

The Jammu and Kashmir Excise Act, 1958 (1901 A. D.)

JAMMU & KASHMIR

India

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The Jammu and Kashmir Excise Act, 1958 (1901 A. D.) [Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 9, dated 4th December, 1901). An Act to consolidate and amend the Excise Law of the Jammu and Kashmir State.] By the Jammu and Kashmir (Extension of Laws) Act, 1956 (Central Act 62 of 1956 the two Central Acts-the Opium Act, 1857 (13 of 1857) and the Dangerous Drugs Act, 1930 (2 of 1930) have been extended to the State and they have come into force with effect from 1st November, 1956. The Jammu and Kashmir Excise Act; 4958 has, therefore, to be read subject to the provisions of the Dangerous Drugs Act, 1930 and also the Opium Act, 1957 so far as the cultivation of the poppy and the manufacture of opium are concerned. According to the definition given in section 2(h) of the Dangerous Drugs Act, 1930 "Dangerous Drug" includes coco leaf, hemp and opium and all manufactured drugs as defined in section 2(a), (c), (e) and (g) of the said Act. Whereas it is expedient to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and intoxicating drugs in the Jammu and Kashmir State it is enacted as follows:-I. - Preliminary and Definitions

1. Short title.

- This Act may be cited as the Jammu and Kashmir Excise Act, 1958. Extent. - It extends to the whole of the territories of [the State.] [Substituted by Act X of Svt. 2010 for 'His Highness the Maharaja Bahadur of Jammu and Kashmir Government'.] Commencement. - It shall come into force in any Ideal area within the said territories to such extent and from such date as [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] by notification shall direct.

2. Repeal of enactments, rules and regulations.

- From the date on which this Act comes into force in any local area, the enactments, rules and regulations governing the Excise Revenue at present in force shall be repealed: Provided that all licences granted under any of the said enactments, rules and regulations in force on the date on which this Act comes into force in any local area, shall continue in force for the periods for which the same have been respectively granted, subject to the provisions of the enactments, rules and regulations under which such licences were granted : Provided further that the said repeal shall not affect any act done or any offence committed, or any proceeding commenced, or any claim which has arisen, or any penalty which has been incurred before this Act comes into force.

3. Interpretation.

- In this Act, unless there be something repugnant in the subject or context,-Excise Revenue. - (1) "Excise revenue" means revenue derived or derivable from any duty, fee, tax, fine or confiscation imposed or [ordered or the penalty imposed consequent upon breach of any agreement, under] [Substituted by Act No. IX of 2010, dated 21st April, 2010.] the provisions of this Act or of any other law for the time being in force relating to liquor or intoxicating drugs.(2)[[(a) 'Commissioner' means any person appointed by the Government to exercise the functions of Commissioner under this Act;(b)'Deputy Commissioner' means any person appointed by the Government to exercise the functions of the Deputy Commissioner under this Act in any province ;](c)"Excise and Taxation Officer" means any Officer or person appointed, or invested with powers, under this Act.][(2-a) "Denatured/Methylated Spirit" means spirit effectually and permanently rendered unfit for human consumption.] [Clause (2-a) inserted by Act XX of 1978, Section 2.](3)["Liquor" means intoxicating liquor and includes spirits of wine, methylated spirits, spirits, wine, beer and all liquids consisting of or containing alcohol; also any substance which the Government may by notification in the Government Gazette declare to be liquor for purposes of this Act.] [Clause (3) of section 3 substituted by Act VIII of 1956.](4)[Omitted.] [Clauses (4), (6) and (7) of section 3 omitted by Act VIII of 1956.]Beer. - (5) Beer includes ale, stout, porter, cider and all other fermented liquors usually made from malt.(6)[Omitted.] [Clauses (4), (6) and (7) of section 3 omitted by Act VIII of 1956.](7)[Omitted.] [Clauses (4), (6) and (7) of section 3 omitted by Act VIII of 1956.](8)[Opium means-(i)the capsules of the poppy (*Papaver somniferum* L), whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom ;(ii)the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and(iii)any mixture, with or without neutral materials, of any of the above forms of opium but does not include any preparation containing not more than 0.2% of morphine or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930 (Central Act 2 of 1930)].[Intoxicating Drug. - (9) "Intoxicating drug" includes [opium] [Clause (9) as amended by amending Act of 1970 substituted by Notification No. 14 published in Government Gazette dated 17th Phagan, 1983.] charas, ganja, bhang and every other preparation and mixture of the same and every intoxicating drink or substance prepared from any part of the hemp plant, from the grain or from other material, not included in the term "Liquor". [xxx] [Deleted by Act IX of 1961.][xxxx] [Second paragraph deleted by Act IX of 1961.] [Clause (8) substituted by Act IX of 1961. (It was previously substituted by Notification No. 14 published in Government Gazette dated 17th

Phagan 1983).]Sale or selling. - (10) "Sale or selling" includes any transfer otherwise than by way of gift.[(10-a) Liquor and intoxicating drugs other than prepared opium and dangerous drugs shall be deemed to be sold "by retail" when sold in quantities not exceeding the quantity (if any) fixed in respect of the same by rules made under this Act as the largest which may be possessed by one person, at one time, without a licence, permit or pass ; and "by wholesale" when sold in quantities larger than the above.] [Clause (10-a) inserted by Notification No. 14 published in Government Gazette dated 17th Phagan 1983.]Import. - (11) "Import" means to bring into the State, territory from [any other part of India.] [Substituted by Act XIII of 1969.]Export. - (12) "Export" means to take out of the State territory to [any other part of India.] [Substituted by Act XIII of 1969.]Transport. - (13) "Transport" means to move from one place to another within the State territory.Manufacture. - (14) "Manufacture" includes every process, whether natural or artificial by which any fermented, spirituous or intoxicating liquor, or intoxicating drug is produced or prepared, and also redistillation and every process for the rectification of liquor.Rectification. - (15) "Rectification" includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith.(16)[Omitted.] [Clause (16) omitted by Act XL of 1966.]Imprisonment. - [(17) "Imprisonment" includes both simple and rigorous.] [Clause (17) added by Council Resolution dated 27th November, 1903 published in the Government Gazette dated 18th Phagan, 1960.][Molasses. - (18) "Molasses" means the heavy dark coloured viscous liquid produced in the final stage of manufacture of gur or sugar containing, in solution or suspension sugars which can be fermented, and includes the solid form of such liquid and also any products formed by the addition to such liquid or solid of any ingredient which does not substantially alter the character of such liquid or solid and from which the wash is prepared but does not include any article which the State Government may, by notification in the Government Gazette, declare not to be molasses for the purpose of this Act] [Added by Act XI of 1999, Section 4, w. e. f. 29-2-2000.].[3A. "Country liquor" and "foreign liquor". - The Government may by notification in the Government Gazette declare what, for the purposes of this Act or any portion thereof, shall be deemed to be "country liquor" and "foreign liquor".] [Section 3-A inserted by Act VIII of 1956.]II. - Establishment and Control[4. Appointment of Excise and Taxation Officer. - [(1) The Government may appoint such officers as it thinks fit to be [Commissioner,] [Section 4 substituted by Act VIII of 1956.] [Deputy Commissioners,] [Substituted by Act XIV of 1966.] and Excise and Taxation Officers ; and the officers so appointed shall exercise such powers as may be conferred and perform such.duties as may be required by or under this Act.] [Clause (2) of section 3 substituted by Act VIII of 1956.](2)[Notwithstanding anything contained in sub-section (1) the Government may appoint any person as Joint Commissioner Enforcement to exercise powers under such provisions of the Act as it may, be notification, in the Government Gazette specify and also appoint such other persons to assist him as it deems fit.] [Section 4 renumbered as section-section (1) and sub-section (2) inserted by Act III of 1998, Section 8.][4A. Delegation of power conferred by section 4. - (1) The Government may delegate any of the powers conferred by section 4 to any of the officers named therein, and may further empower them to appoint such other servants as are necessary for the carrying out of this Act.(2)Every person appointed in exercise of such delegated power may be suspended or dismissed by the officer who appointed him.] [Section 4-A inserted by Act III of 1998, Section 8.][4B. Superintendence and Control of the Excise Administration and Excise Officers. - (1) Subject to the Control of the Government and unless the Government by notification otherwise directs the general superintendence and administration of all matters, relating to Excise shall vest in the

Commissioner.(2)Subject to the general superintendence and control of the Commissioner and unless the Government by notification otherwise directs, the Deputy Commissioner shall control all Excise and Taxation Officers in his division.

4C. Appeal.

- An appeal shall lie from an order passed by-(i)an Excise and Taxation Officer to the Deputy Commissioner;(ii)a Deputy Commissioner in exercise of his original jurisdiction to the Commissioner:Provided that the appeal is preferred within sixty days from the date of order.

4D. Revision and review.

(1)The Commissioner may, suo moto at anytime or on an application made to him in this behalf, call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he may deem fit:Provided that the application shall be made within a period of ninety days of the date of taking of the proceeding or of passing of the order as the case may be.(2)The authority passing an order may review such order or that of its predecessor whether suo moto or at the instance of the aggrieved party:Provided that an order passed in review shall not be subject to further review by the same authority:Provided further that a review petition submitted by an aggrieved party will be admissible only if-(a)there are some new facts or circumstances warranting reconsideration of the order; or(b)there has been a mistake or error apparent on the face of the record; or(c)for any other sufficient reasons.(3)Applications for review may before submission of appeal be preferred to the authority which passed the original order by a person who on account of some mistake or error apparent on the face of record or for any other sufficient reason desires to obtain review of the order passed against him.(4)The period of limitation for any application for review-shall be thirty days.(5)No order shall be made under this section which adversely affects die rights of any person upon whom an obligation is imposed by or under this Act, without giving such person a reasonable opportunity of being heard.] [Sections (4-B) (4-C) and (4-D) inserted by Act XIX of 1981, Section 34.]III. - Import, Export and Transport[5. Import of liquor and intoxicating drugs. - No liquor or intoxicating durings shall be imported into the Jammu and Kashmir State except :-(a)after payment of any duty to which it may be liable under this Act, or execution of a bond for such payment; and(b)in compliance with such conditions as the Government may impose.]

6. Export of liquor or intoxicating drugs.

- No liquor or intoxicating drug shall be exported unless it has been lawfully imported or manufactured in the State, and its export is permitted by competent authority on payment of the fee or duty, if any, to which it is liable under any law for the time being in force.[xxxx] [Second para to section 6 deleted by Act IX of 1961. This para was added vide Notification No. 14 published in the Government Gazette dated 17th Phagan 1983.]

7. Transport of liquor, opium or intoxicating drug may be prohibited.

- [The Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may from time to time, by notification in the Government Gazette, prohibit the transport of liquor or intoxicating drugs from any local area into any other local area.

8. And must be covered by a permit.

- No liquor or intoxicating drug exceeding such quantity as [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may from time to time prescribe by notification, either generally for the whole State or for any local area shall be transported, except it be accompanied by a permit issued under the provisions of the next following section: Provided that in case of foreign liquor transported for bona fide private consumption or for sale at any place at which the sale of such liquor is duly licensed or permitted under the provisions of this Act, such permits shall be dispensed with, unless [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] shall by notification otherwise direct with respect to any local area.

9. Permits for transport.

- Permits for the transport of liquor or intoxicating drugs may be issued by the [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] or by any person duly empowered in that behalf by him. General and special permits. - Such permits shall be either general for definite periods and kinds of liquor or intoxicating drugs, or special for specified occasions and particular consignments only;

10. Particulars to be given in permits.

- Each permit shall specify (a) the name of the person authorized to transport liquor or intoxicating drugs; (b) the period for which the permit is to be in force; (c) the quantity and description of liquor or intoxicating drugs for which it is granted; (d) any other particulars which [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may prescribe. General permits shall be granted only to persons licensed under this Act and shall cover any quantity of liquor or intoxicating drugs transported at any one time within the quantity specified in the permit. Permits shall extend to and include servants and other persons employed by the grantees and acting in their behalf. IV. - Manufacture, Possession and Sale

11. Manufacture of liquor, or intoxicating drugs prohibited except under the provisions of this Act.

- No liquor, or intoxicating drug shall be manufactured ; no hemp [or coca] [Inserted by Notification No. 14 published in Government Gazette dated 17th Phagan, 1983.] or poppy plant shall be cultivated ; [nor shall the spontaneous growth of the hemp plant be collected] [Inserted by Notification No. 14 published in Government Gazette dated 17th Phagan, 1983.];no distillery, or brewery, or other place for the manufacture of liquor of any kind shall be constructed or worked; andno person shall use, keep or have in his possession any material, still, utensil implement or apparatus whatsoever for the purpose of manufacturing any liquor, or intoxicating drug, except under the authority and subject to the terms and conditions of a licence granted by the [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] in that behalf :Provided that [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b),63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may, by notification, direct that in any local area it shall not be necessary to take out a licence for the manufacture of liquor for bona fide home consumption or for the growth of the poppy or hemp plant or the manufacture of opium for sale to vendors licensed for the sale, manufacture or export of intoxicating drugs :Provided also that it shall be competent to [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b),63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] at anytime to restrict or prohibit the manufacture, possession or sale of any kind of liquor or intoxicating drugs in any local area of the territories of [the State.] [Substituted by Act X of Svt. 2010 for 'the Jammu and Kashmir Government'.][11A. Licence for export, import, sale or possession of molasses. - (1) No person shall export, import, transport, sell or possess any quantity of molasses without a licence in accordance with sub-section (2) of this section.(2)The State Government may, by order, authorise Excise Commissioner or any other officer subordinate to him to grant licence (s) for the export, import, transportation, sale or possession of molasses.] [Inserted by Act XI of 1999, Section 5, w.e.f. 29-2-2000.][12. Possession of liquor or intoxicating drugs in excess of the quantity prescribed by the Government prohibited. - No person shall possess any quantity of liquor or of any intoxicating drug in excess of such quantity (if any) as the [Government] [Section 12 substituted by Notification No. 14 published in Government Gazette dated 17th Phagan, 1983.] may from time to time prescribe by notification unless he is licensed by the [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] to collect, cultivate, manufacture or sell the same or holds a pass from the [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] in that behalf.] [Section 5 substituted by Act XIV of 1966.][12A. Possession of unused and printed lables, corks, capsules, seals by certain persons. - No person shall have in his possession:-(a)any unused and printed label, cork, capsule or seal, duly approved by the Commissioner under this Act or under any rule or order made thereunder for use by a person licensed to establish or work in a distillery or brewery; or(b)any other label, cork, capsule, or seal which is an imitation of such unused and printed label, cork, capsule or seal as specified in clause (a):Provided that nothing herein shall apply to :-(i)a person licensed to establish or work in a distillery or brewery or who is incharge of the Jammu and Kashmir Excise Department Warehouse at Jammu or Srinagar; or(ii)a person who, in

the execution of an order received from a person specified in sub-clause (i), manufactures or prints such labels, corks, capsules or seals.][13. Establishment of distilleries and warehouses. - (1) The Commissioner may, with the previous approval of the Government, -(a) establish or licence the establishment and running of a ware-house wherein intoxicants may be deposited and kept without payment of duty; (b) discontinue any warehouse so established or licensed; (c) establish or licence the establishment of a distillery or a brewery for manufacture of liquor or beer, as the case may be; and (d) discontinue any distillery or brewery so established or licensed. (2) No intoxicant shall be removed from any distillery or brewery or warehouse established or licensed under this Act unless the duty, if any, payable under this Act has been paid in respect thereof.] [Section 13 substituted by Act XXV of 1972, Section 2.][14. Sale of liquor or intoxicating drugs without licence prohibited. - No liquor or intoxicating drug shall be sold without a licence from the Commissioner: Provided that, -(a) a person licensed under section 11 of this Act to cultivate the hemp plant may sell without a licence those portions of the plant from which any intoxicating drug can be manufactured to any person who deals in the same and is licensed under this Act or to any officer whom the Commissioner may appoint in this behalf; (b) nothing in this section shall apply to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his demise.][14A. Regulation of the sale of liquor in the State. - (1) Notwithstanding anything to the contrary contained in any other law, rule, order, agreement or any other instrument or any order, judgement or decree of any Court, the Government shall regulate the sale of country liquor in the State [by auctioning or operating departmental vends] [Section 14-A inserted by V of 1987, Section 2.] the country liquor shops on such conditions and for such period as it may deem fit: Provided that the departmental shops existing for the sale of country liquor at the time of first auction shall continue to run at such places and for such period as may be specified by the Government by a special or general order. (2) Any agreement or instrument executed, any letter of intent or order issued by the Government relating to manufacturing, bottling or sale of country liquor before the commencement of the Jammu and Kashmir Excise (Amendment) Ordinance, 1985 (II of 1985) shall be and shall always be deemed to have been without effect.] [Section 14 substituted by Act XX of 1978, Section 2.]

15. Exclusive privileges of manufacture etc. may be granted.

- It shall be lawful for [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] to grant to any person or persons, on such conditions and for such period as may seem fit, the exclusive or other privilege - (1) of manufacturing or supplying by wholesale, or (2) of selling by retail, or (3) of manufacturing or supplying by wholesale and selling by retail, any country liquor or intoxicating drug within any local area. No grantee of any privilege under this section shall exercise the same until he has received a licence in that behalf from the [Commissioner.] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] IV. - Duties

16. Duty on liquor or intoxicating drugs.

- A duty shall, if [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] so direct, be levied on all liquor and intoxicating drugs manufactured in the territories of the State [or imported into or exported from the State] [Substituted by Act XV of 1987, Section 2.] [xxx] [Words 'on State account' omitted by Act XLV of Svt. 2011.] of such amount as the Government may from time to time prescribe :Provided that it shall be lawful for [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] to exempt any liquor or intoxicating drug from any duty to which the same may of liable under any of the provisions of this Act.[16A. Approval to the label. - No liquor whether manufactured in the State or imported, shall be purchased, stored or sold in the State unless the label of such brand is approved by the Commissioner subject to such conditions as may be laid down by him and on payment of such fee as the Government may, by notification in the Government Gazette, specify from time to time.] [Inserted by Act III of 2000, Section 2.]

17. How duty may be imposed.

- Such duty may be levied in one or more of the following ways(a)by duty of excise to be charged, in the case of spirits or beer, either on the quantity produced in the distillery or brewery or passed out of the distillery, brewery or warehouse [or imported into or exported from the State,] [Added by Act XLV of Svt. 2011 and subsequently substituted by Act XV of 1987, Section 3.] as the case may be ;(b)in the case of intoxicating drugs, by a duty to be rateably charged on the quantity produced or manufactured or passed out of the warehouse or on the acreage cultivated ;(c)by payment of a sum in consideration of the grant of any exclusive or other privilege -(1)of manufacturing or supplying by wholesale, or(2)of selling by retail, or(3)of manufacturing or supping by wholesale, and selling by retail any country liquor or intoxicating drug in any local area and for any specified period of time ;(d)by fees on licences for manufacture or sale ;(e)by transport duties assessed in such manner as [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may direct;(f)[by duty on bottling of liquor.] [Clause (f) added by Act XIII of 1959.]

18. Duties may be framed.

- All or any of the duties leviabale under this Act in any local area may, with the sanction of [the Government,] [Added by Act XLV of Svt. 2011 and subsequently substituted by Act XV of 1987, Section 3.] be framed subject to such payment and on such other conditions as [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] shall prescribe. Farmers of duties under this section shall take out licences as such from the [Commissioner.] [Substituted by Act XIV of 1966 for

'Excise and Taxation Commissioner'.]

19. Farmer may let or assign.

- In the absence of any contract or condition to the contrary, any grantee of any exclusive or other privilege may let or assign the whole or any portion of the privilege or farm. But no such lessee or assignee shall exercise any rights as such unless and until the grantee or farmer, as the case may be, shall have applied to the [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] for a licence to be given to such lessee or assignee, and such lessee or assignee shall have received the same. VI. - Licences, etc.

20. Forms and conditions of licences, etc.

(1) Every licence or permit granted under this Act shall be granted-(a) on payment of such fees (if any) ; (b) for such period ; (c) subject to such restriction and on such conditions ; and (d) shall be in such form and contain such particulars, as [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may direct, either generally or in any particular instance, in this behalf. (2) [The Government may, by order, delegate all or any of its powers under sub-section (1) to the [Commissioner] [Sub-section (2) inserted by Act V of Svt. 2001.] subject to Such conditions, if any, as may be specified in the order.] [Section 12-A inserted by Act XX of 1978, Section 3.]

21. Counterpart agreements to be executed by licensees.

- Every person taking out a licence under this Act may be required to execute a counterpart agreement in conformity with the tenor of his licence and to give such security for the performance of his agreement as the [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] may require.

22. Power to recall licences.

- The [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] may cancel or suspend any licence or permit granted under this Act-(a) if any fee or duty payable by the holder thereof is not duly paid; or (b) in the event of any breach by the holder of such licence or permit, or by his servants, or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such licence or permit; or (c) if the holder thereof is convicted of any offence against this Act or any other law for the time being in force relating to the excise revenue, or of any cognizable or non-bailable offence; or (d) where a licence or permit has been granted on the application of the holder of an exclusive or other privilege, or of a farmer of duties under this Act, on the requisition in writing of such person ; or (e) if the conditions of the licence or permit provide for such cancellation or suspension at will, or (f) [if the holder of the licence or permit resorts to illegal transportation of liquor from the distillery.] [Added by Act XI of 1999, Section 7,

w.e.f. 29-2-2000.]VII. - General Provisions

23. Certain licensees required to keep instruments for testing etc.

- Every person who manufactures liquor or sells country liquor under a licence granted under this Act shall be bound-(a)to supply himself with such of the prescribed instruments for testing the strength of such liquor as the [Commissioner] [Substituted by Act XIV of 1966.] may direct and to keep the same in good condition ; and(b)on the requisition of any officer of the [Excise Department] [Substituted by Act XIV of 1966.] duly empowered in that behalf, at any time to measure out or to test the strength of any such liquor in his possession in such manner as the said officer may require.

24. Recovery of duties, etc.

- All duties, taxes, fines and fees payable to the State direct under any of the foregoing provisions of this Act or of any licence or permit issued under it, and all amounts due to the State by any grantee of a privilege, or by any farmer under this Act, or by any person on account of any contract relating to the Excise revenue, may be recovered from the person primarily liable to pay the same or from his surety (if any), as if they were arrears of land revenue, and, in case of default made by a grantee of a privilege or by a farmer, the [Commissioner] [Substituted by Act XIV of 1966.] [with the approval of the Government] [Words inserted by Notification No. 15 dated 14th December, 1922 published in Government Gazette dated 11th Poh, 1979, but in these words 'Government' substituted for 'Minister-incharge' vide Act X of 1966.] may take the grant or farm under management at the risk of the defaulter, or may declare the grant or farm forfeited, re-sell it at the risk and loss of the defaulter. When a grant or farm is under management under this section, the [Commissioner] [Substituted by Act XIV of 1966.] may recover any monies due to the defaulter by any lessee or assignee as if they were arrears of land revenue.[24A. If any tax or other amount due is not paid, consequences thereof. - Notwithstanding anything contained in this Act, if any tax or other amount due under this Act is not paid by the licensee or other person, from whom it is due within the time specified for the payment therefor or within a period of three months from the date of demand whichever is earlier, the licensee or other person from whom the tax or other amount is due shall be liable to pay in addition to the tax or amount due, a sum equal to 2% of such tax or amount for each month or part thereof after the period specified for its payment.] [Section 24-A inserted by Act XIV of 1974, Section 16.][24B. Refund of duty etc. - Any amount of duty, tax, fine or fee paid by any person which was not payable under this Act shall be refunded to such person along with interest for the period of default at the rate of 2% per month:Provided that if such amount has been recovered by the said person from any other person then such other person only shall be entitled to refund:Provided further that if any amount has been refunded to a person who is not entitled to it, it shall be recovered from him as arrears of land revenue.] [Section 24-B inserted by Act XIX of 1981, Section 35.]

25. Power to frame rules.

- [The Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the

Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may from time to time frame rules-(a)for determining the number of licences of each description to be granted in any district or place;(b)for regulating the number, size and description of stills, utensils, implements and apparatus to be used in any distillery;(c)prescribing the instruments to be used in the testing of liquor and the tables of corrections according to temperature to be used therewith;(cc)[prescribing of procedure for regulating the vending of country liquor through auction;] [Clause (cc) inserted by Act V of 1987, Section 3.](d)prescribing the measures to be used for the sale country liquor;(dd)[prescribing the type and description of bottling liquor and regulating other conditions relating thereto;] [Clause (dd) inserted by Act No. XIII of 1969.](e)fixing for any local area the [maximum or] [Inserted by order published in Government Gazette dated 10th Jeth, 1978.] minimum price [above or] [Inserted by order published in Government Gazette dated 10th Jeth, 1978.] below which [any liquor or opium] [Substituted by Act XV of 2006, Section 2.] shall not be sold;(f)for the warehousing of liquor and intoxicating drugs and for the removal of the same from any warehouse in which they are deposited for deposit in any other warehouse or for local consumption or for export;(g)for the inspection and supervision of stills, distilleries, private warehouses and breweries ;(h)for the management of any public distillery or public warehouse established under section 13;(i)for placing the growth of the poppy or hemp plant and the preparation of intoxicating drugs and the storage, import, export, possession or transport of liquor or intoxicating drugs under such supervision and control as may be deemed necessary for the purpose of this Act;(j)prohibiting the use of any article which [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b),63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] shall deem to be noxious or otherwise objectionable in the manufacture of liquor or any intoxicating drugs ;(k)for the grant of batta to witnesses summoned before Magistrate or [Deputy Commissioner] [Substituted by Act XIV of 1966.] under this Act;(l)regulating the powers of the officers of the [Excise Department] [Substituted by Act XIV of 1966.] to summon witnesses ;(ll)[prescribing and limiting the powers and duties of Excise and Taxation Officers and regulating the delegation of duties to and by such Officers] [Clause (ll) added by Act VII of 1956.];(m)for the disposal of the articles confiscated and of the proceeds thereof;(n)for the grant of rewards to [Excise and Taxation Officers] [Substituted by Act VIII of 1956 for 'Customs and Excise Officers'.] and other persons who have assisted in the detection or conviction of offences against this Act;(o)generally to carry out the provisions of this Act or of any other law for the time being in force and relating to the Excise revenue.VIII. - Powers and Duties of Officers, Etc.

26. Magistrate or [Deputy Commissioner] [Substituted by Act XIV of 1966.] may issue a search warrant on application.

- If any Magistrate or [Deputy Commissioner] [Substituted by Act XIV of 1966.] upon information given by an officer of the [Excise Department] [Substituted by Act XIV of 1966.] or by a Police Officer or other person, and after such inquiry as he thinks necessary, has reason to believe that an offence under this Act has been committed and that the issue of a warrant is necessary to assist in its detection, he may issue a warrant for the search for any liquor, or intoxicating drug, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been committed.

27. Powers to certain officers to search houses, etc. without warrant.

- [When any Revenue Officer not below the rank of a Naib-Tehsildar or a Police officer not below the rank of Sub-Inspector or any officer of the [Excise Department] [Substituted for certain words by Act IV of Svt. 2009. (For earlier amendment see Acts III and X of Svt. 2008).] not below the rank of Inspector in any locality to which this Act applies] has reasons to believe that an offence under this Act has been committed, and that if steps are taken to obtain a search warrant under the last preceding section, it is likely to go undetected, he may, after recording his reasons and 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 and may detain and search and, if he thinks proper arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Act.

28. Power to enter and inspect places of manufacture and sale.

- [Any officer of the Excise Department not below the rank of Inspector or any other officer as may be empowered by the Government] [Substituted by Act XI of 1999, Section 8, w. e. f. 29-2-2000.] may enter and inspect at anytime by day or by night, any place in which any licensed manufacturer carries on the manufacture of any liquor or intoxicating drugs or stores any liquor or intoxicating drug; and may enter and inspect, at any time during which the same may be open, any place in which any liquor or intoxicating drug is kept for sale by any licensed person, and may examine, test, measure or weigh any materials, stills, utensils, implements, apparatus, liquor or intoxicating drug found in such place.

29. In case of resistance, entry may be made by force, etc.

- If any officer empowered to make any entry under the provisions of the last two preceding sections cannot otherwise make such entry, it shall be lawful for him to break open any outer or inner door or window and to remove any other obstacle to his entry into any such place.[30. Offenders may be arrested and contraband liquor and articles seized, without warrant. - (1) Any [Excise and Taxation Officer,] [[Existing section 30 numbered as sub-section (1) by Act IV of Svt. 2009.(For earlier amendment see Act VIII of Svt. 1997).]] any Police Officer not below the rank of [Head Constable] [Substituted by Act IV of Svt. 2009. for 'Sub-Inspector'.] and any other person [or class of persons] [Added by Act XI of Svt 2003.] duly empowered by the Government in this behalf may arrest without warrant any person found committing an offence punishable under [section 48, section 50 or section 50-A] [Substituted by Act IV of Svt. 2009 for 'section 48 or section 50'.] and may seize and detain any liquor, drug or other article which he has reason to believe to be liable to confiscation under this Act or any other such law and may detain and search any person upon whom, and any vessel, raft, boat, vehicle, animal, package, receptacle of covering in or upon which, he may have reasonable cause to suspect any such liquor or drug or other such article to be or to be concealed.(2)[Any person other than an [Excise and Taxation Officer] [Sub-sections (2) and (3) to section 30 inserted by Act IV of Svt. 2009.] lawfully arresting a person shall immediately take him along with liquor, drug, or other article so seized or detained before the nearest [Inspector Excise and Taxation] [Substituted by Act VII of 1956 for 'Inspector Customs and Excise'.] who shall at once

take charge of the accused and the articles so seized or detained. The time taken in bringing the accused to the [Inspector Excise and Taxation] [Substituted by Act VII of 1956 for 'Inspector Customs and Excise'.], shall not be included in the period of twenty-four hours prescribed by section 37. The [Inspector Excise and Taxation] [Substituted by Act VII of 1956 for 'Inspector Customs and Excise'.] on taking charge of the accused shall hold such enquiry as he may think necessary :Provided that the [Deputy Commissioner] [Substituted by Act XIV of 1966 for 'Deputy Excise and Taxation Commissioner'.] may of his own motion or on the application of the accused transfer the case for enquiry to any other officer not below the rank of an Inspector under him and such officer shall be deemed to have arrested the accused and shall proceed in the aforesaid manner.(3)(i)Every [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] making an enquiry as aforesaid shall day by day enter his proceedings in the enquiry in a diary, setting forth the time at which the information reached him, the time at which he began and closed his enquiry, the place or places visited by him and a statement of the circumstances ascertained through his enquiry.(ii)Any criminal Court may send for such diaries of a case during the course of an enquiry or trial in such Court, and may use such diaries, not as evidence in the Court but to aid in such enquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court, but if they are used by the Excise Officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Excise Officer, the provisions of the Evidence Act, contained in section 161, or section 145, as the case may be, shall apply.](4)[The Government may by a general or special notification, invest any police officer-in-charge of a police station or attached to it, not below the rank of a sub-inspector with powers exercisable by an Excise Inspector under the Excise Act.] [Sub-section (4) inserted by XXXIX of 1956.]

31. Arrest of person refusing to give name or giving false name.

- Any person who may be accused or reasonably suspected of committing an offence under this Act, and who on demand of [Excise and Taxation Officer] [Substituted by Act XIV of 1966 for 'Deputy Excise and Taxation Commissioner'.] or of any other person duly empowered, refuses to give his name or residence, or who gives a name or residence which such officer or person has reason to believe to be false, may be arrested by such officer or person in order that his name and residence may be ascertained.[32. Searches how to be made. - All searches under the provisions of this Act shall be made in accordance with the Criminal Procedure Code, 1989:Provided that, for the purposes of conducting searches under this Act for the words, "inhabitants of the locality in which the place to be searched is situate" occurring in section 103 of the said Code the words "respectable persons" shall be deemed to have been substituted.] [Section 32 substituted by Act XXXIX of 1956.]

33. Officers of Police and Revenue Departments and all village Headmen and Choukidars bound to assist.

- All officers of the Police and Revenue Departments and all village headmen and Choukidars shall be legally bound to assist any [Excise and Taxation Officer] [Substituted by Act VII of 1956 for 'Customs and Excise Officer'.] in carrying out the provisions of this Act.

34. All officers in State employ required to report offences against this Act.

- Every officer employed by the State other than an [Excise and Taxation Officer] [Substituted by Act VII of 1956 for 'Customs and Excise Officer'.], shall be bound to give immediate information to an [Excise and Taxation Officer] [Substituted by Act VII of 1956 for 'Customs and Excise Officer'.], and every [Excise and Taxation Officer] [Substituted by Act VII of 1956 for 'Customs and Excise Officer'.] shall be bound to give immediate information either to his immediate official superior or to a [Deputy Commissioner] [Substituted by Act XIV of 1966 for 'Deputy Excise and Taxation Commissioner'.] of all breaches of any of the provisions of this Act which may come to his knowledge ; and all such officers shall be bound to take all reasonable measure in their power to prevent the commission of any such breaches which they may know or have reason to believe or about or likely to be committed.

35. Land-holders and others to give information.

- All Zamindars, proprietors, tenants, under-tenants and cultivators who own or hold land on which there shall be manufacture of liquor, growth of the poppy or hemp plant or manufacture of intoxicating drugs not licensed under this Act in accordance with its conditions shall in the absence of reasonable excuse, be bound to give notice of the same to a Magistrate or to an [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] immediately the same shall have come to their knowledge.[35A. Power to seize, destroy etc. poppy and hemp plant. - (1) Where any Excise and Taxation Officer has reason to believe that poppy or hemp plant is unlawfully grown or cultivated, he or any other officer authorised by the Government in this behalf, shall seize, confiscate and destroy such plant in the presence of a [Judicial Magistrate or an Executive Magistrate] [Section 35-A inserted by Act XXIV of 1976, Section 2.](2)Any action taken under sub-section (1) shall not protect the person, cultivating or growing poppy or hemp plant, from being prosecuted under the provisions of this Act.][36. Arrested persons to be taken before a Magistrate. - An [Excise and Taxation Officer] [Sections 36 to 46 substituted by Act IV of Svt. 2009.] arresting a person under this Act, or who has taken charge of the accused under sub-section (2) of section 30, shall without unnecessary delay and subject to the provisions hereinafter contained as to bail, take the person arrested before a [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] having jurisdiction to try the case.]

37. Period of detention not to exceed twenty four hours.

- An [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] arresting a person under this Act, or who has taken charge of the accused under sub-section (2) of section 30, shall not detain him in custody for a longer period than under all the circumstances of the case is reasonable and subject to the provisions of section 30 such period shall not in the absence of a special order of a Magistrate passed under section 40 exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.[38. Certain offences to be non-bailable and triable summarily. - Notwithstanding anything contained in [x x] [Section 38 substituted by Act XXXIX of 1956.] the Code of Criminal Procedure, 1989-(i)the offences specified in clauses (b), (d) and (e) of [section 48 and sub-section (1) of section 50]

[Substituted by Act VII of 2001, Section 3.] shall be non-bailable, and(ii)[the offences specified in sections 48, 49, 50, 50-A, 50-B and 55 and sub-section (1) of section 56 shall be triable summarily.] [Clause (ii) of section 38 substituted by Act VII of 1956.]

39. Bail.

- The provisions contained in Chapter XXX of the Code of Criminal Procedure, 1989, regarding bail so far as they are applicable, shall apply mutatis mutandis in respect of persons arrested or detained or brought before a Court under the provisions of this Act, subject to the modification that for the expression "officer incharge of a Police Station" wherever occurring the expression "an [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] not below the rank of an Inspector" shall be deemed to have been substituted.

40. Procedure where enquiry cannot be completed in 24 hours.

(1)Whenever any person is arrested under this Act and detained in custody and it appears that an enquiry into the offence of which such person is accused cannot be completed within the period of twenty-four hours prescribed by section 37, the [Deputy Commissioner] [Substituted by Act XIV of 1966 for 'Deputy Excise and Taxation Commissioner'.] or the officer making the enquiry, as prescribed in sub-section (2) of section 30, shall forward to the nearest Magistrate a report setting forth the circumstances in which the accused was arrested together with the information which is yet to be elicited and shall at the same time forward the accused to such Magistrate. Remand. - (2) The Magistrate to whom an accused person is forwarded under sub-section (1) may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days on the whole. If he has not jurisdiction to try the case and considers further detention unnecessary he may order the accused to be forwarded to a Magistrate having such jurisdiction :Provided that no Magistrate other than a Magistrate of the first class shall authorise detention in any custody other than a judicial lock-up.(3)A Magistrate authorising under this section detention in any custody other than a judicial lock-up shall record his reasons for so doing.

41. Arrest of persons suspected of offences under this Act.

(1)A [Deputy Commissioner] [Substituted by Act XIV of 1966 for 'Deputy Excise and Taxation Commissioner'.] on such enquiry as he thinks fit and after recording his reasons in writing may arrest or order in writing the arrest of a person whom he has reason to believe to have committed an offence under this Act and shall release him on bail unless he is accused of an offence under clauses (b), (d) and (e) of [section 48 or sub-section (1) of section 50.] [Substituted by Act VII of 2001, Section 4.](2)If the person arrested is unable to furnish bail or if a person has been arrested on an accusation of an offence under clauses (b), (d) and (e) of [section 48 or sub-section (1) of section 50] [Substituted by Act VII of 2001, Section 4.] the person arrested shall be dealt with as provided heretofore with respect to persons arrested under section 30.

42. Excise and Taxation Officer's power to require attendance of witnesses.

- An [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] empowered to hold an enquiry into an offence under this Act, may by order in writing require the attendance before himself of any person, who appears to be acquainted with the circumstances of the case or to produce any documents relevant thereto and such person shall attend or produce as so required ; provided that a person who from sickness or other infirmity may be unable to attend or who is a pardhanashin lady or is otherwise exempted from appearance in Court shall not be bound to attend at any place other than the residence of such person.

43. Examination of witness by Excise and Taxation Officer.

(1)An [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] holding any enquiry under this Act may examine orally any person supposed to be acquainted with the facts and the circumstances of the case.(2)Such person shall answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.(3)Such answers shall be reduced into writing and shall after being read over to the person making the same be signed by such officer.

44. Release of accused when evidence deficient.

- If on enquiry under this Act it appears to the officer holding the enquiry, that there is not sufficient evidence or reasonable ground to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond with or without sureties as such officer may direct, to appear if and when so required, before a Magistrate having jurisdiction to try the case.

45. Case to be sent to Magistrate when evidence is sufficient.

(1)(a)If upon an enquiry under this Act it appears to the [Deputy Commissioner] [Substituted by Act XIV of 1966 for 'Deputy Excise and Taxation Commissioner'.] or the officer holding the enquiry that there is sufficient evidence, such officer shall forward the accused under custody to a [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] competent to try the case or if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] on a day fixed and for his attendance from day to day before such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] until otherwise directed and shall also forward to such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] a report setting forth the names of the parties, the nature of the information, the names of the persons who appear to be acquainted with the circumstances of the case and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond and if so with or without sureties.(b)Such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] shall take on such report cognizance of

the offence charged.(c)The accused on his application shall be entitled at his own cost to a copy of such report before the commencement of the trial.(2)Nothing herein contained shall have the effect of debarring of [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] from taking cognizance otherwise than on such a report i. e. in accordance with the provisions of section 190 Criminal Procedure Code :Provided that such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] shall not take cognizance of an offence under the Excise Act, 1958, on complaints made by private individuals.(3)When such Officer as aforesaid forwards an accused person to a [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] or takes security for his appearance before such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] under this section, he shall send to such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] any articles seized which it may be necessary to produce before him and shall require the complaint (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute bond to appear before the [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.(4)If the Court of the [Chief Judicial Magistrate] [Substituted by Act XL of 1966 for 'District Magistrate or Sub-Divisional Magistrate'.] is mentioned in the bond, such Court shall be deemed to include any Court to which such [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] may refer the case for trial provided reasonable notice of such reference is given to such persons.(5)The day fixed for the appearance of such persons shall be the day when an accused person is to appear, if security for his appearance has been taken or the day on which he may be expected to arrive at the Court of the [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] if he is to be forwarded in custody.[46. Production of seized articles before Magistrate. - All liquor or other contraband articles seized under this Act shall be produced before the nearest Magistrate without any delay who shall seal those articles making an inventory thereof. Where, however, this cannot be done without unreasonable inconvenience, delay or expense the officer making enquiry on the spot or seizing the goods shall seal all such articles in the presence of at least two respectable witnesses. The articles so seized shall remain in the custody of the officer seizing them pending orders of a Magistrate.] [Section 46 substituted by Act XXXV 1962.]

47. Closing of shop for the sake of public peace.

- It shall be lawful for the [Deputy Commissioner of the District] [Substituted by Act III of Svt. 2008 for 'Governor of Province'.] to which this Act applies, by notice in writing to the licensee, to require that any shop in which liquor or any intoxicating drug is sold, shall be closed, at such time or for such period as he may think necessary for the preservation of the public peace.IX. - Penalties[48. For illegal import, etc. - Whoever, in contravention of this Act or of any rule or order prescribed or notified thereunder or of any licence or permit granted thereunder(a)imports, exports, transports or possesses liquor or [any intoxicating drug or molasses, or](b)manufactures liquor or any intoxicating drug, or(c)cultivates the poppy or hemp (*Cannabis sativa* or *Indica*) or coco plant or collects the spontaneous growth of the hemp plant, or(d)constructs or works any distillery or brewery or other place for the manufacture of liquor, or(e)uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever, for the purpose of manufacturing liquor or any intoxicating drug, or(f)[sells or offers to sell any liquor or [intoxicating] [Clause (f]

substituted by Act IV of Svt. 2009.] drug,][shall on conviction before a Judicial Magistrate, be punished with imprisonment for a term which may extend to three years and with fine which may extend to [ten thousand rupees] [Substituted by Act XIX of 1981, Section 37.]:Provided that if the offence relate to possession of,-(i)a working skill for the manufacture of liquor or any intoxicating drug, such imprisonment shall not be less than six months and such fine shall not be less than [five thousand rupees] [Substituted by Act No. IX of 2010, dated 21st April, 2010];(ii)lahan, such imprisonment shall not be less than six months and such fine shall not be less than [three thousand rupees] [Substituted by Act No. IX of 2010, dated 21st April, 2010];(iii)country liquor, manufactured otherwise than in distilleries or warehouses established or licensed under this Act, in a quantity not exceeding ten bottles, each bottle containing 750 mililitres, such fine shall not be less than [one thousand rupees] [Substituted by Act No. IX of 2010, dated 21st April, 2010] and in a quantity exceeding ten bottles of the aforesaid capacity, such imprisonment shall not be less than six months and such fine not be less than [four thousand rupees] [Substituted by Act No. IX of 2010, dated 21st April, 2010];(iv)foreign liquor other than the liquor-(a)manufactured in licensed distilleries or breweries in India, or(b)imported into India on which customs duty is leviable under the Indian Tariff Act, 1934 or the Customs Act, 1962,such imprisonment shall not be less than three months and such fine shall not be less than two thousand rupees.] [Section 48 substituted by notification No. 14 published in Government Gazette dated 17th Phagan, 1983.][48A. Penalty for rendering or attempting to render denatured/methlated spirit fit for human consumption. - Whoever renders or attempts to render fit for human consumption any denatured/ methylated spirit, whether manufactured in India or not, or has in his possession any spirit rendered fit for human consumption in respect of which he knows or has reason to believe that any such attempt has been made, shall be punishable with imprisonment for a term which may extend to [two years but shall not be less than one year and with fine which may extend to seven thousand rupees but shall not be less than three thousand rupees.] [Sections 48-A and 48-B inserted by Act XX of 1978, Section 5.]

48B. Penalty for possession of unused and printed labels, corks etc.

- Whoever in contravention of the provisions of section 12-A of this Act has in his possession any printed label, cork, capsule or seal or an imitation thereof, shall be punished with imprisonment for a term which may extend to [one year but shall not be less than three months and with fine which may extend to three thousand rupees but shall not be less than one thousand rupees.] [Substituted by Act XIII of 2002 Section 3.]

49. For misconduct by licensee, etc.

- Whoever, being the holder of a licence or permit granted under this Act,-(a)fails to produce such licence or permit on the demand of any [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] or of any other officer duly empowered to make such demand, or(b)does any act in breach of the conditions of his licence or permit not otherwise provided for by this Act, or(c)[wilfully commits any contravention not otherwise provided for by this Act, or any rule or order prescribed or notified under this Act, or] [Clause (c) of section 49 substituted by Notification No. 14 published in Government Gazette dated 17th Phagan,

1983.][Omitted] [Clause (d) omitted by Act XXXIX of 1956.](e)permits persons of notoriously bad character to meet or remain in any such place ;(f)[imports, exports, transports, possesses and manufactures any liquor without affixing the approved labels] [Added by Act VII of 2001, Section 4.],shall on conviction before [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.], be punished for each such offence, [with fine which may extend to ten thousand rupees but not less than five thousand rupees or with imprisonment which may extend to six months but not less than two months or with both.] [Substituted by Act VII of 2001, Section 4.]

50. For possession of illicit liquor.

- [(1) Whoever, without lawful authority, is found to be in possession of any quantity of liquor or any intoxicating drug which has been imported and/or transported and/or manufactured without authorisation and/or without the payment of prescribed duty therefor, shall on conviction before a judicial Magistrate be punished with imprisonment for a term which may extend to seven years but shall not be less than three years and with fine which may extend to ten times the duty involved but shall not be less than five times the said duty.] [Substituted by Act VII of 2001, Section 5.](2)[If any person is found in possession, in any Tehsil, town or city in which a licensee cannot sell to any person any liquor for consumption outside the premises of his place of business except in standard sealed bottles, of any liquor which has been unlawfully manufactured it shall be presumed that such person knew that it had been so manufactured.] [Existing section 50 numbered as sub-section (1) and Sub-section (2) inserted by Act IV of Svt. 2009.][50A. Persons found drinking in public or any place of worship etc. Penalty. - Any person found drinking or attempting to drink liquor in any public place or places of worship or in any place which is used for the purpose of transacting any business other than a premises covered by a licence shall be punished with imprisonment which may extend to [six months] [Section 50-A added by Act IV of Svt. 2009.] or with fine which may extend to [three thousand rupees but not be less than one thousand rupees] [Substituted by Act XIII of 2002, Section 4.] or with both.][50B. Penalty for licensed vendor etc. - If any licensed vendor or any person in his employ or acting on his behalf-(a)sells or delivers any liquor or intoxicating drug to any person apparently under the age of twenty-one years ; or(b)employees or permits to be employed on any part of his licensed premises any man under the age of twenty-one years or any woman : or(c)sells any intoxicant to a person who is drunk or intoxicated; or(d)permits drunkenness, intoxication, disorderly conduct or gaming on the licensed premises of such licensed vendor ; or(e)permits any person whom he knows or has reason to believe to have been convicted of any non-bailable offence under this Act to frequent his licensed premises whether for the purposes of crime or not, he shall, in addition to any other penalty to which he may be liable, be punishable with a fine which may extend to [two thousand rupees but shall not be less than one thousand rupees.]When any licensed vendor or any person in his employ or acting on his behalf is charged with permitting drunkenness or intoxication on the licensed 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 licensed vendor or the person employed by him or acting on his behalf took all reasonable steps for preventing drunkenness or intoxication on such premises.] [Inserted by Act XXXIX of 1956.][50C. Destruction of unfit liquor or beer. - The Commissioner may order destruction of liquor or beer rendered unfit for human consumption because of its having got sedimented or for any other reason. The destruction of such stocks shall be done in such manner

and subject to such conditions as may be prescribed.] [Section 50-C inserted vide Act XXV of 1972, Section 3.]

51. For vexatious search or arrest.

- Any [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] or other person who, without reasonable ground of suspicion, enters or searches or causes to be searched, any closed place, or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act, or vexatiously and unnecessarily detains, searches, or arrests any person, or in any other way vexatiously exceeds his lawful powers, shall, on conviction before a [Judicial Magistrate] [Substituted by Act XL of 1966 'Magistrate'.] of the first class, be punished for each such offence with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

52. For vexatious delay.

- Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to a [Deputy Commissioner] [Substituted by Act XIV of 1966 for 'Deputy Excise and Taxation Commissioner'.] any person arrested or any articles seized under this Act shall, on conviction before a [Judicial Magistrate] [Substituted by Act XL of 1966 'Magistrate'.] of the first class, be punished with fine which may extend to one hundred rupees.

53. For abetment of escape of persons arrested, etc.

- Any officer or person who unlawfully releases or abets the escape of any person arrested under this Act, [xxx] [Words omitted by Act XXXIX of 1956.] [or receives or retains any liquor or intoxicating drug in respect of which an offence has been committed, knowing or having reason to believe that such offence has been committed] [Inserted by Notification No. 14 published in Government Gazette dated 17th Phagan, 1983.] or acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken or the Excise revenue may be defrauded, shall, on conviction before a [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] of the first class for every such offence be punished with fine which may extend to [five thousand] [Substituted by Act VII of 2001, Section 7.] rupees or with imprisonment for a term which may extend to [one year,] [Substituted by Notification No. 14 of Samvat 1983.] or with both.

54. For Excise and Taxation Officer using violence.

- Any [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] who shall offer any unwarrantable violence to any person in his custody shall, on conviction before a [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] of the first class, be punished with fine which may extend to one hundred rupees, or with imprisonment which

may extend to one month, or with both.[55. Screening offender or giving false information. - Whoever knowing or having reason to believe that an offence has been committed under this Act, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to a fourth part of the longest period of imprisonment provided for the offence, or with fine, or both.] [Section 55 added by Council Resolution dated 27th November, 1903 published in Government Gazette dated 18th Phagan, 1960. Existing section 55 was numbered as 56 and sections after that were also renumbered.]Note.- A fine imposed under this section may extend to the full amount for the original offence.

56. For offences not otherwise provided for.

(1)Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act and not otherwise provided for in this Act, shall, on conviction before a [Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] of the first class, be punished for each such wilful act or omission with fine which may extend to [five thousand rupees] [Substituted by Act VII of 2001, Section 8.].For subsequent offence double punishment. - [(2) Whoever having been previously convicted of an offence under this Act is again convicted of an offence punishable under this Act shall be liable for every such subsequent offence to punishment not exceeding double the punishment provided therefor by this Act.] [Section 56 (2) added by Notification No. 14 published in Government Gazette dated 17th Phagan, 1983.][56A. Attempt to commit offences punishable under the Act. - Whoever attempts to commit or abets any offence punishable under this Act shall be liable to punishment provided for the offence.

56B. Security for abstaining from commission of certain offences.

(1)Whenever any person is convicted of an offence punishable under section 48 or 50 of this Act and the Court convicting him is of the opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under these sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period not exceeding two years, as it thinks fit to fix.(2)The bond shall be in the form contained in Schedule II of the Code of Criminal Procedure, 1989. The provisions of the said Code shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of the said Code.(3)If the conviction is set aside on appeal, or in revision, the bond so executed shall become void.(4)An order under this section may also be made by an appellate Court or by the High Court when exercising its powers of revision.] [Section 56-A and 56-B inserted by Act XXXIX of 1956.]

57. Presumption as to commission of offence in certain cases.

- In prosecutions under section 48, it shall be presumed, until the contrary is proved, that the accused person has committed an offence under that section in respect of any liquor or intoxicating drug, or any still, utensil, implement, or apparatus whatsoever for the manufacture of liquor, or any intoxicating drug, or any such materials as are ordinarily used in the manufacture of liquor, or any intoxicating drug, for the possession of which he is unable to account satisfactorily; and the holder of a licence or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf under any of the previous sections of this Act as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence :Provided that no person, other than the actual offender, shall be punished with imprisonment except in default of payment of fine.

58. What things are liable to confiscation.

- In any case in which an offence has been committed under this Act, the liquor, drug, materials, still, utensil, implement or apparatus in respect of which an offence has been committed shall be liable to confiscation. Any liquor, or intoxicating drug lawfully imported, exported, transported, manufactured, had in possession or sold along with, or in addition to, [the liquor including molasses] [Substituted by Act XI of 1999 for 'any liquor', Section 12. w.e.f. 29-2-2000.] or intoxicating drug liable to confiscation under this section, and the receptacles, packages and coverings in which any such liquor, or intoxicating drug, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of (the receptacles or packages in which the same is or are found, and the animals, carts, boats or other conveyances used in carrying the same, shall likewise be liable to confiscation.

59. Confiscation how ordered.

- Whenever confiscation is authorised by this Act, the [Deputy Commissioner] [Substituted by Act XIV of 1966.] or Magistrate ordering it may give the owner of the thing liable to be confiscated an option to pay in lieu of the confiscation such fine as such officer thinks fit. When an offence under this Act has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the [Commissioner] [Substituted by Act XIV of 1966.] or by any other officer authorised by him in that behalf who may order such confiscation :Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they produce in support of their claims. [60. Power to compound offences. - (1) A Deputy Commissioner may accept from any person whose licence or permit is liable to be cancelled or suspended under section 22 or who is reasonably suspected of having committed an offence under section 49 or section 50-A or section 56, a sum of money not exceeding [fifteen thousand rupees] [Section 60 substituted by Act XI of 1999, Section 13, w. e. f. 29-2-2000.] but not less than [five thousand rupees] [Substituted by Act No. IX of 2010, dated 21st

April, 2010], in lieu of such concealment or suspension, or by way of compensation for the offence which may have been committed as the case may be ; and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by him :Provided that in respect of offence committed under section 11-A, the Deputy Commissioner may accept a sum of money not exceeding [fifteen thousand rupees] [Substituted by Act No. IX of 2010, dated 21st April, 2010] but not less than [five thousand rupees] [Substituted by Act No. IX of 2010, dated 21st April, 2010] by way of composition of the offence which may have been committed :[Provided further that in respect of an offence under clause (f) of section 49 the Deputy Commissioner may accept a sum not exceeding fifteen thousand rupees but not less than ten thousand rupees by way of composition of the offence.] [Proviso added by Act VII of 2001, Section 9.](2)On the payment of such sum of money, or such value, or both, as the case may be, the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property.]

61. Provisions of the Criminal Procedure Code and Ranbir Penal Code applicable to offences committed under this Act.

(1)The provisions of the Criminal Procedure Code relating to execution so far as the same are applicable, and sections 54, 55 and 56 of Ranbir Penal Code shall apply to all offences committed and to all persons punished under the provisions of this Act(2)[(a) Notwithstanding anything contained in the Code of Criminal Procedure, 1989 all processes, summonses, warrants issued in cases under this Act may be executed by any [Excise and Taxation Officer.] [Existing section 61 numbered as sub-section (1) and sub-section (2) inserted by Act IV of Samvat 2009.](b)A warrant directed to any [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and Excise Officer'.] may also be executed by any such officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.]X - Miscellaneous

62. Publication of rules and notifications.

- All rules made and notifications issued under this Act shall be [published in the Jammu and Kashmir Government Gazette] [Substituted by Act IV of Svt. 2001 for the words 'made and issue by publication in three successive issues of the Jammu and Kashmir Government Gazette'.] and shall thereupon have the force of law and be read as part of this Act, and may, in like manner, be varied, suspended or annulled.[63. Exemptions and prohibitions. - (a) Nothing in the foregoing provisions of this Act applies to the manufacture, possession, sale or supply by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries of any medicated article for bona fide medicinal purposes, or to the possession by the public of such articles lawfully supplied by them ; but(b)it shall be lawful for [the Government] at any time by notification to prohibit the import, export, transport, manufacture, possession, sale or supply whether for medicinal purposes or otherwise of any liquor or intoxicating drug otherwise than in accordance with such rules and conditions (if any) as may be prescribed by the Government] in that behalf:(c)it shall be lawful for [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b), 63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] at any time by notification to exempt subject to such

conditions, if any, as [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b),63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] may impose, any specified article or class of articles or any specified person or class of persons from the operation of all or any of the provisions of this Act or of rules made or prohibitions notified thereunder and in like manner to cancel such exemption;(d)it shall also be lawful for [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b),63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] to authorise the [Commissioner] [Substituted by Act XIV of 1966 for 'Excise and Taxation Commissioner'.] to permit subject to such restrictions and conditions as [the said [Commissioner] [Substituted by Act VIII of 1956 for 'the said Inspector General'.] may in each case or class of cases prescribe, the possession by medical practitioners of liquor or [opium and hemp drugs] [Substituted for 'intoxicating drugs' by order published in Government Gazette dated 1st Assuj, 1988.] and the preparation by them of medicines containing the same for use in their practice.]

64. Bar of actions.

- No action shall lie be against [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b),63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] or against any [Excise and Taxation Officer] [Substituted by Act III of 1956 for 'Customs and Excise Officer'.] for damages in any Civil Court for any act bona fide done or ordered to be done in pursuance of this Act or of any law for the time being in force relating to the Excise revenue and prosecutions of any [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and excise Office'.] and all actions which may be lawfully brought against the Jammu and Kashmir Government or against any [Excise and Taxation Officer] [Substituted by Act VIII of 1956 for 'Customs and excise Office'.] in respect of any thing done or alleged to have been done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and one month after notice has been given in writing to [the Government] [In sections 1 (para third), 3 clauses (7) and (9), 4, 5 (proviso), 7, 8, 10(d), 11, 12, 13, 15, 16, 17(e), 18, 20(d), 25, 63(b),63(c), 63(d) and 64 for the words 'His Highness the Maharaja Bahadur' the words 'the Government' substituted by Act X of Svt. 1996.] or to the officer against whom the suit is to be brought.In such actions for damages, it shall be lawful for the Court if tender of sufficient amount had been made before the action was brought, in awarding the amount so tendered, to refuse costs to the plaintiff and direct him to pay the costs of the defendant.[Section 63 substituted by Notification No 14 published in Government Gazette dated 17th Phagan, 1983.]