

SIKKIM

GOVERNMENT



GAZETTE

EXTRAORDINARY

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

NOTIFICATION

Notification No. 2/LD/92.

Dated Gangtok, the 7th April

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 27th day of March, 1992, is hereby published for general information:—

THE SIKKIM EXCISE ACT, 1992
(ACT NO. 2 OF 1992)

AN
ACT

to provide for the manufacture, possession, sale, transport, import and export of alcoholic liquor and imposition of duty of excise therein and for matters connected therewith and incidental thereto.

BE it enacted by the Legislature of Sikkim in the Forty-third Year of the Republic of India as follows:—

CHAPTER I Preliminary

Short title, extent and commencement.

1. (1) This Act may be called the Sikkim Excise Act, 1992.

- (2) It extends to the whole of Sikkim.
(3) It shall come into force on such date as the Government may, by notification, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) "Beer" includes ale, stout, porter and all other fermented liquor usually made from malt;
(b) "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 rebottling;
(c) "denaturant" means any substance as may be prescribed for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever;
(d) "to denature" means to mix spirit with one or more denaturants in such manner as may be prescribed and "denatured spirit" means spirit so mixed;

- (e) "exciseable article" means any alcoholic liquor for human consumption or any intoxicating drug but does not include medicinal preparations or toilet preparations containing alcohol;

Explanation. In this clause the expressions "Medicinal preparations" and "toilet preparations" have the same meaning respectively assigned to them in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955;

Central Act 16
of 1955

- (f) "Excise Commissioner" means the person appointed by the Government to exercise all the powers and to perform all the duties of the Excise Commissioner in Sikkim;
- (g) "excise duty" and "countervailing duty" means such excise duty or countervailing duty, as the case may be, as mentioned in entry 51 of List II of the Seventh Schedule to the Constitution;
- (h) "Excise Officer" means the Additional Commissioner or Joint Commissioner or Deputy Commissioner or Assistant Commissioner or any officer appointed or invested with the powers under section 5.
- (i) "excise revenue" means revenue derived or derivable from any duty, fee, tax, penalty payment (other than a fine imposed by a Criminal Court) or confiscation imposed, made or ordered under this Act or any other law for the time being in force relating to liquor or intoxicants;
- (j) "export" means to take out of Sikkim;
- (k) "Government" means the Government of the State of Sikkim;
- (l) "import" means to bring into Sikkim;
- (m) "intoxicant" means -
- (i) any liquor, or
 - (ii) any substance which is declared by the Government by notification to be an intoxicant for the purposes of this Act;
- (n) "liquor" means liquid consisting of or containing alcohol and includes -

spirit, wine, pachwai, beer and any substance which the Government may by notification, declare to be liquor for the purposes of this Act;

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

- (o) "manufacture" includes -

- (i) every process, whether natural or artificial by which any intoxicant is produced or prepared;
- (ii) redistillation; and
- (iii) every process for the rectification, flavouring, blending or colouring of liquor or for the reduction of strength of liquor for sale;

- (p) "notification" means a notification published in the Official Gazette;

- (q) "pachwai" means fermented rice, millet, or other grain or any other substance which the Government may, by notification, declare to be the basic raw material for making pachwai, whether mixed with any liquid or not, and any liquid obtained therefrom whether diluted or undiluted but does not include beer;

- (r) "prescribed" means prescribed by rules made under this Act;

- (s) "place" includes building, house, shop, booth, vessel, raft, vehicle and tent;

- (t) "sale" means any transfer other than by way of gift;

- (u) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not;

- (v) "transport" means to remove from one place to another within Sikkim.

Power to declare what shall be deemed to be "country liquor" and "Foreign liquor" or" respectively.

Wholesale and retail sale.

3. The 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.

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

CHAPTER II

Establishment and Control

Appointment of Officers and conferment, delegation of powers.

5. (1) The administration of the Excise Department and the collection of the excise revenue within any district or whole of State shall ordinarily be under the charge of the Excise Commissioner.
- (2) The Government may, by notification applicable to the whole of the State or to any district or to any local area comprised therein -
- (i) appoint an Officer who shall, subject to such control as the Government may direct, have the control of the administration of the provisions of this Act and rules made thereunder and the collection of the excise revenue ;
 - (ii) appoint any person to exercise all or any of the powers and to perform all or any of the duties conferred and imposed on an Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner by or under this Act, either concurrently with, or in sub-ordination to, or to the exclusion of the Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner and subject to such control as the Government may direct ;
 - (iii) appoint officers of appropriate educational background for the administration of the provisions of this Act and the rules made thereunder of such classes and with such designations, powers and duties as the Government may think fit ;
 - (iv) appoint scientific experts designated as "State Chemical Examiner" or "State Assistant Chemical Examiner" ;
 - (v) order that all or any of the powers or duties assigned by or under this Act to any officer appointed under clause (iii) shall be exercised and performed by any Government Officer or any other person ;
 - (vi) delegate to the Excise Commissioner all or any of the powers conferred upon the Government by or under this Act except the powers conferred by section 76 and 77 ; and
 - (vii) permit the delegation by the Excise Commissioner or Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner to any person or classes of persons specified in such notification of any powers conferred or duties imposed upon him by or under this Act.

CHAPTER III

Import, Export and Transport

- Restrictions on import.* 6. No excisable articles and intoxicant shall be imported unless -
- the Government has given permission either general or special, for its import ;
 - such conditions (if any) as the Government may impose, have been satisfied ; and
 - the duty , if any, payable under chapter V for importation, exportation or transportation has been paid or a bond has been executed for payment thereof:
- Provided that the Government may, subject to such conditions as it thinks fit to impose, exempt any excisable article from the provisions of this section.
- Restriction on export or transport.* 7. No excisable article or intoxicant shall be exported or transported unless -
- the duty, if any, payable under Chapter V has been paid or a bond has been executed for the payment thereof: and
 - if the article was previously imported, the duty, if any, imposed on its importation has been paid :
- Provided that the Government may, subject to such conditions as it thinks fit to impose, exempt any excisable articles from the provisions of this section.
- Power to prohibit import, export or transport.* 8. The Government may, by notification -
- prohibit the import or export of any excisable articles or intoxicant into or from Sikkim or any part thereof ; or
 - prohibit the transport of any excisable articles or intoxicant either absolutely or in such circumstances as it may, by notification, specify.
- Passes for import, export and transport.* 9. (1) No excisable article exceeding such quantity as the Government may fix by notification either generally or for any specified local areas, shall be imported, exported or transported except under a pass :
- Provided that in case of duty paid foreign liquor other than denatured spirit, such passes shall be dispensed with unless the Government by notification or otherwise, directs to any local area.
- The passes required by sub-section (1) may be granted by the Excise Commissioner.
 - The passes may be either general for definite period and for particular kinds of excisable articles or special for specified occasions and particular consignments only.

CHAPTER IV

Manufacture, Possession and Sale

- Licence required for manufacture and sale of excisable articles.* 10. The Excise Commissioner may grant a licence for -
- the manufacture of excisable articles;
 - the bottling of liquors;
 - the working of distillery or brewery;
 - the possession or use of any materials, namely still, utensils, implements or apparatus whatsoever for the purpose of manufacturers and sale of any excisable articles.
- Power of Excise Commissioner to grant, withdraw and cancel licence.* 11. The Excise Commissioner shall exercise the power to grant licence, withdraw or cancel any licence granted under this Act subject to such restrictions and conditions as may be prescribed.

Establishment of distilleries, breweries and warehouses.

12. (1) The Excise Commissioner may -

- (a) subject to such restrictions and conditions as may be imposed by the Government in this behalf, establish or authorise the establishment of distilleries or breweries in which liquor may be manufactured under licence granted under section 10;
- (b) discontinue any such distillery or brewery;
- (c) establish, or authorise the establishment of warehouse, wherein excisable article or intoxicant may be deposited and kept without payment of duty; 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.

Licence required for depositing or keeping excisable article or intoxicant in warehouse or other place of storage.

13. No person shall, except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Excise Commissioner, deposit or keep any excisable article or intoxicant in any warehouse or other place of storage, established or authorised under this Act.

Payment of duty on removal from distillery, brewery, warehouse or other place of storage.

14. No excisable articles or intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established or authorised under this Act unless the duty, if any, payable under Chapter V has been paid or a bond has been executed for the payment thereof.

Manufacture and sale of liquor in or near cantonments.

15. Within the limits of any military cantonment and within such distance from those limits as the Central Government may in any case specify, no licence for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

Prohibited sites for liquor shops.

16. No liquor shop shall be licensed for retail, wholesale and consumption of liquor -

- (a) in close proximity of school, hospital, place of worship, factory, or other places of public resort; or
- (b) in the rural areas and other areas as the Government may notify from time to time.

Grant of exclusive privilege of manufacture and sale of country liquor.

17. (1) The Government may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege of manufacturing or of supplying or of both to the licensed vendors any country liquor or intoxicating drug within any specified local area.

(2) No grantee of any exclusive privilege under this section shall exercise the same until he has received a licence in that behalf from the Excise Commissioner.

Transfer of exclusive privilege.

18. (1) A grantee of an exclusive privilege under section 17 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 Excise Commissioner.

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

Maintenance and use of measures, weights and instruments by licensed vendors and manufacturers.

19. Every person who manufactures or sells excisable articles under a license granted under this Act -

- (a) shall use such measures, standard weights and instruments as the Excise Commissioner may specify and shall keep in good condition;
- (b) when such measures, weights and instruments have been so specified shall, on the requisition by any Excise Officer duly empowered by the Excise Commissioner in that behalf at any time to measure, weigh or test any excisable article in his possession in such manner as the said Excise Officer may require.

Prohibition of sale to persons under the age of eighteen years, students and persons on Government uniform.

20. No licensed vendor and no person in the employment of such vendor and acting on his behalf shall sell or deliver any liquor or intoxicants to any person apparently of under the age of eighteen years or a student or any unformed person whether for consumption by such person or by any other person and whether for consumption on or off the premises of such vendor.

Prohibition of employment of persons under the age of eighteen years and of woman,

21. (1) No person who is licensed to sell foreign liquor or country liquor for consumption in 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 eighteen 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 liquor for consumption in his premises shall, without the previous permission in writing of the Excise Commissioner, during the hours in which such premises are kept open for business, employ or permit to be employed with or without remuneration any woman in any part of such premises in which liquor is consumed by the public.

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

Power to close shops temporarily.

(1) The District Magistrate or a Sub-Divisional Magistrate or a Superintendent of Police may, by notice in writing to the licensee, require that any shop in which any excisable article is sold shall be closed at such time or for such period as such Magistrate or Superintendent 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 Inspector 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 Excise Commissioner of his action and the reason thereof.

CHAPTER V Duties and Fees

Power to impose, duty on import, export and transport and manufacture,

(1) An excise duty or a countervailing duty, as the case may be, at such rate or rates as the Government may by notification 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 manufactured under any licence granted under clause; (a) of section 10 or

(e) any excisable article manufactured in any distillery or brewery licensed, established or authorised 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 place to which such article is to be removed for consumption or according to the varying strengths and quality for such article.

- (2) The Government shall, in imposing an excise duty or a countervailing duty as aforesaid and in fixing its rate, be guided by the Directive Principles specified in article 47 of the Constitution of India.

Ways of levying such duty, 24.

Subject to any rules that may be made under clause (1) of section 77, any duty imposed under section 23 may be levied in any of the following ways, namely :-

- (a) on an excisable article imported -
 - (i) by payment upon or before importation into the State; or
 - (ii) by payment upon issue for sale from the warehouse established or authorised under this Act;
- (b) on an excisable article exported by payment in the State from which the article is sent ;
- (c) on an excisable article transported by payment upon issue for sale from a warehouse established as authorised under this Act;
- (d) on excisable article manufactured -
 - (i) by a rate charged upon the quantity manufactured under a licence granted under the provisions of clause (a) of section 10 or issued for sale from a warehouse established or authorised under this Act; or
 - (ii) by a rate upon the quantity produced under a licence granted under the provisions of clause (b) of section 10;
- (e) on spirit or beer manufactured in any distillery or brewery licensed, established or authorised under this Act-
 - (i) by a rate charged upon the quantity produced or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established or authorised 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 wort, as the case may be, as the Government may prescribe :

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

Payment for grant of exclusive privilege 25.

Instead of, or in addition to, any duty leviable under this Act, the Government may accept payment of sum in consideration of the grant of any exclusive privilege under section 17.

Levy of duty on non-excisable articles and articles produced outside India, 26.

Until provision to contrary is made by Parliament, the Government may levy duty-

- (a) on intoxicants or medicinal or toilet preparations containing alcohol which are not excisable article within the meaning of this Act;
- (b) on an excisable article produced outside India and imported into Sikkim.

CHAPTER VI
Licence, Permit and Passes

Terms and conditions, fee and form of, and duration of licence, permit and pass:

27. (1) Every licence, permit or pass under this Act shall be granted by such officer, for such period and subject to such restrictions and on such conditions as may be prescribed.

- (2) The licence granted under sub-section-
(1) shall be in such form and payment of such fee as may be prescribed ;

Provided that every licence granted under the Sikkim Excise (Abkari) Act, 1971 which was in force in the State immediately before the commencement of this Act shall be deemed to have been granted under the corresponding provisions of this Act and shall, unless previously cancelled, suspended or surrendered, remain in force for the period for which it was granted.

Power to cancel or suspend licence, permit or pass.

28. (1) Subject to such restrictions as the Government may prescribe, the authority who granted any licence, 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 or fee payable by the holder thereof is not duly paid ; or
- (c) in the event of any breach by the holder of such licence, permit or pass 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 of such licence, permit or pass; 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 Dangerous Drugs Act, 1930 or under sections 479 to 489 of the Indian Penal Code, 1860 or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 ; or
- (e) where a licence, permit or pass has been granted on the application of the holder of an exclusive privilege under section 17 of this Act, on the requisition in writing of such holder ; or
- (f) if the conditions of the licence or permit or pass provide for such cancellation or suspension at will.

*Central Act 2
of 1930*

*45 of 1860
16 of 1955.*

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

- (3) The holder shall not be entitled to any compensation for the cancellation or suspension of his licence, permit or pass under this section nor he is entitled to refund of any fee paid or deposit made in respect thereof.

Power to withdraw licence, permit or pass.

29. (1) Whenever the authority granting a licence under this Act considers that the licence, permit or pass should be cancelled or withdrawn for any cause other than those specified in section 28, it shall remit a sum equal to the amount of the fee payable in respect thereof for fifteen days and may cancel the licence either-

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

- (2) When a licence, permit or pass is withdrawn under sub-section (1), there shall be paid to the holder of the licence, 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 licence, permit or pass together with compensation amounting to fifteen days' average fee payable in respect of the licence, permit or pass calculated in the manner specified in sub-section (3) :

Provided that where a licence, 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) be calculated in the following manner, that is to say, :-

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

Counterpart agreement by licensee and security or deposit.

30. Any authority granting a licence under this Act may require the licensee to execute a counterpart agreement in conformity with the tenure of his licence 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.

Technical irregularities in licence.

31. (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 licence in or any proceeding taken prior to the grant thereof.
- (2) The decision of the Excise Commissioner as to what is a technical defect, irregularity or omission shall be final.

Surrender of licence to sell by retail.

32. Any holder of a licence to sell by retail under this Act may surrender his licence on the expiration of one month's notice in writing given by him to the Excise Commissioner of his intention to surrender the same and on payment of the fee payable for the licence 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 such a licence, he may remit the holder thereof the sum so payable on surrender, or any portion thereof.

Explanation : The word "holder of a licence" used in this section include a person whose tender, bid and request on the prescribe form for a licence has been accepted, although he may not actually have received the licence.

Bar to right of renewal and compensation-

33. No person to whom a licence or permit has been granted under this Act shall have any claim to the renewal thereof or, save as provided in section 29 any claim to compensation on the determination thereof.

CHAPTER VII

Offences and Penalties

Penalty for unlawful import, transport, manufacture, possession and sale.

34. Whoever in contravention of this Act or any rule, notification or order made or issued under this Act or of any licence, permit or pass obtained under this Act -

- (a) imports, exports, transports, possesses or sells any excisable article ; or

- (b) manufactures any intoxicant ; or
- (c) constructs or works any distillery or brewery ; or
- (d) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant or excisable article ; or
- (e) bottles any liquor for the purpose of sale ; or
- (f) removes any intoxicant from any distillery, brewery, warehouse licensed or other place of storage established or authorised under this Act ;

shall be liable to imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to one thousand rupees but in no case the court shall award a sentence of imprisonment less than three months and a fine of five hundred rupees.

Penalty for altering or attempting to alter denatured spirit.

35. Whoever -

- (a) alters or attempts to alter, by any means whatsoever, any denatured spirit ; or
- (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 five years and also to fine and in case of clause (b) to imprisonment for a term which may extend to two years and to fine.

Penalty for adulteration by licensed manufacturer or vendor or his servant,

36. If any licensed manufacturer or a licensed vendor or any person or his employee acting on his behalf mixes or permits to be mixed with any excisable article manufactured, sold or kept or exposed for sale by him any noxious drug or any article prohibited by rules made under sub-clause (i) of clause (i) of section 77 and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code, or has in his possession any excisable article 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. 45 of 1860

Penalty for fraud by licensed manufacturer or vendor or his servant.

37. If any licensed manufacturer or licensed vendor or any person in his employment 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 45 of 1860
- (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 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.

Penalty for certain unlawful acts of licensed vendors or their servants,

38. (1) If any licensed vendor, or any person in his employment and acting on his behalf -

- (a) employs or permits to be employed in any part of his licensed premises any woman or other person in contravention of section 21 ;
- (b) sells any excisable article or intoxicant to a person who is drunk or intoxicated ; or

- (c) sells or delivers any spirit or intoxicating article to any person apparently under the age of eighteen 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 gaming on the premises of such vendor ; or
- (e) permits any person 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 employment 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, shall lie on the person charged to prove that the vendor and the persons employed by him took all reasonable steps preventing drunkenness or intoxication on such premises.

Penalty for possession of intoxicant in respect of which an offence has been committed.

39. 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 two years and shall also be liable to fine of minimum of five hundred rupees but not exceeding two thousand rupees.

Penalty for consumption in chemist's shop etc.

- 40. (1) If any chemist, druggist, apothecary or 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 or a term which may extend to three months or to fine which may extend to one thousand rupees or to both.

Penalty for rendering denatured spirit fit for human consumption.

41. Whoever renders or attempts to render fit for human consumption any spirit whether manufactured in India or not, which has been denatured or has, in his possession, any denatured spirit which has been rendered fit for human consumption or in respect of which any attempt has been made to render it so fit, shall be punished with imprisonment for a term which may extend to two years and shall also be punishable with fine which may extend to two thousand rupees.

Penalty for failing to produce licence etc. by licensee or his servant.

42. If any holder of a licence, permit or pass granted under this Act or any person in his employment and acting on his behalf, fails to produce such licence, permit or pass on the demand of any officer duly empowered by the Government in this behalf to make such demand, shall be liable to fine which may extend to one thousand rupees.

Penalty for contravention of the provisions of the Act, rules and conditions of licence.

- 43. If any holder of a licence, permit or pass granted under this Act, or any person in his employment and acting on his behalf.
 - (a) in any case not provided for in section 34, wilfully contravenes any rules made under section 76 or section 77 ; or
 - (b) wilfully 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 five thousand rupees.

- Import, export, transport, manufacture, sale or possession by one person on account of another.* 44. (1) When any intoxicant has been imported, exported, transported, manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport, manufacture or sale was, or that such possession is on his account, the article shall, for the purposes of this Act, be deemed to have been 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, exports, transports, manufactures, sells or has possession 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.
- Criminal liability of licensee for acts of servants.* 45. When any offence punishable under section 34, section 36, section 37, section 38, section 39, section 42, or section 43 is committed by any person in the employment and acting on behalf of the holder of a licence, 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 be subject to the provisions of section 46 be punishable accordingly.
- Imprisonment under section 44 or 45.* 46. No person other than the actual offender shall be punished under section 44 or section 45 with imprisonment, except in default of payment of a fine.
- Penalty on Excise Officer making vexatious search, seizure, detention, arrest or refusing duty, or being guilty of cowardice.* 47. If any Excise Officer -
- without reasonable grounds of suspicion searches or causes to be searched, any place, under colour of exercising any power conferred by this Act ; or
 - 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
 - vexatiously and unnecessarily detains, searches or arrests person ; or
 - without lawful excuse ceases or refuses to perform or draws himself from the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner unless he has given to his immediate superior two month's notice in writing of his intention to do so ; or
 - 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.
- Penalty for offences not otherwise punishable.* 48. If any person is convicted of any act in contravention of any provisions of this Act or of any rules, notifications or orders 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.
- Penalty for attempt to commit offence.* 49. Whoever attempts to commit any offence or aids or abets commission of any offence punishable under this Act shall be liable to punishment provided for such offence.
- Enhanced punishment after previous conviction.* 50. If any person, after having previously been convicted of an offence punishable under section 34, section 40 or section 41 or under similar provision in any enactment, rule or notification repealed by this Act, subsequently commits and is convicted of an offence punishable under any of those sections, he shall be liable to twice the punishment which might be imposed on first conviction under this Act :

Provided that in the case of conviction for a second or subsequent offence under clause (a) or clauses (c) to (f) of section 34, section 40 or section 41, he shall be liable to a sentence of imprisonment for a term of not less than one month and with fine, and in the case of conviction for a second or subsequent offence under clause (b) of section 34 or section 41, a sentence of imprisonment for a term of not less than one year and with fine.

Things liable to confiscation. 51. (1) Whenever an offence punishable under this Act has been committed the intoxicant, materials, still, utensil, 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, and in possession or sold alongwith or in addition to any intoxicant which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which or any such intoxicant as first aforesaid, any such materials, still, utensil, implement, or apparatus as aforesaid, is found and the animal, cart, vessel, raft or other conveyance 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) if it is the possession of a minor the guardian of such minor, or
- (b) if it is the subject of a hire-purchase agreement, the person in possession thereof under that agreement.

Offences by companies. 52. (1) Where any offence punishable under this Act is committed by a company, 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 proceeded 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.

Demand for security for abstaining from commission of certain offences. 53. (1) Whenever any person is convicted of an offence punishable under the provision of clause (d) or clause (e) of section 34 or section 41, the court convicting such person may, at the time of passing the sentence on such person, ask him to execute a bond for a sum proportionate to his means, with or without sureties to abstain from the commission of any offence punishable under the said provisions during such period not exceeding three years, as it may direct.

(2) The provisions of the Code of Criminal Procedure, 1898 shall mutatis mutandis apply to all matters connected with such bond as if it were a bond to keep the peace required to be executed under section 106 of the said Code.

5 of 1898

Penalty for abetment. 54. Whoever abets an offence punishable under this Act shall, whether such offence is or is not committed in consequence of such abetment and notwithstanding anything contained in section 116 of the Indian Penal Code, be punished on conviction for such abetment, with the same punishment as is provided for the principal offence.

45 of 1860

penalty for 55. If any licensed vendor, or any person in his employment or any
selling to per- person acting on his behalf -
sons under eigh- (a) in contravention of section 20, sells or delivers any liquor
teen years, or or intoxicating drug to any person apparently under the age
employing of eighteen years ; or
persons under (b) in contravention of section 21, employs or permits to be
eighteen years employed on any part of his licensed premises referred to
or woman of in that section, any person under the age of eighteen years
any age, or any woman of any age,

he shall be liable to fine which may extend to one thousand rupees.

Further provision 56. When anything mentioned in sub-section (1) and (2) of section 51
for confiscation. is found in circumstances which afford reason for believing that an offence
punishable under this Act has been committed in respect of or by means
thereof, or when such an offence has been committed and the offender is
not known or cannot be found, the Excise Commissioner may order confis-
cation of such thing and, or any other thing or animal found or used there-
with which is liable to confiscation as provided under sub-section (1) of
section 51 :

Provided that no such order shall be made until the expiration of one
month from the date of seizing the thing or animal in question or without
hearing the person, if any, claiming any right thereto, and the evidence,
if any, which he produces in support of his claim :

Provided further that if the thing in question is liable to speedy and
natural decay, or if the Excise Commissioner is of opinion that the sale of
the thing or animal in question would be for the benefit of its owner, the
Excise Commissioner may at any time direct it to be sold.

Power to
compound
offences.

57. (1) When any licence, permit or pass granted under this Act is
liable to be cancelled or suspended under clause (a) or clause
(b) or clause (c) of section 28 or who is reasonably suspected
of having committed of an offence under this Act, other than
an offence under section 47, the Excise Commissioner
or any Excise Officer specially empowered by the
Government in this behalf, instead of enforcing such can-
cellation or suspension or instituting of prosecution in res-
pect of such offence, may accept from the holder of such
licence, permit or pass or from such persons, by way of com-
position, a sum of money not exceeding five hundred rupees
and thereupon such holder or person if in custody shall be
discharged and no further proceedings in respect of such
liability or offence shall be taken against him.
- (2) If in any such case referred to in sub-section (1) any property
has been seized as liable to confiscation under this Act,
the Excise Commissioner or any Excise Officer empowered
in that behalf, may release the same on receiving payment
of the value thereof as estimated by him or of such similar
sum as he may think fit.
- (3) The Excise Commissioner or any Excise Officer may also,
after the institution against any person of any prosecution in
respect of any offence under this Act other than the offence
under section 47, compound the offence on payment by
such person, of a sum of money not exceeding five hundred
rupees.

CHAPTER VIII

Detection, Investigation and Trial of offences and Procedure

Power to enter 58.
and inspect, and
power to test and
seize measures,
etc.

- Any of the following officers, namely -
- (a) the Excise Commissioner ; or
- (b) any Excise Officer not below such rank as the Government
may, by notification, appoint may, subject to such restric-
tions as may be prescribed ,-

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

- (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 ;
- (ii) examine the accounts, registers, passes and such other documents as may be prescribed in this behalf maintained in any such place as aforesaid ;
- (iv) examine, test measure or weigh any materials, still, implements, apparatus or intoxicant found in any such place as aforesaid ;
- (v) seize any intoxicant materials, still, utensils, implements or apparatus referred to in clause (i), clause (ii) or clause (iv) together with any accounts, registers, passes and other documents referred to or connected with those referred to in clause (iii) found in any such place as aforesaid ; and
- (vi) examine or test and seize any measures, weights or testing instrument found in any such place as aforesaid, which he has reason to believe to be false.

Power to
arrest without
warrant, to
seize articles
liable to
confiscation and
to make searches,

59.

Any of the following officers namely :-

- (a) an officer of the Excise Department not below the rank of Excise Sub-Inspector or
- (b) any other officer empowered by the Government in this behalf by notification may, subject to any restrictions as may be prescribed -
 - (i) arrest without warrant any person found committing an offence punishable under section 34, section 35, section 39 or section 40 ;
 - (ii) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the excise revenue ;
 - (iii) 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 of having any such article; and
 - (iv) search and seize any excisable article under lock key godown, house, almīrah or showcase suspected to have kept such articles.

Power to issue
warrant of
arrest.

60. A 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 34, section 35, section 39, or section 40.

Power to issue
search warrant.

61. If a Magistrate empowered to try offences punishable under this Act upon information received and after such inquiry if any as he thinks necessary, has reason believe that any offence punishable under section 34, section 35, section 39 or section 40 has been or is likely to be committed or abetted, he may issue warrant to search for and to seize any intoxicant material, still, utensil, implement or apparatus in respect of which 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.

Power of the
Magistrate to
arrest or search
without issuing
warrant.

62. A Magistrate empowered to try offence 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 61 ; or
- (b) search or direct a search to be made in his presence, at any place or the search of which he is competent to issue a search warrant under section 61.

Power of Excise Officer to search without a warrant.

63. Wherever any Excise Officer not below such rank as the Government may, by notification, appoint, has reason to believe that an offence punishable under section 34, section 35, section 39 or section 40 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 alleged offence 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.

Information and aid to Excise Officers.

64. (1) Every Officer of the Government shall be bound, subject to any rules made under clause (k) of sub-section (2) of section 77 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 agents and all panchayats shall be bound, subject to any rules that may be made, 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.

Power of the Excise Commissioner and certain Excise Officers to investigate offences.

65. (1) The Excise Commissioner may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area would have power to inquire into or try under the provisions of Chapter XV of the Code of Criminal Procedure, 1898 5 of 1898.

(2) Any other Excise Officer specially empowered in this behalf by the 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.

Powers and duties of Excise Commissioner and certain Excise Officers investigating offences.

66. (1) The Excise Commissioner or any Excise Officer 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 160 to 171 of the Code of Criminal Procedure, 1898; and 5 of 1898

(b) as regards offences punishable under section 34, section 35, section 39 or section 40 of this Act, any of the powers conferred upon Police Officer in respect of cognizable offences by first clause of sub-section (1) of section 54 and section 56 of the said Code and the said portion of the said Code shall apply accordingly, subject to any restrictions or modifications as may be prescribed.

(2) Subject to any restriction as the Government may impose, the Excise Commissioner or an Excise Officer empowered under sub-section (2) of section 65 may, without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any persons concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

(3) For the purposes of section 166 of the Code of Criminal Procedure, 1898, the area to which an Excise Officer empowered under sub-section (2) of section 65 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 the Excise Commissioner or by an Excise Officer empowered under sub-section (2) of section 65 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 57 shall submit a report which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a Police report to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police report.
- Security and bail.* 67. (1) When a Magistrate issues a warrant for the arrest of any person under this Act, he shall in every such case direct in the manner provided in section 76 of the Code of Criminal Procedure, 1898, that such person shall be released from custody on bail or, if the Magistrate thinks fit, on his own hand. 5 of 1898
- (2) When any person is arrested otherwise than under a warrant under this Act and is prepared to give bail, he shall be released on bail or at the discretion of the officer releasing him, on his own hand.
- (3) All Excise Officers not below such rank as may be empowered by the Government may accept bail.
- (4) If the arrest be made otherwise than under a warrant by a person or officer not empowered to accept bail and the person arrested is prepared to give bail, the officer or person making the arrest shall, for that purpose, take the person arrested to the nearest Excise Officer empowered to accept bail, or the nearest officer in-charge of a police station, whoever is nearer.
- (5) Bonds taken under this section from persons arrested otherwise than under a warrant shall bind such person to appear before a Magistrate or other officer empowered under section 65 to investigate the case.
- (6) The provision of sections 498 to 502, 513, 514, 515 and 516 of the Code of Criminal Procedure, 1898 shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section. 5 of 1898
- (7) A bond taken under this section shall, for the purpose of sub-section (6), be deemed to be a bond under the Code of Criminal Procedure, 1898. 5 of 1898
- Production of articles seized and persons arrested.* 68. (1) Articles seized under a warrant issued under this Act and unless security for their appearance before the Excise Commissioner or an Excise Officer empowered under sub-section (2) of section 65 to investigate the case be taken, persons arrested under such a warrant shall be produced before the Magistrate empowered to try the offence under this Act.
- (2) Articles seized under section 58, section 59 or section 61 and persons arrested under the 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 Excise Commissioner or an Excise Officer empowered under sub-section (2) of section 65 to investigate the case, or
- (b) the nearest Excise Officer who has authority to release arrested person on bail or on their own bond.
- (3) When a person arrested is produced before an Excise Officer who has authority to release arrested person on bail or on their own bond, such officer shall forward such person to, or take security for his appearance before the Excise Commissioner or the Excise Officer empowered under sub-section (2) of section 65 to investigate the case.

- 4 When any article seized cannot conveniently be conveyed before as 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 articles 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 58, section 59, section 61 or section 63 is subject to speedy decay, such article may be destroyed in accordance with the rules made under clause (n) of section 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 orders of a Magistrate, or of the Excise Commissioner, or an Excise Officer empowered under sub-section (2) of section 65 to investigate the case all persons arrested and all article 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.

Report of arrest, seizures and searches.

70. When any Excise Officer below the rank of Excise Commissioner, 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 of the information received to the Excise Commissioner, and to the Excise Officer, if any, empowered under sub-section (2) of section 65, within the local limits of whose jurisdiction the arrest, seizure or search was made.

Execution of warrant.

71. Any warrant issued by 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 Magistrate for the purpose.

Maximum period of detention.

72. 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 place where the Court of Magistrate having jurisdiction to inquire into and try the case situate.
- 2 Every Officer executing a warrant issued under this Act, and every Officer other than the Excise Commissioner making arrests, searches or seizures under this Act shall, for the purposes of the Code of Criminal Procedure, 1898 be deemed to be police officers.

Magistrates having jurisdiction to try offences.

73. No Magistrate other than a Judicial Magistrate of First Class shall try an offence punishable under this Act.

Initiation of certain prosecutions.

74. No Magistrate shall take cognizance of an offence referred to -
- in section 34, section 35, section 39 or section 40, 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 Government ; or
 - in section 42, 43, clause (d) or clause (e) of section 47, or section 48, except on the complaint or report of the Excise Commissioner or an Excise Officer authorised by the Excise Commissioner in this behalf.

Bar to transfer of trial on application of accused.

75. The provisions of section 191 of the Code of Criminal Procedure, 1898 shall not apply in any case in which a Magistrate takes cognizance of an offence under this Act on the report of any officer referred to in clause (a) or clause (b) of section 74.

CHAPTER IX MISCELLANEOUS

power of the
Government to
make rules.

The Government may, subject to previous publication, make rules for carrying out the provisions of this Act.

- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -
- (a) prescribing the powers and duties of officers of the Excise Department ;
 - (b) regulating the delegation of any powers by the Excise Commissioner under clause (vii) of sub-section (2) of section 5 ;
 - (c) 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 thereunder, and for prescribing the time and manner for presenting and the procedure for dealing with, such appeals ;
 - (d) regulating the import, export, transport, sale, purchase, possession or consumption of any intoxicant ;
 - (e) regulating the periods for which licenses 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) prohibiting the grant of licenses for the retail sale of any intoxicant at any place or within any local area described in the rules, or for defining places in the vicinity of which shops for the retail sale of any intoxicant shall not ordinarily be licensed ;
 - (g) prohibiting the grant to specified classes of persons of licenses or any particular kind of class ;
 - (h) 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) prescribing restrictions subject to which a licence, permit or pass granted under this Act may be cancelled or suspended ;
 - (j) regulating the procedure to be followed and prescribing the matters to be ascertained before any licence 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 57, section 58 and section 59 ;
 - (l) for declaring the Excise Officers to whom and the manner in which, information or aid should be given under section 64 ;
 - (m) for the grant of expenses to witnesses ;
 - (n) for the grant of compensation for loss of time to persons released by an 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 restriction or modifications in the application to Excise Officer of the provisions of the Code of Criminal Procedure, 1898, relating to powers of police officers which are referred to in sub-section (1) of section 66 of this Act :

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

Further power 77.
of Government
to make rules.

The Government may also make rules -

- (a) 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-
 - (i) 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 ;
 - (ii) the bottling of liquor for purposes of sale ;
- (b) 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 processed and for prescribing a standard of quality for any intoxicant ;
- (c) for declaring how spirit manufactured in India shall be denatured ;
- (d) for causing spirit so manufactured to be denatured through the agency or under the supervision of servants of the Government ;
- (e) for ascertaining whether any spirit so manufactured has been denatured ;
- (f) 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 ;
- (g) for prescribing the scale of fees or the manner of fixing the fees payable in respect of any exclusive privilege granted under section 17 or any licence, permit or pass granted under this Act, or in respect of the storing of any intoxicant ;
- (h) for regulating the time, place and manner of payment of such fees ;
- (i) for prescribing the restrictions under which or the condition of which any licence, 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 or 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 a lower strength ;
 - (iii) prescribing the nature and regulating the arrangement of the premises in which any intoxicant may be sold, and prescribing the notices to be exposed at such premises ;
 - (iv) prohibiting or regulating the employment by the licensee or 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 days 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 ;
 - (vii) prescribing the accounts and registers to be maintained and the returns to be submitted by the licensee relating to their business ;
 - (viii) regulating the transfer of licenses ;
- (j) for prescribing the particulars to be contained in licenses, permits or passes granted under this Act ;
- (k) for the payment of compensation of licensees whose premises are closed under section 22 or under any rule made under sub-clause (vi) of clause (i) of this section ;

- (l) for prescribing the time, place and manner of levying duty on intoxicants;
- (m) for providing for the destruction or for the disposal in any other manner, of any intoxicant deemed to be unfit for use; and
- (n) 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 (g) of this section at different rates for different classes of exclusive privilege, licenses, permits, passes or storage, and for different areas.

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

Recovery of dues.

78. (1) The following moneys, namely :-
- (a) all excise revenue;
 - (b) loss that may accrue when a grant has been taken under management by the Excise Commissioner;
 - (c) all amounts due to the Government by any person on account of any contract relating to the excise revenue: may be recovered from the person primarily liable to pay the same, or from his surety, if any, by distress and sale of his moveable or immovable property in accordance with the law relating to recovery or public demand for the time being in force.
- (2) When a grant has been taken under management by the Excise Commissioner, or has been transferred by him, the Excise Commissioner may recover in any manner authorised by sub-section (1), any money due to the grantee by any lessee or assignee.
- (3) When any money is due in respect of an exclusive privilege to a grantee referred to in section 18 from any person holding under him, such grantee may apply to the Excise Commissioner and he may recover such money on his behalf in order of the ways provided in sub-section (1).

Power of Government to exempt intoxicants from provisions of Act.

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

Protection of action taken in good faith.

80. No suit or other proceeding shall lie in any court against the Government or any Excise Officer 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.

Limitation of suits and prosecutions.

81. (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 Government, no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act, unless the suit or prosecution is instituted within six months after the date of the act complained of.
- (2) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, 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 Government.

Exception of medicated articles.

82. Nothing in the foregoing provisions of this Act applies to the import, manufacture, possession, sale or supply of any bonafide medicated article for medicinal purposes by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries, except in so far the Government may, by notification, so direct.

*Provisions re- 83. The provisions of section 337, 339 and 339A of the Code of Criminal
garding pardon Procedure, 1898, shall apply in relation to offences punishable under this
etc. to apply to Act as they apply in relation to offences mentioned in the said sections.
offences punish-
able under this
Act.*

5 of 1898

*Restriction of 84. If any Excise Officer considers that he ought to stop further proceed-
powers of cert- dings against any person concerned, or supposed to be concerned in an off-
ain officers to ence, he shall forthwith send a report to the Excise Commissioner stating
stop proceeding. all the facts relating to the initiation of proceedings and his reason for
thinking that further proceedings should be stopped, such proceedings
shall be stopped only when the Excise Commissioner authorises him to do
in writing.*

*Repeal and 85. (1) On and from the date of commencement of this Act, the Sik-
saving. kim Excise Act, 1971 shall stand repealed.
(2) Notwithstanding such repeal, anything done or any action
taken under the repealed Act shall, so far as it is not inconsis-
tent with the provisions of this Act, be deemed to have
been done or taken under the corresponding provision of
this Act.*

By Order of the Governor.

B. R. Pradhan
Secretary to the Government of Sikkim
Law Department.
F. No. 16(267)LD/92.

SIKKIM

GOVERNMENT **GAZETTE**

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok, Tuesday, 23rd April, 2002 No. 113

GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 3/LD/2002.

Dated the 10th. April, 2002.

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 30th day of March, 2002 is hereby published for general information:-

THE SIKKIM EXCISE (AMENDMENT) ACT, 2002
(ACT NO. 3 OF 2002)
AN
ACT

to amend the Sikkim Excise Act, 1992.

BE it enacted by the Legislature of Sikkim in the Fifty-third Year of the Republic of India as follows:-

- | | |
|--|--|
| <i>Short title, extent and commencement</i> | 1. (1) This Act may be called the Sikkim Excise (Amendment) Act, 2002.
(2) It extends to the whole of Sikkim.
(3) It shall come into force at once. |
| <i>Amendment of heading of Chapter II</i> | 2. In the Sikkim Excise Act, 1992 (hereinafter referred to as the said Act,) in Chapter II, for the heading "Establishment and Control", the following shall be substituted, namely:-

"Establishment, Control and Appeal". |
| <i>Insertion of new section 5A after section 5</i> | 3. In the said Act, after section 5, the following section shall be inserted, namely :-
"5A. Appeal.

(1) An appeal shall lie from an order passed by,-
(i) any Excise Officer under this Act or under any rules made thereunder to the Excise Commissioner", and
(ii) the Excise Commissioner from an original or appellate jurisdiction |

under this Act or under any rules made thereunder to the State Government or to any Officer not below the rank of Secretary Excise to be appointed by the State Government by notification.

- (2) For the purpose of an appeal under sub-section (1), the cases or classes of cases, the time, manner for presenting and the procedure for dealing with such appeals shall be as may be prescribed".

Substitution of reference to certain expression by certain other expression

4. In the said Act, for the words and figures "the Code of Criminal Procedure, 1898" wherever they occur, the words and figures "the Code of Criminal Procedure, 1973" shall be substituted.

Amendment of section 28(1) (d)

5. In the said Act, in clause (d) of sub-section (1) of section 28, for the words and figures "the Dangerous Drugs Act, 1930", the words and figures "the Narcotic Drugs and Psychotropic Substances Act, 1985" shall be substituted.

Amendment of section 65(1)

6. In the said Act, in sub-section (1) of section 65, for the word and figure "Chapter XV", the word and figure "Chapter XIII" shall be substituted.

Amendment of section 66(1) (b)

7. In the said Act, in section 66, in clause (b) of sub-section (1), for the words and figures "first clause of sub-section (1) of section 54 and section 56 of the said Code", the words and figures "clause (a) of sub-section (1) of section 41 and section 55 of the said Code" shall be substituted.

Amendment of section 67

8. In the said Act, in section 67,-
(1) in sub-section (1), for the word and figure "section 76", the word and figure "section 71", shall be substituted;

Amendment of section 83

- (2) in sub-section (6), for the words and figures "section 498 to 502, 513, 514, 515 and 516", the words and figures "section 440-444, 445, 446, 449 and 450" shall be substituted.
9. In the said Act, in section 83, for the words and figures "sections 337, 339 and 339 A", the words and figures "sections 306 and 308", shall be substituted.

By Order of the Governor.

T. D. Rinzing,
Secretary to the Govt. of Sikkim,
Law Department.

F. No. 16 (82) LD/77-2002.

SIKKIM

GOVERNMENT **GAZETTE**

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok	Tuesday	26th	October, 2004	No. 411
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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 1/LD/2004

Dated: 15. 10. 2004.

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 4th day of October, 2004 is published for general information:-

THE SIKKIM EXCISE (AMENDMENT ACT, 2004

(ACT No. 1 of 2004)

AN

ACT

further to amend the Sikkim Excise Act, 1992.

BE it enacted by the Legislature of Sikkim in the Fifty-fifth Year of the Republic of India as follows:-

*Short title,
extent and
commencement.*

1. (1) This Act may be called the Sikkim Excise (Amendment) Act, 2004.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force at once.

*Amendment of
section 57.*

2. In section 57 of the Sikkim Excise Act, 1992, in sub-sections (1) and (3), for the words "five hundred rupees", the words "five thousand rupees" shall be substituted.

By Order of the Governor.

TASHI WANGDI, SSJS
Legal Remembrancer- cum- Secretary Law

File No. 16(82)LD/97-2004

SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok	Friday, 11th July 2008	No. 277
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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No: 17/ LD/P/2008

Date:- 10.07.2008

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on 28th day of June, 2008 is hereby published for general information:-

THE SIKKIM EXCISE (AMENDMENT) ACT, 2008
(Act No. 17 of 2008)
AN
ACT

further to amend The Sikkim Excise Act, 1992.

Be it enacted by the Legislature of Sikkim in the Fifty-Ninth Year of the Republic of India as follows:-

- | | | |
|---|-----------|--|
| Short title, extent
and commencement | 1. | <p>(1) This Act may be called The Sikkim Excise (Amendment) Act, 2008.</p> <p>(2) It extends to the whole of Sikkim.</p> <p>(3) It shall come into force at once.</p> |
| Amendment of
Section 74 | 2. | <p>In the Sikkim Excise Act, 1992, in Section 74 after the word and figure "Section 35" and before the word and figure "Section 39", the word and figure "Section 36" shall be inserted.</p> |

BY ORDER.

R. K. PURKAYASTHA, SSJS
LR-cum-SECRETARY
LAW DEPARTMENT

SIKKIM

GOVERNMENT **GAZETTE**

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

Gangtok Thursday 24th November, 2011 No. 612

GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 12/LD/P/2011

Date: 21.11.2011

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on the 3rd day of September, 2011 is hereby published for general information :-

**THE SIKKIM EXCISE (AMENDMENT) ACT, 2011
(Act No. 12 of 2011)
AN
ACT**

further to amend the Sikkim Excise Act, 1992.

Be it enacted by the Legislature of Sikkim in the Sixty-second Year of the Republic of India as follows:-

- | | | |
|---|----|---|
| Short title, extent
and commencement | 1. | (1) This Act may be called the Sikkim Excise (Amendment) Act, 2011.
(2) It extends to the whole of Sikkim.
(3) It shall come into force at once. |
| Amendment of
section 55 | 2. | In the Sikkim Excise Act, 1992, in clause (a) of section 55 after the words " eighteen years" the words "shall be liable in case of first offence fine up to twenty thousand rupees and in case of second offence, suspension or cancellation of license and in case of third offence, imprisonment for a term which may be extend up to five years" shall be inserted. |

R.K. PURKAYASTHA (SSJS)
LR-cum-Secretary
Law Department
File No. 16 (82)/ LD/77/2011

S.G.P.G. - 612/Gazette /30 Nos./Dt:- 24.11.2011.
