor's premises ;

(b) if any site referred to in the said list is not at the time used for the retail sale of spirit for consumption on the vendor's premises, cause a notice, to the effect that it is proposed to grant a license for the retail sale thereat, or in the vicinity, during the next period of settlement, of spirit for consumption on the vendor's premises to be proclaimed in the locality by beat of drum or in such other manner as the Collector may think fit;

(c) send to the Chairman of each Municipality or in Calcutta, to the Commissioner of the Corporation of Calcutta, an extract reproducing so much of the said list as relates to shops in the Municipality or in Calcutta, as the case may be ; and

(d) cause the said list or any portion thereof, to be published in such other methods (if any) as maybe prescribed by rule made under section 85, sub-section (2), clause (j)-

(2) When an extract is sent to the Chairman of any Municipality or to the Commissioner . of the Corporation of Calcutta under clause (c) of sub-section (1) he shall—

(i) cause a copy of the extract to be conspicuously affixed at the central office of the Municipality concerned or of the Corporation of Calcutta, as the case may be ; and

(ii) send to each member of each Ward Committee (if any) a copy of so much of the extract as relates to shops situated in his Ward.

32. Time for preparation and -publication of such list.—The list mentioned in section 30 shall be prepared and shall be published under section 31, at such time as may be prepared by rule made in this behalf under section 85, sub-section (2), clause (j).

33. Submission of objections and opinions to Collector.—(1) Objections to any proposal contained in any list prepared under section 30 may be received at any time prior to the date prescribed by rule made in this behalf under section 85, sub-section (2), clause (j), from—

(a) persons residing'—

(i) in any municipality to which proposal relates or if any such municipality is divided into Wards, in the Ward to which such proposal relates or in any Ward adjoining such Ward ; or

(ii) in any Ward of Calcutta to which such proposal relates or in any Ward adjoining such Ward, or

(b) in the case of shops not situated in Calcutta or in any Municipality, persons owning or occupying land or residing in the vicinity of the shop to which such proposal relates ; or

(c) the District Magistrate.

(2) Such objections must be submitted to the Collector provided that in any Municipality or in Calcutta, they may, at the option of the objector, be submitted to the Chairman of the Municipality or to the Commissioner of the Corporation of Calcutta, as the case may be.

(3) Every Chairman of a Municipality or the Commissioner of the Corporation of Calcutta to whom an extract has been sent under section 31, sub-section (1) clause (c) shall send to the Collector by a date prescribed by rule made in this behalf under section 85, sub-section (2) clause (j)—

(i) all objections (if any) to proposals contained in the extract which may be received by the Chairman, or the Commissioner of the Corporation of Calcutta, as the case may be, before that date, and

(ii) any opinion which in the case of the Corporation of Calcutta, the Commissioner or, in the case of a Municipality, the Chairman of the Municipal Commissioners may wish to record on the said proposals.

34. Grant of license by Collector and submission of list, objections and opinions of Excise Commissioner.—(1) After the date prescribed for the receipt of objections and opinions submitted under section 33, the Collector shall consider the same, and shall, if necessary, revise the said list, and shall decide for what places licenses for the retail sale of spirit shall be granted, and may, subject to the provisions of section 37A, grant licenses accordingly.

(2) The Collector shall then forthwith submit the said list as so revised and the said objections and opinions and his own opinion,—

(a) in the case of shops outside the Calcutta district to the Commissioner of the Division for transmission to the Excise Commissioner, and

(b) in the case, of shops in the Calcutta district, to the Excise Commissioner.

(3) The Commissioner of the Division shall consider the list, objections and opinion sent' to him, and shall forward them with his own opinion and, recommendations, (if any), to the Excise Commissioner.

35. Finality of decision of Excise Commissioner or State Government.—The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by the Collector ; and subject to the provisions of sections 8, his order shall be final:

Provided that, if there be any difference of opinion between—

(a) the Excise Commissioner ; and

(b) the Commissioner of a Division, the Commissioner of the Corporation of Calcutta or the Corporation of Calcutta (if the opinion of the said Corporation referred to in clause (ii) of sub-section (3) of section 33 has been red brded at a meeting of the Corporation), the matter shall be referred by the Excise Commissioner to the State Government whose decision shall be final.

35A. Definition.—In sections 31, 33 and 35, the expression "Calcutta" has the meaning attached to it in clause (11) of section 5 of the Calcutta Municipal Act, 1951 (W. Bengal Act 33 of 1951) but does not include any area included within Calcutta under the provisions of section 592 or section 594 of that Act.

36. Application of sections 30 to 35 to licenses for retail sale of intoxicants other than spirit.—The provisions of sections 30 to 35 as to licenses'for the retail sale of spirit shall apply also in respect of licenses for the retail sale in West Bengal generally or in any local area as may be specified, in any order made by the State Government in this behalf, or any other intoxicant specified in such order.

36A. Omitted by the Bengal Excise (Amendment) Act, 1979 (XII of 1979).

37. Exemption of certain licenses from sections 30 to 36.—Sections 30 to 36 shall not apply in the case of any license which it is proposed to grant—

(a) to any person, for retail sale of any intoxicant during any period not exceeding six months ;

(b) to any person, for the sale of any denatured spirit; or

(c) to any person, for the retail sale of any intoxicant in substitution for and for the remainder of the period of a license which has been cancelled, withdrawn or surrendered before the expiration of the period for which it Was granted, or which has lapsed on the death of the person to whom it was granted ; or

(d) to any medical practitioner, chemist, druggist, apothecary, or keeper of a dispensary, for the retail sale of any intoxicant for medicinal purposes.

37A. Selection of, persons to whom licences may be granted.—(1) Before granting a license for the sale of an intoxicant other than a license referred to in sub-section (2) of section 22, the Collector shall select, in such manner and subject to such restrictions as the State Government may prescribe, a person to whom such license may be granted.

(2) Omitted by Bengal Excise (Amendment) Act, 1979 (XII of 1979).

38. Fees for terms, conditions and form of, and duration of licenses, permits and passes.—(1) Every license, permit or pass granted under this Act—

(a) shall be granted—

(i) on payment of such fees (if any) as the State Government may fix, and

(ii) subject to such restrictions and on such conditions as the State Government may impose, and

(b) shall be in such form and contain such particulars as the State Government may direct.

(2) Every license, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rules made by the State Government under section 85, sub-section (2), clause (e).

39. Rep. by the Bengal Excise (Amendment) Act, 1944 (Ben. Act VII of 1944), sec. 14.

40. Counterpart agreement by licensee, and security or deposit.—Any authority granting a license under this Act may require the grantee to execute a counterpart agreement in conformity with the tenor of his license, and to give such security for the performance of such agreement, or to make such deposit in lieu of security as such authority may think fit.

41. Technical defects, irregularities and omissions.—(1) No licence granted under this Act shall be deemed to be invalid by

reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof. (2) The decision of the Excise Commissioner or (where a reference is made to the State Government under section 35), the State Government's decision as to what is a technical defect, irregularity or omission, shall be final.

42. Power to cancel or suspend license, permit or pass.—(1) Subject to such restrictions as the State Government may prescribe, by rule made section 85, sub-

section (2), clause (i) the authority who granted any license, permit or pass under this Act may cancel or suspend it—

(a) if it is transferred or sublet by the holder thereof without the permission of the said authority : or

(b) if any duty, tax or fee payable by the holder thereof be not duly paid ; or

(c) 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 or conditions thereof; or

(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence or of any offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985, or under the Trade and Merchandise Marks Act, 1958 (43 of 1958) or under any of the sections 479 to 489 of the Indian Penal Code (45 of 1860), or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955) ; or

³ [(e) if the holder thereof is subjected to any penalty under Chapter XIV of the Customs Act, 1962 ; or]

(f) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege under section 22 on the requisition in writing of such holder ; or

(g) if the conditions of the license, permit or pass provide for such cancellation or suspension at will.

(2) When a license, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), clause (d) or clause (e) of sub-section (1), the authority aforesaid may cancel any other licence, permit or pass granted to such person by, or by the authority of the State Government under this Act, or under any other law for the time being in force relating to excise or under the Narcotic Drugs and Psychotropic Substances Act, 1985.

(3) The holder of a license, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this section, or to the refund of any fee paid or deposit made in respect thereof.

43. *Power to withdraw license, etc.*—(1) Whenever the authority which granted any license, permit or pass under this Act considers that the license, permit or pass should

³ Substituted by the Bengal Excise (Amendment) Act, 1983" (38 of 1983).

be withdrawn for any cause other than those specified in section 42, it may, subject to such restrictions (if any) as the State Government may prescribe by rule under sec. 85, withdraw the license, permit or pass either—

- (a) on the expiration of fifteen days' notice in writing of its intention to do so, or
- lb) forthwith, without notice, after recording its reasons in writing for doing so.

(2) When a license, permit or pass is withdrawn under subsection (1), there shall be paid to the holder of the license, permit or pass, as the case may be, the amount (if any) deposited as security or in advance as fees in respect of the unexpired period of the license, permit or pass together with compensation amounting to fifteen days' average fees payable in respect of the license, permit or pass calculated in the manner specified in sub-section (3):

Provided that where a license, permit or pass is withdrawn without notice, the amount of such compensation shall be twice the amount of such average fees.

(3) The amount of fifteen days' average fee referred to in sub-section (2) shall be calculated in the following manner, that is to say,—

- (i) where the fees in respect of the license, permit or pass have been fixed by auction, the amount of fifteen days' average fees shall bear to the total amount of fees so fixed the same proportion as the period of fifteen days bears to the total period of the license, permit or pass ; and
- (ii) in other cases the amount of fifteen days average fees shall bear the average for fifteen days of the fees actually paid in respect of the license, permit or pass during a period of three months or during the actual period whichever is less immediately preceding the withdrawal of the license, permit or pass.

44. Surrender of license.—(1) Any holder of a license granted under this Act to sell an intoxicant may, unless his license is liable to cancellation or suspension under section 42, surrender the same on—

- (i) the expiration of a period of three months, or such shorter period as the Collector may allow, after giving to the Collector a notice in writing of his intention so to do ; and
- (ii) payment of the fees payable for the license for the whole 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 license, he may remit to the holder thereof the sum sq payable on surrender, and any fees paid in advance, or any portion of such sum or fees.

(2) Sub-section (1) shall not apply in the case of a license for the sale of any country liquor or intoxicating drug in the exercise of an exclusive privilege granted under section 22.

Explanation.—The words 'holder of a license' as used in this section include a person whose tender or bid for a license has been accepted, although he may not actually have received the license.

44A. Bar to right of renewal and to compensation.—No person to whom a license or permit has been granted under this Act shall have any claim to the renewal thereof or save as provided in section 43, any claim to compensation on the determination thereof.

CHAPTER VII

Departmental Management or Transfer.

45, Power, of Collector to take grants under management, or to transfer them.—If any holder of a license granted under this Act, or any person to whom an exclusive privilege has been granted under section 22, contravenes any provisions of this Act or any rule made thereunder, or makes default in complying with any condition imposed upon him by such license or privilege, or if any holder of a license granted under this Act surrenders the same under section 44, the Collector may (in the case of a license, after the cancellation or surrender thereof, and, in the case of an exclusive privilege, at any time)—

(a) take the grant under management, at the risk and loss of the person to whom it was made, or

(b) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any another person.

CHAPTER VIII

Offences and Penalties.

⁴ **[46. Penalty for unlawful import, export, transport, manufacture, etc. of intoxicant other than spirit or intoxicating drug and collecting or selling hemp, bottling liquor and removing intoxicant, etc]**—Whoever in contravention of this Act, or any rule, notification or order made, issued or given, or licence, permit or pass granted under this Act,—

⁵[(a) manufactures intoxicant (including bakhar but excluding spirit or other intoxicating drugs); or]

⁴ Substituted by the Bengal Excise (Amendment) Act, 1979 (XII of 1979).

⁵ Substituted by Act No. 38 of 1983.

⁵[(b) imports, exports, transports, possesses or sells any intoxicant (including bakhar but excluding spirit or other intoxicating drugs), or]

(c) omitted by Act 38 of 1983 :

(d) bottles any liquor ^{**}[other than spirit] for the purpose of sale, or

(e) removes any intoxicant from any distillery, brewery, warehouse or other place of storage, licensed, established, authorised or continued under this Act,

⁵ [shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.]

46 A. Penalty for unlawful manufacture of spirit or transport, etc. of intoxicating drug, cultivation of hemp, use and possession of materials for manufacture of spirit and intoxicating drug.—Whoever in contravention of this Act or of any rule, notification or order made, issued or given, or a license, permit or pass granted under this Act,—

⁵[(a) manufactures any spirit or intoxicating drug other than bakhar or cultivates hemp plant (*Cannabis sativa, L*), or].

(b) uses, keeps or has in his possession any material, still, utensils, implements or apparatus whatsoever for the purpose mentioned in clause (a), or

⁶[(c) imports, exports, transport, possesses or sells spirit or intoxicating drug other than bakhar, or]

⁶ [(cc) bottles spirit for the purpose of sale, or]

(d) works any distillery or brewery, or

(e) establishes any distillery, brewery or warehouse, or ⁶[(f) collects or sells any portion of hemp plant (*Cannabis aativa L.*) from which an intoxicating drug may be manufactured or produced,]

⁶ [shall be punishable—

(i) in the case of an offence under clause (c) or clause (f), when the value of the spirit, intoxicating drug or hemp plant (*Cannabis sativa L.*) is less than two thousand rupees, with imprisonment for a term which may extend to two years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be,—

(1) for the first offence, for less than one month, and

(2) for the second and for every subsequent offence, for less than three months ;

⁶ Substituted by Act No. 38 of 1983.

(ii) in any other case, with imprisonment for a term which may extend to five years (but shall not be less than six months) and with fine :

Provided that for special and adequate reasons to be recorded in the judgment of the court, such imprisonment may be for less than six months but shall not be for less than three months.]

⁷ **[46B. Offences by Companies.**—(1) Where any offence punishable under this Act is committed by a Company, the Company and every Director, Manager, Secretary or agent of the Company, unless such Director, Manager, Secretary or agent proves that the offence was committed without his knowledge or consent, shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any other officer or person concerned in the management of the affairs of the Company, such other officer or person 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 a body corporate and includes a firm or other association of individuals; and

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

47. Presumption as to offence where possession is not satisfactorily accounted for.—In prosecution under section 46 or section 46A it may be presumed unless and until the contrary is proved that the accused person has committed an offence punishable under section 46 or section 46A, as the case may be, in respect of—

(a) any intoxicant, or

(b) any still, utensil, implement or apparatus whatsoever for the manufacture of any intoxicant other than *tari*, 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 fails to account satisfactorily.

[⁷48. Penalty for altering or attempting to alter denatured spirit.—Whoever—

(a) alters or attempts to alter, by any means whatsoever, any denatured spirit, or

⁷ Substituted by the Bengal Excise (Amendment) Act, 1979 (XII of 1979).

(b) has in his possession any spirit which has been and which he knows or has reason to believe to have been derived from denatured spirit, so that such spirit may be used for human consumption internally, whether as a beverage or medicine or in any other way whatsoever shall be liable in case of clause (a) to imprisonment for a term which may extend to ⁸[five years and to fine] and in case of clause (b) to imprisonment for a term which may extend to *[two years and to fine] :

[Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall be,—

(1) in the case of clause (a), for the first offence, for not less than three months, and for the second and for every subsequent offence, for not less than six months, and

(2) in the case of clause (b), for the first offence, for not less than one month, and for the second and for every subsequent offence, for not less than three months.]

48A. Presumption as to offence under section 48 in certain cases.—In prosecution under section 48, when the accused person is proved to have been in possession of any spirit which is, or contains, or has been derived from denatured spirit and in respect of which any such alteration or attempt as is referred to in section 48 has been made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person—

- (i) has himself made such alteration or attempt, or
- (ii) knows or has reason to believe that such alteration or attempt has been made.

48B. Presumption as to any spirit which contains any denaturant.—In any prosecution under this Act, it may be presumed Unless and until the contrary is proved, that any spirit which contains any denaturant different in kind, quality or quantity from such as may be prescribed by rule made under clause (3) of section 86 for denaturing spirit, has been derived from denatured spirit by alteration.

49. Penalty for adulteration by licensed manufacturer or vender or his servant.—If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf—mixes or permits to be mixed with any intoxicant manufactured, sold or kept or exposed for sale by him, any noxious drug or any article prohibited by rule made under section 86, clause (9), sub-clause (i) and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code, or has in his possession

⁸ Substituted by Act No. 38 of 1983.

any intoxicant, in respect of which such admixture has been made, he shall be liable to imprisonment for a term which may extend to eighteen months, or to fine which may extend to five thousand rupees or to both.

50. Penalty for fraud by licensed manufacturer or vendor or his servant.—If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf—

(a) sells or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor and such sale does not amount to an offence punishable under section 417 or section 418 of the Indian Penal Code, or

(b) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or deals with any bottle, case, package or other receptacle containing country liquor, with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, and such marking or dealing does not amount to an offence punishable under Section 482 of the said Indian Penal Code, he shall be liable to imprisonment for a term which may extend to one year or to fine which may extend to two thousand rupees, or to both.

51. Penalty for certain unlawful act of licensed vendor or their servants.—(1) If any licensed vendor or any person in his employ and acting on his behalf,—

(a) employs, or permits to be employed, in any part of his licensed premises referred to in section 25, any woman or other person in contravention of that section ; or

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

(c) sells or delivers any spirit or intoxicating drug to any person apparently under the age of twenty-one years, whether for consumption by such person or by any other person and whether for consumption on or off the premises of such vendor; or

(d) permits drunkenness intoxication, disorderly conduct or gaming on the premises of such vendor ; or

(e) permits any persons whom he knows, or has reason to believe, to have been convicted of any non-bailable offence, or who are reputed prostitutes, to meet, or any such person to remain on the premises of such vendor whether for the purposes of crime or prostitution or not, he shall be liable to imprisonment for a term which may extend to six months or to fine which may extend to two thousand rupees or to both.

(2) When any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness or intoxication on the premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the

person charged to prove that the vendor and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises,

52. Penalty for possession of intoxicant in respect of which an offence has been committed.—If any person, without lawful authority, has in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, transported or manufactured or knowing that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a term which may extend to ⁹[two years and to fine].

53. Penalty for consumption in chemist's shop, etc.—(1) If any chemist, druggist, apothecary or keeper of a dispensary allows any intoxicant which has not been *bonafide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be liable to imprisonment for a term which may extend to one year or to fine which may extend to three thousand rupees, or to both.

(2) If any person not employed as aforesaid consumes any such intoxicant on such premises, he shall be liable to imprisonment for a term which may extend to three months or to fine which may extend to one thousand rupees or to both.

¹⁰ [54. *Penalty for failing to produce licence, etc by licensee or his servants.*—If any holder of a licence, permit or pass granted under this Act, or any person in his employ and acting on his behalf, fails to produce such licence, permit or pass on the demand of any officer duly empowered by the State Government in this behalf to make such demand shall be liable to fine which may extend to one thousand rupees.

54A. Penalty for contravention of sections 85 and 86 and conditions of licence, etc.—If any holder of a licence, permit or pass granted under this Act, or any person in his employ and acting on his behalf,—

(a) in any case not provided for in sections 46 and 46A willfully contravenes any rule made under section 85 or section 86, or

(b) willfully does any act, in breach of any of the conditions of the licence, permit or pass, for which a penalty is not prescribed elsewhere in this Act, shall be liable to fine which may extend to ⁹[five thousand rupees].

55. Import, export, transport, manufacture, sale or possession by one person on account of another.—(1) When any intoxicant has been imported, exported, transported, manufactured or sold or is possessed by any person on account of any

⁹ Substituted by Act 38 of 1983.

¹⁰ Substituted by Act XII of 1979

other person and such other person knows or has reason to believe that such import, export, transport, manufacture or sale was or that such possession is, on his account, the article shall, for the purpose of this Act, be deemed to have been imported, exported, transported, 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 imports, export, transports, manufactures, sells, or has possess, ion of an intoxicant on account of another person from liability to any punishment under this Act for the unlawful import, export, transport, manufacture, sale or possession of such article.

56. Criminal liability of licensee for acts of servant.— When any offence punishable under section 46, section 46A, section 49, section 50, section 51, section 52, section 54 or section 54A is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be deemed to have himself committed the offence unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence and shall, subject to the provisions of section 57, be punishable accordingly.

57. Imprisonment under section 55 or section 56.—No person other than the actual offender shall be punished under sec. 55 or sec. 56 with imprisonment except in default of payment of a fine.

58. Penalty on Excise Officer making vexatious search, seizure, detention or arrest or refusing duty or being guilty of cowardice.—If any Excise Officer,—

(a) without reasonable grounds of suspicion, searches or causes to be searched any place under colour of exercising any power conferred by this Act, or

(b) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article.liable to confiscation under this Act, or

(c) vexatiously and unnecessarily detains, searches or arrests any person, or

(d) without lawful excuse, ceases or refuses to perform, or withdraws himself from, the duties of his office unless expressly allowed to do so in writing by the Collector or unless he has given to his immediate superior two months' notice in writing of his intention to do so, or

(e) is guilty of cowardice, he shall be liable to imprisonment for a term which may extend to one year or to fine which may extend to two thousand rupees, or to both.

59. Penalty for offences not otherwise punishable.—If any person is convicted of any act in contravention of the provisions of this Act, or of any rule, notification or order made, issued or given under this Act, for which a penalty is not prescribed elsewhere in this Act, he shall be liable to fine which may extend to one thousand rupees.

60. *Penalty for contempt of Court.*—Every proceeding under this Act, before a Collector, or before any officer, of such rank as the State Government may by notification, prescribe, who is exercising powers of a Collector, shall be deemed to be judicial proceeding within the meaning of section 228 of the Indian Penal Code, and every Collector or Officer holding such proceeding shall, for the purposes of section 345, 346, and 348 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to be a Revenue Court.

61. Penalty for attempt to commit offences.—Whoever attempts to commit any offence or aids or abets in commission of any offence punishable under this Act shall be liable to the punishment provided for such offence.

¹¹ **62. Enhanced punishment after previous conviction.**—(1) If any person convicted of an offence under section 46 or clause (i) of section 46A or clause (b) of section 48 or section 52 or section 53 subsequently commits, and is convicted of, the same offence as aforesaid, then, he shall, subject to the proviso to clause (i) of section 46A and clause (2) of the proviso to section 48, be liable for the second and for every subsequent offence to twice the punishment which might be imposed on him on first conviction for any such offence.

(2) If any person convicted of an offence under clause (ii) of section 46A or clause (a) of section 48 subsequently commits, and is convicted of, the same offence as aforesaid, then, he shall, subject to the proviso to clause (ii) of section 46A and clause (1) of the proviso to section 48, be liable for the second and for every subsequent offence to imprisonment for a term which may extend to seven years and to fine.]

63. What things are liable to confiscation.—(1) Whenever an offence has been committed which is punishable under this' Act, the intoxicant, materials, still, implement and apparatus in respect of or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any intoxicant lawfully imported, transported, manufactured, had in possession or sold along with or in addition to any intoxicant which is liable to confiscation under sub-section (1), and the receptacles, packages, and coverings in which any such intoxicant

¹¹ Substituted by Act 38 of 1983.

as first aforesaid or any such materials, still, utensil, implement or apparatus is found, and the other contents, if any, of such receptacles or packages, and the animals, carts, vessels, rafts or other conveyances used in carrying the same, shall likewise be liable to confiscation :

Provided that no animal, cart, vessel, raft or other conveyance as aforesaid shall be liable to confiscation unless the owner thereof is proved to have been implicated in the commission of the offence.

Explanation.—For the purposes of this section, 'owner' includes, in relation to any animal, cart, vessel, raft or other conveyance,—

- (a) which is in the possession of a minor, the guardian of such minor, or
- (b) which is the subject of a hire purchase agreement, the person in possession thereof under that agreement.

64. Confiscation by Magistrate or Collector.—(1) When in any case tried by him, the Magistrate decides that anything is liable to confiscation under section 63, he may either order confiscation or give the owner of such thing an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit :

Provided that the Magistrate shall in all cases order confiscation of the intoxicants decided by him to be liable to confiscation under section 63.

(2) Whenever anything is liable to confiscation under section 63, and the offender or the person entitled to possession is not known or cannot be found, the case shall be inquired into and determined by the Collector who may order confiscation:

Provided that no such order shall be made until the expiration of two months from the date of seizing the thing intended to be confiscated or without giving such person as may, before such expiration, claim any right thereof, an opportunity of being heard and of producing such evidence as he may like to produce in support of his claim :

Provided further that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that its sale would be for the benefit of its owner, the Collector may at any time direct it to be sold and the provisions of this sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale.

65. Power to compound offences and to release property liable to confiscation.—

(1) The Excise Commissioner, Collector or any Excise Officer not below the rank of Inspector of Excise, authorised by the Excise Commissioner or the Collector by general or special order in this behalf—

(a) may accept from any person whose license, permit or pass is liable to be cancelled or suspended under clause (ii) of section 46A, clause (a) of section 48, or who is reasonably suspected of having committed an offence punishable under any section of this Act other than sections 40A, 4SA and section 58, on payment of a sum of money not exceeding ¹²[five thousand rupees,] in lieu of such cancellation or by way of composition for such offence, as the case may be and

(b) in any case in which any property has been seized as being liable to confiscation under section 63 may, at any time before the case is lodged before the Magistrate, release the property on payment of any sum not exceeding the value thereof as estimated by the Excise Commissioner, the Collector or such Excise Officer.

(2) When the payments, referred to in sub-section (1) have been duly made, the accused person, if in custody, shall be discharged and the property seized, if any shall be released; and no further proceeding shall be taken against such person or property.

CHAPTER IX

Detection, Investigation and trial of Offences and Procedure

66. Power to enter and inspect, and power to test and seize measures, etc.—Any of the following officers, namely—

(a) the Excise Commissioner, or

(b) a Collector, or

(c) any Excise Officer not below such rank as the State Government may, subject to any restrictions prescribed by the State Government by rule made under section 85,—

(i) enter and inspect, at any time by day or night any place: in which any licensed manufacturer carries on the manufacture of, or stores any intoxicants ; and

(ii) enter and inspect at any time during which the same may be open, any place in which any intoxicant is sold or kept for sale by any licensed person ;

(ia) examine the accounts, registers, passes and such other documents as may be prescribed by the State Government by rule made under section 85 in this behalf maintained in any such place as aforesaid ; and.

(iii) examine, test, measure or weigh any materials, still, utensils, implements, apparatus or intoxicant found in any such place as aforesaid ; and

¹² Substituted by Act XII of 1979

(iiia) seize any intoxicant (including any sample of any intoxicant), materials, still, utensils, implements, or apparatus referred to in clause (i), clause (ii) or clause (iii) together with any accounts, registers, passes and other documents referred to, or connected with those referred to, in clause (iia) found in any such place as aforesaid ;
(iy) examine or test and seize any measures, weights or testing instruments[^] found in any such place as aforesaid, which he has reason to believe to be false.

67. Power to arrest without warrant, to seize articles liable to confiscation and to make searches.—Any of the following persons namely—

(a) any officer of the Excise and Salt, Police, Customs or Land-revenue Department, or

(b) any person empowered by the State Government in this behalf, by notification, may, subject to any restrictions prescribed by the State Government by rules made under section 85,—

(i) arrest without warrant any person found committing an offence punishable under section 46, section 46A, section 48, section 52, or section 53 ; and

(ii) seize and detain any articles 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 the excise revenue ; and

(ii) 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.

68. Power to issue warrant of arrest.—The Collector, or any Magistrate empowered to try offences punishable under this Act may issue a warrant for the arrest of any person whom he has reason to believe to have committed or abetted the commission of any offence punishable under section 46, section 46A, section 52, or section 53.

69. Power to issue search warrant.—If any Collector, or any Magistrate empowered to try offences punishable under this Act, upon information received and after such inquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under section 46, section 46A, section 48, section 52 or section 53 has been, or is likely to be committed or abetted, he may issue a warrant to search for and to seize— any intoxicant, material, still, utensil, implement or apparatus in respect of which the alleged offence has been, or is likely to be committed or abetted, or any document or other article which may furnish evidence of the commission of the alleged offence.

69A. Power of Collector or Magistrate to arrest or search without issuing a warrant.—The Collector, or any Magistrate empowered to try offences punishable under this Act, may at any time—

(a) arrest or direct the arrest in his presence of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant under section 68, or

(b) search, or direct a search to be made in his presence of, any place for the search of which he is competent to issue search warrant under section 69.

70. Power of Excise Officer to search without a warrant.— Whenever any Excise Officer not below such rank as the State Government may, by notification prescribe, has reason to believe that an offence punishable under section 46, section 46A, section 48, section 52 or section 53 has been, is being, or is likely to be committed or abetted and that a search warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence, he may, after recording the grounds of his belief at any time by day, or night, enter and search any place, and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act, together with any document which may furnish evidence of the commission of the alleged offence, and may detain and search, and if he thinks proper, arrest any person found in such place whom he has reason to believe to have committed or abetted any such offence as aforesaid.

73. Information and aid to Excise. Officers—(1) Every officer of the State Government shall be bound, subject to any rules made under section 85, sub-section (2), clause (1) to give immediate information to an Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge.

(2) Every officer referred to in sub-section (1) and every village *chaukidar and dafadar*, shall be bound, subject to rules made under section 8i, sub-section (2), clause (1) to give reasonable aid to any Excise Officer in carrying out the provisions of this Act or of any rule, notification or order made, issued or given under this Act, upon request made by such officer.

72. Duty of owners and occupiers of land and other persons to give notice of unlicensed manufacture.—Whenever any intoxicant is manufactured or any hemp plant *Cannabis sativa* is cultivated or any portion of the hemp plant *Cannabis sativa* from which an intoxicating drug can be manufactured or produced is collected on any land or in any hut or building in contravention of this Act; all owners and occupiers of such land

or of such hut or building, as the case may be and their agents, and all *pane hay ats*, village headmen, *patwaris*, *sarbarakars*, *chaukidars* and *dafadars* of the village in which such land, hut Or building may be situated, shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or an officer of the Excise, Police or Land Revenue Department as soon as the fact comes to their knowledge.

73. Power to Collector, and certain Excise officers to investigate offences.—(1) A Collector may, without the order of a magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to inquire into or try under the provisions of Chapter XIII of the Code of Criminal Procedure, 1973, relating to the place of inquiry or trial.

(2) Any other Excise Officer specially empowered in this behalf by the State Government in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate investigate any such offence which a Court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under the aforesaid provisions.

74. Powers and duties of Collectors and certain Excise Officers investigating offences.—(1) Any Collector or any Excise Officer empowered under section 73, sub-section (2), may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise—

(a) any of the powers conferred upon a Police Officer making an investigation or upon an officer-in-charge of a police station by section 166 to 171 of the Code of Criminal Procedure, 1973, and

(b) as regards offences punishable under section 46, section 46A, section 48, section 52 or section 53 of this Act—any of the powers conferred upon Police Officers in respect of cognizable offences by clause (a) of sub-section (1) of section 41 and by section 55 of the said Code ; and the said portions- of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the State Government by rule made under section 85, clause (b).

(2) Subject to any restrictions, prescribed by the State Government, a Collector, or an Excise Officer empowered under section 73, sub-section (2) may, without, reference to a Magistrate and for reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

(3) For the purpose of section 156 of the Code of Criminal Procedure, 1973, the area to which an Excise Officer empowered under section 73 sub-section (2) is appointed shall be deemed to be a police station, and such Officer shall be deemed to be the officer-in-charge of such station.

(4) As soon as an investigation by a Collector or by an Excise Officer empowered under section 73, sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the investigating officer, unless he proceeds under sub-section (2)

of this section or under section 65 of this Act, shall submit a report (which shall for purposes of section 190 of the Code of Criminal Procedure, 1973, be deemed to be a police-report) to the Magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police reports.

75. Security and bail.—(1) A Collector or a Magistrate having jurisdiction under section 82 to try the case may issue a warrant under this Act for the arrest of any person, and may, at his discretion direct, by endorsement on the warrant ¹³[except when such person is arrested for committing an offence under clause rii) of section 46A or clause (a) of section 48] that if such person executes a bond with sufficient sureties for his attendance before the Collector or before an Excise Officer empowered under section 73, sub-section (2), to investigate the case at a specified time and thereafter until otherwise directed, by the Collector or an Excise Officer empowered as aforesaid, the officer to whom the warrant is directed shall release such person from custody if such bond is executed by him.

(2) The endorsement shall state—

(a) the number of sureties,

(b) the amount in which they, and the person for whose arrest the warrant is issued are respectively to be bound ; and

(c) the time at which such person is to attend as aforesaid.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Collector or to an Excise Officer empowered as aforesaid.

(4) Omitted by Act 34 of 1965.

(5) Any Excise Officer not below such rank as the State Government may by notification prescribe, may release persons on bail or on their own bond *[except when such person

¹³ Added by Act XII of 1979

is arrested for committing an offence punishable under clause (n) of section 46A or clause (a) of section 48].

(6) Bonds taken under this section from persons arrested otherwise than under warrant shall bind such person to appear before the Collector or an Excise Officer empowered under section 73 sub-section (2) to investigate the case.

(6A) A bond taken under this section shall for the purposes of sub-section (7), be deemed to be a bond under the Code of Criminal Procedure, 1973 (2 of 1974).

(7) The provisions of sections 439 to 449 of the Code of Criminal Procedure, 1973, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

76. Production of articles seized and persons arrested.— (1) Articles seized under a warrant issued under this Act and unless security for the appearance before the Collector or an Excise Officer empowered under section 63, sub-section (2), to investigate the case be taken, persons arrested under such a warrant shall be produced before the Collector or such Excise Officer.

(2) Articles seized under section 66, section 67 or section 69, and persons arrested under this Act by persons or officers not having authority to release arrested persons on bail or on their own bond, shall be produced before or forwarded to—

(a) the Collector or an Excise Officer empowered under section 73, sub-section (2), to investigate the case ; or

(b) the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond ; or

(c) the officer-in-charge of the nearest police-station, whoever is nearer.

(3) When a person arrested is produced before an Excise Officer who has authority to release arrested persons on bail or on their own bond; or before an officer-in-charge of a police-station, such officer shall forward such person to or take security for his appearance before the Collector or the Excise Officer empowered under-section 73, sub-section (2) to investigate the case.

(4) When any article seized cannot conveniently be conveyed before an officer referred to in sub section (1) or sub-section (2) as the case may be, the person making the seizure shall dispose of such article in some place of safety and forthwith report the seizure to such an officer.

(5) Notwithstanding anything elsewhere contained in this Act, when an article seized under section 66, section 67, section 69 or section 70 is subject to speedy decay, such article may be destroyed in accordance with rules made under section 86, clause (14).

77. Custody by police of articles seized.—(1) All officers in charge of police stations shall take charge of and keep in safe custody pending the order of a Magistrate or of the Collector, or of an Excise Officer empowered under section 73, sub-section (2), to investigate the case, all persons arrested and all articles seized under this Act and brought, or delivered to them, and shall allow any Excise Officer who may accompany any such articles to the police-station, or who may be deputed for the purpose by an official superior, to affix his seal to such articles and to take samples of and from them.

(2) All samples so taken shall be sealed with the seal of the officer in charge of the police station.

78. Reports of arrests, seizures and searches.—(1) When any Excise Officer below the rank of Collector, or any officer in charge of a police station, makes or receives information of any arrest, seizure or search under this Act, he shall within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search or the information received, to the Collector and to the Excise Officer (if any) empowered under section 73, sub-section (2) within the local limits of whose jurisdiction the arrest, seizure or search was made.

¹⁴ [(2) Upon receipt of the report under sub-section (1), the Collector may, without the order of a Magistrate having jurisdiction to try the case and before any report is submitted to such Magistrate under sub-section (4) of section 74, pass such order as he may deem fit for the custody of the intoxicants and other articles, if any, seized under this Act.]

79. Execution of warrant.—Any warrant issued by a Collector or a Magistrate under this Act may be executed by the Officer to whom the warrant is directed or by any other officer selected by the Collector or the Magistrate for the purpose.

80. Maximum period of detention.—(1) No person arrested under this Act shall be detained in custody for a longer period than under all the circumstances of the case is reasonable and such period shall not, without the authority of a Magistrate, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Court of the nearest Magistrate.

¹⁴ Added by Bengal Excise (Am.) Act, 1983 (38 of 1983).

(2) A Magistrate to whom an accused person is forwarded under section 167 of the Code of Criminal Procedure, 1973, by a Collector or an Excise Officer empowered under section 73, subsections (2), may exercise the power conferred upon a Magistrate by the said section 167.

81. Application of certain provisions of the Criminal Procedure Code, 1973.—(1) Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1973, relating to arrests, detentions in custody, searches, summonses, warrant of arrest, search warrants and the production of persons arrested shall apply so far as may be to arrest, detention and searches made, summonses and warrants issued and the production of persons arrested under this Act.

(2) For the purposes of the said provision of the said Code, a Collector shall be deemed to be a Court.

(3) Officers executing any warrant issued under this Act, and officers other than Collectors making arrest, searches or seizures under this Act, shall, for the purposes of the said Code, be deemed to be Police Officers.

¹⁵ **82. Magistrate having jurisdiction to try offences.—**No Magistrate other than—

- (a) the Chief Metropolitan Magistrate, or
- (b) the Chief Judicial Magistrate, or
- (c) an Additional Chief Metropolitan Magistrate, or
- (d) an Additional Chief Judicial Magistrate, or
- (e) a Metropolitan Magistrate, or
- (f) a Judicial Magistrate of the first class, or
- (g) a Judicial Magistrate of the second class,

shall try any offence punishable under this Act.]

83. Initiation of certain prosecutions.—No Magistrate shall take cognizance of an offence referred to,—

(a) in section 46, section 46A, section 48, section 52 or section 53 except on his own knowledge or suspicion or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the State Government, or

(b) in section 54, section 54A, section 58, clause (d) or clause (e), or section 59 except on the complaint or report of the Collector or an Excise Officer authorized by the Collector in this behalf.

¹⁵ Substituted by Bengal Excise (Am.) Act, 1983 (38 of 1983).

84. Bar to transfer of trial on application of accused.—The provisions of section 191 of the Code of Criminal Procedure, 1973, shall not apply in any case in which a Magistrate (not being the Collector) takes cognizance of an offence under this Act „ on the report of any officer referred to in clause (a) or clause (b) of section 83.

**CHAPTER X
Miscellaneous**

85. Power of State Government to make rules.—(1) The State Government may make rules to carry out the objects of this Act, or any other law for the time being in force relating to the excise revenue.

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

- (a) for prescribing the powers and duties of officers in the Excise Department :
- (b) for regulating the delegation of any powers by the Commissioner of a Division, the Excise Commissioner or Collectors under section 7, sub-section (2), clause (g) :
- (c) for declaring in what cases or classes of cases and to what authorities appeals shall lie from orders whether original or appellate, passed under this Act or under any rule made hereunder and for prescribing the time and manner for presenting and the procedure for dealing with, such appeals :
- (d) for regulating the import, export, transport, sale, purchase, possession or consumption of any intoxicant ;
- (e) for regulating the periods for which licences for the wholesale or retail vend of any intoxicant may be granted and the number of such licenses which may be granted for any local area ;
- (f) for prohibiting the grant of licenses for the retail sale of any intoxicant at any place within any local area described in the rules, or for defining the place in the vicinity to which shops for the retail sale of any intoxicant shall not ordinarily be licensed ;
- (g) for prohibiting the grant to specified classes of persons of licenses of any particular kind or class ;
- (h) for declaring either generally or in respect of areas described in the rules the persons or classes of persons to whom any intoxicant may or may not be sold ;
- (i) for prescribing restrictions subject to which a license, permit or pass granted under this Act may be cancelled or suspended;
- (j) for regulating the procedure to be followed and prescribing the matters to be ascertained before any license for the wholesale or retail vend of any intoxicant is granted for any locality ;

(k) for restricting the exercise of any of the powers conferred by section 65, sub-section (1) and sections 66 and 67 ;

(l) for declaring the Excise Officer to whom and the manner in which information or aid should be given under section 71 ;

(m) for the grant of expenses to witnesses ;

(n) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with offences punishable under this Act and subsequently acquitted, and

(o) for prescribing restrictions or modification in the application to Excise Officers of the provisions of the Code of Criminal Procedure, 1973, relating to powers of Police Officers which are referred to in section 74, sub-section (1) of this Act.

(3) The powers conferred by this section for making rules are subject to the condition that the rules be made after previous publication:

Provided that any such rules may be made without publication if the State Government considers that they should be brought into force at once.

86. Further power of State Government to make rules.—The State Government may make rules—

(1) for regulating the manufacture, supply or storage of any intoxicant and in particular and without prejudice to the generality of this provision, may make rules for regulating—

(a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any intoxicant and the provision and maintenance of fittings, implements and apparatus therein ;

(b) the bottling of liquor for purposes of sale ;

(c) the cultivation of the hemp plant (*Cannabis sativa*);

(d) the collection of the portions of the hemp plant (*Cannabis sativa*) from which intoxicating drugs can be manufactured or produced, and the manufacture or production of intoxicating drugs therefrom ;

(e) the tapping of *tari*-producing tress and the drawing of *tari* from trees ;

(f) the marking of *tari*-producing trees in areas notified in this behalf by the State Government, and the maintenance of such marks ;

(2) for fixing the strength, price or quantity in excess of or below which any intoxicant shall not be supplied or sold and the quantity in excess of which denatured spirit shall not be possessed and for prescribing a standard of quality for any intoxicant;

(3) for declaring how spirit manufactured in India shall be denatured ;

(4) for declaring spirit manufactured to be denatured through the agency or under the supervision of Government servants;

(5) for ascertaining whether any spirit so manufactured has been denatured ;

(6) for regulating the deposit of any intoxicant in a warehouse established, authorised or continued under this Act and the removal of any intoxicant from any such warehouse or from any distillery or brewery ;

(7) for prescribing the scale of fees and manner of fixing the fees payable in respect of any exclusive privilege granted under section 22 or any license, permit or pass granted under this Act, or in respect of the storing of any intoxicant;

(8) for regulating the time, place and manner of payment of such fees ;

(9) for prescribing the restriction under which or the conditions on which any license, permit Or pass may be granted and in particular and without prejudice to the generality of this provision, may make rules for—

(i) prohibiting the admixture with any intoxicant of any article deemed to be noxious or objectionable,

(ii) regulating or prohibiting the reduction of liquor by a licensed manufacturer, or licensed vendor from a higher to lower strength,

(iii) prescribing the nature and regulating the arrangement of the premises in which any intoxicant may be sold, prescribing the notices to be exposed at such premises,

(iv) prohibiting or regulating the employment by the licensee of any person or class of persons to assist him in his business,

(v) prohibiting the sale of any intoxicant except for cash,

(vi) prescribing the day and hours during which any licensed premises may or may not be kept open and providing for the closing of such premises on special occasions;

(viii) prescribing the accounts and registers (if any) to be maintained and the returns to be submitted by the licensees relating to their business, and

(viii) regulating the transfer of licenses ;

(10) for prescribing the particulars to be contained in licenses, permits or passes granted under this Act;

(11) for the payment of compensation to licensees whose premises are closed under section 26 or under any rule made under sub-clause (vi) of clause (9) of this section ;

(12) for prescribing the time, place and manner of levying duty on intoxicants ;

(13) for providing for the destruction or for the disposal in any other manner, of any intoxicant deemed to be unfit for use ; and

(14) for regulating the disposal or destruction of articles or things confiscated or seized under the provisions of this Act.

Explanation 1.—Fees may be prescribed under clause 7 of this section at different rates for different classes of exclusive privileges, licenses, permits, passes or storage and for different areas.

¹⁶[Explanation.—The price of an intoxicant as fixed by rules made under clause (2) of this section, shall be deemed to have always been exclusive of any tax, surcharge, additional surcharge or any other impost on the sale or purchase of such intoxicant levied under any law for the time being in force.]

87. Repealed by Bengal Act VII of 1914, s. 5.

88. Publication and effect of rules and notifications.—All rules made and notifications issued under this Act shall be published in the official Gazette, and on such publication shall have effect as if enacted in this Act.

89. Recovery of duties.—(1) The following money namely,—

(a) all excise revenue,

(b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under section 45, and

(c) all amounts due to the State 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, by distress and sale of his movable property and shall also be recoverable by the process authorised for the recovery of arrears of revenue.

(2) When a grant has been taken under management by the Collector has been transferred by him, under section 45, the Collector may recover in any manner authorised by sub-section (1), any money due to the grantee by any lessee or assignee.

¹⁶ Added by the Bengal Excise (Am.) Act, 1974 (L of 1974)

(3) When any money is due in respect of an exclusive privilege, to a grantee referred to in section 23, from any person holding under him, such grantee may apply to the Collector; and the Collector may recover such money on his behalf in either of the ways provided by sub-section (1):

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

90. Power of State Government to exempt intoxicants from provisions of Act.—

The State Government may by notification either wholly or partially, and subject to such condition (if any) as it may think fit to prescribe, exempt any intoxicant from all or any of the provisions of this Act, either throughout Bengal or in any specified local area; or for any specified period or occasion or as regards any specified class of persons.

91. Bar to certain suits.—No suit shall lie in any Civil Court against the Government or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise revenue.

92. Limitation of suits and prosecutions.—(1) No Civil Court shall try any suit against the Government in respect of anything done, or alleged to have been done in pursuance of this Act, and except with the previous sanction of the State Government, no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act to any other law relating to the excise revenue, or made against any other person under this Act, unless the suit or prosecution is instituted within six months after the date of the act complained of.

¹⁷[(2) Notwithstanding anything to the contrary contained in this Act or in any other law in force for the time being, when any Sub-Inspector of Excise or Assistant Sub-Inspector of Excise or Excise Constable is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the State Government.]

92A. Bar to application of Section 370 of the Bengal Municipal Act, 1932.—Section 370 of the Bengal Municipal Act, 1932, shall not apply to,—

(a) any distillery, warehouse or other place of storage licensed, established, authorised, or continued under this Act, or

¹⁷ Added by Bengal Excise (Am.) Act, 1979 (XL of 1979).

(b) the premises used for the manufacture or sale of any intoxicant by the holder of a license granted under this Act for such manufacture or sale.

93. Repealed by Bengal Act 1 of 1939. The Schedule Repealed by Bengal Act 1 of 1939.

DEPARTMENT OF EXCISE

No. 16I-Ex./IT-I/70.—28th September, 1970.—In exercise of the power conferred by sec. 14 of the Bengal Excise Act, 1909 (Ben. Act V of 1909), and in suppression of notification No. 286-Ex., dated the 1st March, 1966, the Governor is pleased hereby to specify the areas mentioned in Parts I and II of the schedule below in which—

(a) no tari-producing tree shall be tapped and no tari shall be drawn from any tree, unless unfermented tari is drawn in vessels which, before being attached to a tree, contain lime, or are freshly coated internally with a coating of lime, sufficient to prevent fermentation, except under and in accordance with the terms and conditions of a license granted in that behalf by the Collector of the district in which the area is situated; and

(b) no person, not being licensed to manufacture, collect, transport or sell tari, shall have in his possession—any tari in excess of the quantity declared under sec. 5 of the said Act to be the limit of a retail sale except under a permit granted by the Collector in that behalf at any time if the tree is situated in any area included in Part I of the said schedule and, if the tree is situated in any area included in Part II thereof, during any period mentioned in the corresponding entry against the area.

THE SCHEDULE

Part I

Specified areas

1. The whole of the Calcutta district.
2. The whole of the Howrah district excluding the area included in the Calcutta district.
3. The whole of the Hooghly district.
4. Burdwan district—Sadar, Galsi, Memari and Jamalpur police-stations in the Sadar subdivision.
5. 24-Parganas district—
 - (a) The whole of Falta and Magrahat police-stations, and Union 1 and 2 (Karimnagore and Iswaripur) of the Kulpi police station and Union 3 and 4 (Nilambaripur and Ballavpur) of the Mandirbazar police station of the Diamond Harbour subdivision.
 - (b) The whole of Barasat, Barrackpur & Basirhat sub-division.

(c) The railway lands on both sides of the Eastern Railway lines from stations Gobardanga to Chandpara situated within the jurisdiction of Habra and Gaighata police-stations.

6. Nadia district—The whole of Ranaghat sub-division.

7. Midnapur district—The whole of the Ghatal sub-division.