

**GOVERNMENT OF PONDICHERRY**

**LAW DEPARTMENT**

Pondicherry, 3rd June, 1970

The following Act of the Legislative Assembly, Pondicherry, received the assent of the President on 28th May, 1970 and is hereby published for general information :—

**THE PONDICHERRY EXCISE ACT, 1970**

(No. 12 of 1970)

(28-5-1970)

**AN ACT**

to provide for a uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon, in the Union territory of Pondicherry, and for matters connected therewith.

BE it enacted by the Legislative Assembly of Pondicherry in the Twenty-first Year of the Republic of India as follows :—

**CHAPTER I**

Preliminary

**Short title, extent and commencement**

1. (1) This Act may be called the Pondicherry Excise Act, 1970.

(2) It extends to the whole of the Union territory of Pondicherry.

\* (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

**Definitions**

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

(1) “beer” includes ale, stout and porter and all other fermented liquors usually made from malt;

(2) “to bottle” means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not and includes re-bottling;

(3) “cultivation” includes the tending or protection of a plant during growth and does not necessarily imply raising it from seed;

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\* The Lieutenant Governor, Pondicherry has appointed the 10-06-1970 as the date on which the provisions of the said Act shall come into force vide notification No: B.7289/69 dated 10-06-1970 in Gazette No. 47 dated 10-06-1970.

(4) “denatured” means subjected to a process prescribed for the purpose of rendering unfit for human consumption;

(5) “Deputy Commissioner” means any person appointed under section 4 to exercise the powers and to perform the duties of the Deputy Commissioner under this Act;

(6) “excisable article” means—

(a) any liquor;

(b) any intoxicating drug;

(c) opium; or

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

(7) “Excise Commissioner” means the officer appointed as Excise Commissioner under section 3;

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

(9) “Excise Inspector” means an officer appointed under section 5;

(10) “Excise Officer” means the Excise Commissioner, a Deputy Commissioner, or any officer or other person lawfully appointed or invested with powers under section 5;

(11) “Excise Revenue” means revenue derived or derivable from any duty, fee, tax, rent, fine or confiscation imposed or ordered under the provisions of this Act or any other law for the time being in force relating to liquor or intoxicating drugs;

(12) “Export” means to take out of the Union territory otherwise than from a Customs station as defined under section 2 of the Customs Act, 1962;

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

(14) “Government” means the Administrator of the Union territory appointed by the President of India under article 239 of the Constitution of India.

(15) “Import”, except in the phrase “import into India” means to bring into the Union territory otherwise than from a Customs station as defined under section 2 of the Customs Act, 1962;

(16) “Indian liquor” includes all liquor produced or manufactured in India;

(17) “Intoxicant” means any liquor as defined in clause (19) or any intoxicating drug as defined in clause (18);

(18) “intoxicating drug” means,—

(a) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant including all forms known as bhang, siddi, or ganja;

(b) charas, that is the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport.

(c) any mixture with or without neutral materials of any of the above forms of intoxicating drug or any drink prepared therefrom; and

(d) any other intoxicating or narcotic substance which the Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf or manufactured drug as defined under section 2 of the Dangerous Drugs Act, 1930;

(19) "Liquor" includes—

(a) spirits of wine, denatured spirits, wine, beer, toddy and all liquids consisting of or containing alcohol; and

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

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

<sup>1</sup> [(20-A) "molasses" means the heavy, dark coloured residual syrup drained away in the final stage of the manufacture of jaggery or sugar containing in solution or suspension, sugars which can be fermented, and includes any product formed by the addition to such syrup of any ingredient which does not substantially alter the character of such syrup; but does not include any article which the Government may, by notification, declare not to be molasses, for the purpose of this Act];

(21) "Notification" means a notification published in the Official Gazette;

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

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

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

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

(26) "sale" or "selling" includes any transfer otherwise than by way of gift;

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

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1. Inserted vide the Extraordinary Gazette No 64 dated 13-7-1972.

\* Denatured spirituous preparations to be considered as liquor for the purposes of this Act (vide EOG No.115, dated 23-11-1970]

(28) “toddy” means fermented or unfermented juice drawn from a toddy tree;

(29) “toddy tree” includes the tree of coconut, palm, palmyra, date, bagani or any tree of the species of palm or palmyrah, the fermented or unfermented juice of which contains alcohol and from which toddy or liquor can be prepared;

(30) “transport” means to move from one place to another within the Union territory, whether the intervening area lies wholly within the Union territory or not;

(31) “Union territory” means the Union territory of Pondicherry.

## **CHAPTER II**

### **Establishment and control**

#### **Appointment of Excise Commissioner**

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

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

#### **Appointment of Deputy Commissioner**

4. (1) The Government may, by notification appoint one or more Deputy Commissioners, <sup>1</sup> who shall, within the limits of his or their jurisdiction, exercise such powers and perform such duties and functions as are assigned by or under the provisions of this Act to a Deputy Commissioner subject to such control as the Government may from time to time, direct.

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

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\* The Collector of Pondicherry shall hitherto function as District Magistrate, Excise Commissioner and will continue to be the Additional Secretary (Revenue) - cum - Head of the Revenue Department. vide G.O.Ms.No.37 of Confidential and Cabinet Department dated 25-05-2005.

1. The Lieutenant Governor, Pondicherry appoints the Deputy Collector (Excise), Pondicherry and the Sub/Deputy Collectors (Revenue), Mahe and Yanam and the Revenue Officer (Karaikal) as Deputy Commissioner (vide No.B.7289/69 dated 10-06-1970. Notification I Gazette No.47 dated 10-06-1970) & vide Notification No.9814/78-B dated 7-8-78 published in Gazette No.34, dated 22-8-78.

## **Appointment of Excise Inspectors and other subordinate officers**

5. (1) The Government may appoint <sup>1,2</sup> Excise Inspectors to exercise the powers and to perform the duties in connection with detection, investigation and trial of offences under this Act.

(2) The Government may appoint <sup>3</sup>subordinate officers of such classes and with such designations, powers and duties under this Act as it may think fit.

(3) The Government may, by notification, direct that all or any of the powers and duties assigned to an Excise Inspector or subordinate officer under sub-section (1) or sub-section (2), as the case may be, shall be exercised and performed by any officer of the Government.

### **Delegation**

6. The Government may, by notification, delegate its powers under section 5 to the Excise Commissioner.

## **CHAPTER III**

### **Import, export and transport**

#### **Import of intoxicant**

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

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

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1. The Lieutenant Governor, Pondicherry appoints the Tahsildars in charge of Taluks and Deputy Tahsildars in charge of Sub-Taluks including the Excise Tahsildars and Deputy Tahsildars (as the case may be), as Excise officers, within the limits of their respective jurisdiction, to exercise the powers and perform the duties of excise officers under the said Act (vide No. 12499/72 Notification in EOG.94, 02-11-1972).

2. The Deputy Tahsildar (Legal Metrology), Mahe and Deputy Tahsildar (Land Reforms), Mahe are appointed as Excise Inspector in Mahe region (vide EO No, 24 dated 27-05-1999)

3. The Firka Revenue Inspectors (including the Excise Revenue Inspectors) and the Karnams are appointed as Excise Sub-Inspectors and Excise Guards, respectively (vide No. 12499/72 Notification in E.O.G. 94, 02-11-1972)

Provided further that no countervailing duty shall be payable on any intoxicant which being liable to the payment of duty under the Indian Tariff Act, 1934, or any other law, for the time being in force, relating to the duties of customs on goods imported into India, it has been dealt with according to such law.

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

Provided that no permit shall be cancelled under this sub-section except after giving a reasonable opportunity to the holder of the permit for making any representation against such cancellation and after considering the representation, if any, received.

### **Export of intoxicant**

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

Provided that no intoxicant produced or manufactured in India shall, save as provided in section 65, be permitted to be exported unless the excise duty or countervailing duty to which such intoxicant is liable, has been paid.

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

Provided that no permit shall be cancelled under this sub-section except after giving a reasonable opportunity to the holder of the permit for making any representation against such cancellation and after considering the representation, if any, received.

### **Control and regulation of molasses**

<sup>1</sup>[8-A. (1) Except as otherwise provided in sub-sections (2) and (3) and subject to such rules as may be prescribed in this behalf, no person shall import, export, transport, sell or have in his possession any quantity of molasses.

(2) The Government may, by general or special order, authorise any officer to grant licences for the import or sale of molasses.

(3) The Government may also authorise any officer to grant permits for the transport or possession of molasses.]

### **Prohibiting of transport of intoxicant**

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

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1. Inserted vide the Extraordinary Gazette No. 54 dated 13-07-1972.

### **Transport of intoxicant**

10. No intoxicant exceeding such quantity as may be prescribed either generally or for any local area, shall be transported, except under a permit issued under section 11.

### **Permits for transport**

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

(2) A permit under sub-section (1) may be either a general permit for definite periods and kinds of particular intoxicants or a special permit for specified occasions and particular consignments only:

Provided that a general permit shall be granted only to persons licensed under this Act and may cover any quantity of liquor transported at any one time not exceeding the quantity specified in the permit.

(3) Every permit under this section shall specify —

- (a) the name of the person authorised to transport intoxicants;
- (b) the period for which the permit is to be in force;
- (c) the quantity and description of intoxicants for which it is granted; and
- (d) any other particulars which may be prescribed.

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

## **CHAPTER IV**

### **Manufacture, possession and sale**

#### **Manufacture etc., of excisable article prohibited except under a licence**

12. (1) No person shall —

- (a) manufacture or collect an intoxicant; or
- (b) cultivate hemp plant;
- (c) tap a toddy producing tree or draw toddy from any tree; or
- (d) construct or work in a distillery or brewery; or
- (e) bottle liquor for sale; or

(f) use, keep, or have in his possession, any materials, still, utensil, implement or apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy;

except under the authority and subject to the terms and conditions of a licence granted by the Excise Commissioner in that behalf or under the provisions of section 17.

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

### **Possession of excisable articles in excess of the quantity prescribed**

13. (1) The Government may, by notification, prescribe a limit of quantity for the possession of any intoxicant:

Provided that different limits may be prescribed for different qualities of the same article.

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

- (a) a licence for the manufacture, cultivation, collection, sale or supply of such article, or
- (b) a permit granted by the Deputy Commissioner in that behalf.

### **Sale of excisable articles without licence prohibited**

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

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

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

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

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

- (a) by the Deputy Commissioner, if the sale is in an area within his jurisdiction, or
- (b) by the Excise Commissioner if the sale is in an area within the jurisdiction of more than one Deputy Commissioner.

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

(3) Nothing in this section shall apply to the sale of any liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.

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

### **Establishment of distilleries and warehouses**

15. (1) The Excise Commissioner, may, with the previous sanction of the Government :

(a) establish a distillery, in which spirit may be manufactured under licence granted under section 12 on such conditions as the Government may impose;

(b) discontinue any distillery so established ;

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

(d) license a private bonded warehouse;

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

(f) discontinue any warehouse so established.

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

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

### **Power to grant lease of right to manufacture, etc.**

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

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

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

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

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

### **Lessee's permission to draw toddy**

17. Where a right to manufacture toddy has been leased under section 16, the Government may declare <sup>1</sup> that the written permission of the lessee to draw toddy shall have the same force and effect as a licence under section 12 from the Excise Commissioner for that purpose.

### **Duties of licensees with regard to measurement and testing**

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

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

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

### **Prohibition of employment of children and women**

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

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

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

### **Closing of shops for the preservation of public peace**

20. (1) The District Magistrate (Independent) may, by notice in writing to the licensee, require that any shops in which any intoxicant is sold shall be closed at such times and for such period as he may think necessary for the preservation of the public peace.

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

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1. The Government declared that written permission of the lessee to draw toddy shall have the same force and effect as a licence under section 12 from the Excise commissioner for that purpose [ vide No. E-344/70 Notification in EOG No.115 dated 23-11-1970]

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

Provided further that the licensee shall not be entitled to any compensation for the closure of the shops ordered under this section.

## **CHAPTER V**

### **Excise duty and countervailing duty**

#### **Excise duty or countervailing duty on excisable articles**

21. (1) The Government may, by notification, levy an excise duty on any excisable article manufactured or produced in the Union territory under any licence or permit granted under this Act at such rate, not exceeding the rates mentioned in Schedule I as may be specified in the notification.

(2) The Government may by notification, levy a countervailing duty on any excisable article manufactured or produced elsewhere in India and imported into the Union territory under a licence or permit granted under this Act at such rates as may be specified in the notification, which may not exceed the rates of excise duty on similar excisable articles levied under sub-section (1).

(3) Different rates may be specified under sub-sections (1) and (2) for different kinds of excisable articles and for different modes of levying duties under section 22.

#### **Modes of levying duties**

22. Subject to such rules regulating the time, place and manner, as may be prescribed, the excise duty and countervailing duty under section 21 shall be levied in one or more of the following modes as may be prescribed namely:--

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

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

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

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

### **Excise duty in respect of grant of lease**

23. Notwithstanding anything contained in sections 21 and 22, the sum accepted in consideration of the grant of any lease relating to any excisable article under section 16, shall be the excise duty or countervailing duty payable in respect of such excisable article in addition to any duty payable under sections 21 and 22.

### **Tax for tapping trees from whom leviable**

24. When duty is levied by way of tax on toddy trees under section 21 and toddy trees are tapped without licence, the tax due shall be recoverable primarily from the tapper or in default by him, from the occupier, if any, of the land, or if the trees do not belong to the occupier of the land, or if the land is not occupied, from the person, if any, who owns or is in possession of the tree, unless he proves that the trees were tapped without his consent.

## **CHAPTER VI**

### **Licences and permits**

#### **Form and conditions of licence, etc.**

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

(2) The conditions prescribed under sub-section (1) may include provision of accommodation by the licensee to Excise Officers at the licensed premises or the payment of rent or other charges for such accommodation at or near the licensed premises, and the payment of the costs, charges and expenses (including the salaries and allowances of the Excise Officers) which the Government may incur in connection with supervision to ensure compliance with the provisions of this Act, the rules made thereunder and the licence.

#### **Power to take security and counterpart agreement**

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

- (a) to give security for the observance of the terms of his licence, and
- (b) to execute a counterpart agreement in conformity with the tenor of his licence.

#### **Technical defects, irregularities and omissions**

27. (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 or in any proceedings taken prior to the grant thereof.

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

### **Powers to cancel or suspend licence, etc.**

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

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

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

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

(d) if the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs Act, 1930, or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under the Trade and Merchandise Marks Act, 1958, or under section 481, 482, 483, 484, 485, 486, 487, 488 or 489 of the Indian Penal Code or of any offence punishable under sections 112 or 144 of the Customs Act, 1962; or

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

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

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

### **Power to withdraw licence**

29. (1) Whenever the authority which granted any licence under this Act considers that such licence should be withdrawn for any cause other than those specified in section 28, it may withdraw the licence on the expiration of not less than thirty days notice in writing of its intention to do so.

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

### **Surrender of licence**

30. (1) Any holder of a licence granted under this Act to sell an excisable article may surrender, his licence on the expiration of one month's notice in writing given by him to the Excise Commissioner

of his intention to surrender the same and on payment of the fee payable for the licence for the remainder of the period for which it would have been current, but for such surrender;

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

(2) Sub-section (1) shall not apply in the case of any licence granted under section 16.

## **CHAPTER VII**

### **Offences and penalties**

#### **Penalty for illegal import, etc.**

<sup>1</sup>[31. Whoever in contravention of this Act, or of any rule, notification or order made, issued or passed thereunder; or of any licence or permit granted under this Act,—

- (a) imports, exports, transports, manufactures, collects or possesses any intoxicant; or
- (b) save in the cases provided for in section 36, sells any intoxicant ; or
- (c) cultivates or fails to take the measures prescribed for checking the spontaneous growth or for the extirpation of the hemp plant; or
- (d) taps or draws toddy from any toddy producing tree; or
- (e) constructs or works any distillery or brewery; or
- (f) uses, keeps or has in his possession any materials, still, utensil, apparatus or implement whatsoever for the purpose of manufacturing any intoxicant other than toddy; or
- (g) removes any intoxicant from any distillery, brewery or warehouse licensed, established or continued under this Act; or
- (h) bottles any liquor;

shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall also be liable to fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.] <sup>1</sup>

#### **Penalty for rendering denatured spirit fit for human consumption**

32. Whoever,—

- (a) renders fit for human consumption any spirit, which has been denatured; or
- (b) has in his possession any spirit in respect of which he knows, or has reason to believe that any such offence has been committed or that an attempt to commit such an offence has been made;

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shall, on conviction, be punished [with rigorous imprisonment for a term which shall not be less than 1. Substitution vide E.O.G.No.16 dated 25-04-1989.

six months but which may extend to three years and with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.]<sup>1</sup>

Explanation :— For the purpose of this section it shall be presumed, unless the contrary is proved, that any spirit which is proved on chemical analysis to contain any quantity or any of the prescribed denaturants, is, or contains, or has been derived from denatured spirit.

### **Penalty for illegal possession**

33. Whoever, without lawful authority has in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected or knowing the prescribed duty not to have been paid thereon, shall, on conviction, be punished<sup>1</sup>[with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.]<sup>1</sup>

### **Penalty for offence not otherwise provided for**

34. Whoever does any act in contravention of any of the provisions of this Act, or of any rule, notification, or order, made, issued or passed thereunder and not otherwise provided for in this Act, shall, on conviction, be punished with fine which<sup>1</sup>[shall not be less than two thousand rupees but which may extend to twenty thousand rupees.]<sup>1</sup>

### **Penalty for misconduct of licensee, etc.**

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

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

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

(c) save in a case provided for by section 31 wilfully contravenes any rule made under section 70; or

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

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

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

(g) sell or gives any intoxicant to any child apparently under eighteen years of age or permits

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1. Amendment vide The Pondicherry Excise (Amendment) Act, 1989 vide EOG No.16, 25th April,1989.

or suffers such child to remain in or on the premises where any excisable article is sold, or manufactured;  
or

(h) in contravention of section 19 employs or permits to be employed on any part of his licensed premises referred to in that section any child or woman;

shall, on conviction, be punished <sup>1</sup> [with rigorous imprisonment for a term which shall not be less than one month but which may extend to one year and with fine which shall not be less than five thousand rupees but which may extend to fifty thousand rupees.] <sup>1</sup>

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

### **Penalty for adulteration, etc., by licensed vendor or manufacturer**

36. (1) Whoever, being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or a person in the employ of such holder mixes or permits to be mixed with the intoxicant sold or manufactured by him, any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under this Act, when such admixture does not amount to an offence of adulteration under section 272 of the Indian Penal Code, 1860 shall, on conviction, be punished <sup>1</sup>[with rigorous imprisonment for a term which shall not be less than one month but which may extend to one year and with fine which shall not be less than five thousand rupees but which may extend to fifty thousand rupees.] <sup>1</sup>

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

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

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

(c) sells or keeps or exposes for sale any Indian liquor in a bottle, case, package or other receptacle with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor: when such act shall not amount to the offence of selling goods marked with counterfeit trade mark under section 486 of Indian Penal Code;

shall, on conviction, be punished <sup>1</sup>[with rigorous imprisonment for a term which shall not be less than one month but which may extend to one year and with fine which shall not be less than five thousand rupees but which may extend to fifty thousand rupees.] <sup>1</sup>

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1. Amended vide EOG No.16 dated 25-04-1989.

### **Penalty for consumption in Chemist's shop, etc.,**

37. (1) A chemist, druggist, apothecary or keeper of a dispensary, who allows any intoxicant which has not been bona fide medicated for medicinal purposes to be consumed on his business premises by any person shall, on conviction, be punished <sup>1</sup>[with rigorous imprisonment for a term which shall not be less than one month but which may extend to one year and with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.] <sup>1</sup>

(2) Any person not employed as aforesaid, who consumes any such intoxicant on such premises shall on conviction, be punished with fine which may [shall not be less than two thousand rupees but which may extend to twenty thousand rupees.] <sup>1</sup>

### **Penalty for allowing premises etc., to be used for the purpose of committing an offence under this Act**

<sup>2</sup>[37. (a) Whoever, being the owner or occupier or having the use or care or management or control of any place, room, enclosure, space, vessel, vehicle knowingly permits it to be used for the purpose of commission by any other person of an offence punishable under section 31, 32, 33, 35 or 36 shall, on conviction, be punished as if he has committed the offence punishable under the appropriate section.]

### **Manufacture, sale, or possession by one person on account of another**

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

(2) Nothing in sub-section (1) shall absolve any person who manufactures, sells or has possession of any intoxicant on account of another person from liability to any punishment under this Act for unlawful manufacture, sale or possession of such article.

### **Presumption as to commission of offence in certain cases**

39. In prosecutions under section 31 or section 33, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of;

(a) any intoxicant; or

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

1. Amended vide EOG No.16 dated 25-04-1989.

2. Inserted vide the Extraordinary Gazette No.64 dated 13-7-1972.

other than toddy ; or

(c) any materials which have undergone any process towards the manufacture of an intoxicant or from which an intoxicant has been manufactured for the possession of which he is unable to account satisfactorily.

### **Criminal liability of licensee for acts of servants**

40. Where any offence under section 31, section 32, section 33, section 35 or section 36 is committed by any person in the employ and acting on behalf of the holder of a licence or permit granted under this Act, such holder shall also be punishable as if he had committed himself the said offence; unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence:

Provided that no person, other than the actual offender shall be punishable under this section with imprisonment, except in default of payment of fine.

### **Enhanced punishment after previous conviction**

41. If any person, after having been previously convicted of an offence punishable under section 31, section 32, section 33, section 36 or section 37 or under the corresponding provisions of any enactment repealed by this Act, subsequently commits and is convicted of an offence punishable under any of these sections, he shall be liable to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

### **Liability of certain things to confiscation**

42. Whenever an offence has been committed which is punishable under this Act, the following things shall be liable to confiscations, namely:—

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

(b) any intoxicant lawfully imported, transported, or manufactured and held in possession or sold along with, or in addition to any intoxicant liable to confiscation under clause (a); and

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause (b), is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same:

Provided that, if anything specified in clause (c) is not the property of the offender, it shall not

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1. Amendment vide E.O.G. No. 16 dated 25-04-1989.

2. Inserted vide the Extraordinary Gazette No. 64 dated 13-07-1972.

be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed.

### **Order of confiscation**

43. (1) Where in any case tried by him, the Magistrate decides that anything is liable to confiscation under section 42, he may either order confiscation or may give the owner of the thing liable to be confiscated an option to pay in lieu of confiscation such fine as the Magistrate thinks fit.

(2) When an offence under this Act has been committed, but the offender 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 Excise Commissioner or by any other officer authorised by the Government<sup>1</sup> 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 goods intended to be confiscated or without hearing the persons, if any, claiming any right thereto and the evidence, if any, which they produce, in support of their claims:

Provided further that if the thing in question is liable to speedy and natural decay, or if the Excise Commissioner or by any other officer authorised by the Government in this behalf is of opinion that the sale would be for the benefit of its owner, he may, at any time, direct it to be sold and the provisions of this section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

### **Compounding of offences**

44. (1) The Excise Commissioner<sup>2</sup>[and subject to such conditions as may be prescribed ]<sup>2</sup> the Deputy Commissioner, or any other Excise Officer specially empowered in that behalf may accept from any person whose licence or permit is liable to be cancelled or suspended under clause (a) or clause (b) of sub-section (1) of section 28 or who is reasonably suspected of having committed an offence under [clauses (b) to (h) of section 31]<sup>3</sup> Section 32, section 33, section 34, section 35 or sub-section (2) of section 36, a sum of money not exceeding [one lakh rupees]<sup>3</sup> and subject to such minima as may be prescribed, in lieu of such cancellation or suspension or by way of compensation for the offence, which may have been committed, as the case may be; and in all cases in which any property has been seized as liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer.

(2) On the payment by such person of such sum of money or such value or both as the case may be, such person, if in custody, shall be set, at liberty and all the property seized may be released and no proceedings shall be instituted against such person in any Criminal Court. The acceptance of compensation shall be deemed to amount to an acquittal and in no case shall any further proceedings be taken against such person or property with reference to the same act.

### **Penalty on Excise Officer making vexatious search, seizure, detention or arrest**

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1. The Deputy Commissioners are authorised by the Lieutenant-Governor to exercise the powers conferred by sub-section 2, section 43 of this Act (vide Notification No. 7289/69 Notification.I Gazette No. 47 dated 10-06-1970.

2. Inserted vide the EOG No. 16 dated 25-04-1989.

3. Amendment vide EOG No. 16 dated 25-04-1989.

45. Any Excise Officer or other person who vexatiously and without reasonable ground for suspicion,—

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

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

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

(d) in any other way exceeds his lawful powers under this Act,

shall on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

#### **Penalty for Excise Officer refusing to do duty**

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

#### **Penalty for vexatious delay**

47. Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to the nearest Excise Officer or to the officer in charge of the nearest police station, as required by sub-section (2) of section 58 any person arrested, shall on conviction, be punished with fine which may extend to two hundred rupees.

#### **Penalty for abetment of escape of persons arrested, etc.**

48. Any officer or person who unlawfully releases or abets the escape of any person arrested under this Act or abets the commission of any offence against this Act, or acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or contravened or the excise revenue may be defrauded and any officer of any other Department referred to in section 49 who abets the commission of any offence against this Act in any place, shall on conviction ; for every such offence, be punished [with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine which shall not be less than five thousand rupees but which may extend to fifty thousand rupees.]<sup>1</sup>

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1. Amendment vide EOG No. 16 dated 25-04-1989.

## CHAPTER VIII

### Detection, Investigation and trial of offences

#### Landholders, officers and others to give information

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

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

(b) (i) Village Karnams or the peons working under them,

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

shall, in the absence of reasonable excuse be bound to give notice of the fact to a magistrate or to an officer of the Excise or Police or Revenue Department as soon as the fact comes to their knowledge.

(2) Every Excise Officer shall be bound to give immediate information either to his immediate official, superior or to an Excise Inspector, of all breaches of any of the provisions of this Act, which may come to his knowledge under sub-section (1) or otherwise.

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

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

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

#### Power to enter and inspect places of manufacture and sale

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

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1. Amendment vide the EOG No. 16 dated 25-04-1989.

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

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

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

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

51. (1) Any officer of the Government employed in the Excise, Police or Revenue Department of the Union territory, subject to such restrictions as may be prescribed, and any other person duly empowered, may—

(a) arrest without warrant any person found committing an offence punishable under section 31, section 32, section 33, section 35 or section 36;

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

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

(2) When any person is accused or is reasonably suspected of committing an offence under this Act, other than an offence under section 31, section 32, section 33, section 35, or section 36 and on demand of any such officer as aforesaid, refuses to give his name and residence or gives a name and residence which such officer has reason to believe is false, he may be arrested by such officer, in order that his name and residence may be ascertained.

**Power of magistrate to issue a warrant**

52. If a magistrate, upon information and after such inquiry (if any) as he thinks necessary, has reason to believe that an offence under section 31, section 32, section 33, section 35 or section 36 has been, is being, or is likely to be, committed, he may issue a warrant—

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

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

### **Power to search without warrant**

53. Whenever the Excise Commissioner or a Deputy Commissioner or any police officer not below the rank of an officer incharge of a police station <sup>1</sup>[duly empowered in that behalf] <sup>1</sup> or any Excise Officer not below the rank of Excise Sub-Inspector, has reason to believe that an offence under section 31, section 32, section 33, section 35, or section 36 has been, is being, or is likely to be committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, after recording the grounds of his belief—

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

(b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

### **Power of Excise officers in matters of investigation**

54. (1) Any Excise Inspector or any Excise Officer not below such rank and within such specified area as the Government may, by notification, prescribe, may, as regards offences under section 31, section 32, section 33, section 35 or section 36, exercise powers conferred on an officer in charge of a police station by the provisions of the Code of Criminal Procedure, 1898:

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

(2) For the purposes of section 156 of the said Code, the area in regard to which an Excise Inspector is empowered under sub-section (1), shall be deemed to be a police station and such officer shall be deemed to be the officer in charge of such station.

### **Report by Investigating Officer**

55. If, on any investigation by an Excise Inspector or an Excise Officer empowered under sub-section (1) of section 54, it appears that there is sufficient evidence to justify the prosecution of the accused, the Investigating Officer, shall submit a report, (which shall, for the purposes of section 190 of the 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 reports.

### **Report by Excise Officer**

56. Where any Excise Officer below the rank of an Excise Inspector makes any arrest, seizure or search under this Act, he shall, within twenty four hours thereafter—

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

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1. Amendment vide EOG No. 16 dated 25-04-1989.

(b) unless bail be accepted under section 58, take or send the person arrested or the things seized, with all convenient despatch, to a Magistrate for trial or adjudication.

### **Arrest, search, etc., how to be made**

57. Any person arrested under this Act shall be informed, as soon as may be, of the grounds for such arrest and save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detention in custody, searches, summonses, warrants of arrests, search warrants, the production of persons arrested and the disposal of things seized, shall apply, as far as may be, to all action taken in these respects under this Act.

### **Security for appearance in case of arrest without warrant**

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

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

- (a) the nearest Excise Officer who has authority to release arrested persons on bail, or
- (b) the nearest officer in charge of the police station, whoever is nearer.

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

(4) The provisions of sections 490 to 502, section 513, section 514 and section 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case, in which bail is accepted or, bond taken under this section.

### **Procedure for prosecution**

59. No Magistrate, shall take cognizance of an offence punishable—

(a) under section 34 or section 37 except on the complaint or report of the Deputy Commissioner or of an Excise Officer authorised by the Government in this behalf, or

(b) under any other section of this Act, other than section 45 or section 47, except on his own knowledge or suspicion or on the complaint or report of [an Excise officer or a Police Officer duly authorised in that behalf] <sup>1</sup>

## CHAPTER IX

### Appeals and revision

#### Appeals

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

(2) Any person aggrieved by an order passed by the Deputy Commissioner under this Act, may within ninety days from the date of communication of such order, appeal to the Excise Commissioner.

(3) Any person aggrieved by an order passed by the Excise Commissioner, whether on appeal under sub-section (2) or otherwise, may, within ninety days from the date of communication of such order, appeal to the Government.

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

#### Revision

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

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

## CHAPTER X

## **Miscellaneous**

### **Recovery of Government dues**

62. (1) The following moneys, namely—

(a) all excise revenue,

(b) any loss that may accrue when, in consequence of default, a lease under section 16 has been taken under management by the Deputy Commissioner, or has been re-sold by him, and

(c) of amounts due to the Government by any person on account of any contract relating to the excise revenue,

may be recovered from the person primarily liable to pay the same or from his surety, if any, as if they were arrears of land revenue.

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

### **Government lien on property of defaulters**

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

### **Recovery of dues by lessee under section 16**

64. Any person to whom a lease has been granted in accordance with the provisions of section 16, may in a case where sub-letting is not forbidden by the terms of the lease, proceed against any person holding under him for the recovery of any money due in respect of such sub-lease as if it were an arrear of rent recoverable under the law for the time being in force with regard to landlord and tenant :

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

### **Refund in cases of exported liquor**

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

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

#### **Power of Government to exempt, etc.**

66. The Government may, by notification, and subject to such restrictions and conditions as may be specified in such notifications,—

(a) exempt, reduce or remit either in whole or in part, the excise duty levied under section 21 on any liquor sold,

(i) for use or consumption by the members of the Armed Forces of the Union; or

(ii) for use for *bona fide* medicinal, scientific, industrial or such like purpose;

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

#### **Protection of action taken under this Act**

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

#### **Limitations of suits**

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

#### **Offences by companies, etc.**

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

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

due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any Director, Manager, Secretary, or other officer of the Company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:— For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals, and

(b) “director”, in relation to a firm, means a partner in the firm.

### **Power to make rules**

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

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

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

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

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

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

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

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

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

(e) prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale is granted for any locality;

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

(g) prescribing the authority by which, the form in which and the terms and conditions on and

subject to which any licence or permit shall be granted, and may, by such rules, among other matter,—

- (i) fix the period for which any licence or permit shall continue in force;
- (ii) prescribe the scale of fees, or the manner of fixing the fees payable in respect of any lease, licence or permit, or the storing of any excisable article;
- (iii) prescribe the amount of security to be deposited by the holders of any licence or permit for the performance of the conditions of the same;
- (iv) prescribe the accounts to be maintained and the returns to be submitted by licence holders;
- (v) prohibit or regulate the transfer of licences; and
- (vi) prescribe the ages under which it shall be unlawful to employ children and to sell or give to children excisable articles;
- (h) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use;
- (i) regulating disposal of confiscated articles;
- (j) regulating the grant of expenses to witnesses and to persons charged with offences under this Act, and subsequently released or acquitted;
- (k) regulating the powers of Excise Officers to summon witnesses;
- (l) prescribing the rent payable to the Government in respect of toddy trees from which toddy is drawn;
- <sup>1</sup> [(II) regulating the import, export, transport, sale or possession of molasses];
- (m) any other matter that may be prescribed under this Act.

(3) Every rule made under this Act shall, as soon as may be after it is made, be laid before the Legislative Assembly, Pondicherry, while it is in session for a total period of fourteen days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid, or the sessions immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made or issued, the rule shall there after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### **Power to amend the Schedule**

<sup>2</sup> [“70 A. (1) The Government may by notification, alter, add to or cancel the Schedule I.

(2) Where a notification has been issued under sub-section (1), there shall, unless the notification is in the meantime rescinded, be introduced in the Legislative Assembly, as soon as may be, but in any case during the next session of the Legislative Assembly following the date of the issue of the notification, a Bill on behalf of the Government, to give effect to the alteration, addition or cancellation, as the case may be, of the Schedule I and the notification shall cease to have effect

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1. Inserted vide the EOG No.64 dated 13-7-1972.

2. Inserted vide E. O.G. No.16 dated 25-04-1989

when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder:

Provided that if the notification under sub-section (1) is issued when the Legislative Assembly is in session, such a Bill shall be introduced in the Legislative Assembly during that session:

Provided further that where for any reasons a Bill as aforesaid does not become law within six months from the date of its introduction in the Legislative Assembly, the notification shall cease to have effect on the expiration of the said period of six months.

(3) All references made in this Act to the Schedule I shall be construed as relating to the said Schedule as for the time being amended in exercise of the powers conferred by this section.”]

### **Repeal and saving**

71. (1) As from the commencement of this Act, any law in force in the Union territory including the Deliberations, arrete and the Act specified in Schedule II, in so far as it makes provisions for matters covered by this Act, shall stand repealed.

(2) Nothing in sub-section (1) shall, affect—

(a) the previous operation of the corresponding law, so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the corresponding law so repealed ; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the corresponding law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(3) Subject to the provisions of sub-section (2) anything done or any action taken (including any appointment or delegation made, notification, instruction or direction issued, any rule or form framed, certificate obtained, patent, permit or licence granted or registration effected) under the corresponding law shall be deemed to have been done or taken under this Act.

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1. Insertion vide EOG No.16 dated 25-04-1989.

2. Insertion vide the EOG No. 64 dated 13-07-1972.

**SCHEDULE-I**

(See Section 21)

| Sl. No.         | Description of excisable articles  | Mode of levying duty                             | Maximum rate of duty                              |
|-----------------|--|--|---|
| (1)             | (2)  | (3)  | (4)   |
| 1.              | Spirituous liquors, liquors whether Indian made or foreign manufactured or imported in the Union territory, rectified or semi-rectified spirit and arrack patte. | On the quantity issued                           | <sup>1</sup> [Rs 150 per proof litre of alcohol]. |
| 2.              | 'Wine' cider and Perrys  | On the quantity issued.                          | Rs. 24 per bulk hecto-litre.                      |
| 3.              | Beer   | On the quantity issued.                          | <sup>2</sup> [Rs 500] per bulk hecto-litre.       |
| 4.              | Denatured spirit, methylated spirit.   | On the quantity issued.                          | Rs. 50 per bulk hecto-litre.                      |
| 5.              | Toddy  | On each variety of the following trees per year. |   |
|                 |  | 1. Coconut tree.                                 | Rs. 18 per tree.                                  |
|                 |  | 2. Sago palm                                     | Rs. 36 per tree.                                  |
|                 |  | 3. Palm  | Rs. 6 per tree.                                   |
|                 |  | 4. Date  | Rs. 6 per tree.                                   |
| <sup>1</sup> 6. | Bottled Toddy  | On the quantity issued.                          | Rs. 60 per bulk hecto-litre.                      |

1. Vide EOG No.29, 10-03-2000.

2. Vide EOG No.28, 16-06-1999.

**SCHEDULE-II**

(Section 71)

| Sl No. | Deliberations  |            | Arrete and Act              |            |
|--------|--|------------|-----------------------------|------------|
| 1.     | Deliberations dated  | 14-1-1906  | Promulgated by Arrete dated | 28-3-1907  |
| 2.     | "  | 24-12-1908 | "                           | 2-2-1910   |
| 3.     | "  | 23-12-1911 | "                           | 22-9-1912  |
| 4.     | "  | 30-12-1911 | "                           | 2-10-1912  |
| 5.     | "  | 1-10-1913  | "                           | 22-11-1916 |
| 6.     | "  | 13-12-1917 | "                           | 26-10-1918 |
| 7.     | "  | 22-11-1918 | "                           | 11-11-1919 |
| 8.     | "  | 25-11-1919 | "                           | 3-11-1920  |
| 9.     | "  | 20-12-1922 | "                           | 9-6-1923   |
| 10.    | "  | 10-12-1923 | "                           | 28-6-1924  |
| 11.    | "  | 30-11-1925 | "                           | 20-5-1926  |
| 12.    | "  | 1-10-1952  | "                           | 9-12-1952  |
| 13.    | "  |            | Arrete dated                | 26-7-1962  |
| 14.    | Pondicherry Alcoholic Liquors Consumption Duty (Amendment) Act, 1966 (Act No. 5 of 1966) |            |                             |            |

**NOTIFICATION VII - dated 10-06-1970**

<sup>1</sup> [ In exercise of the powers conferred by Section 21 of the Pondicherry Excise Act, 1970 (No.12 of 1970) the Lieutenant-Governor, Pondicherry, hereby directs that the excise duty or countervailing duty, as the case may be, that are to be levied on the excisable articles mentioned in column (2) of the Schedule hereto annexed, shall be at the rates specified in the corresponding entries in column (3) thereof when such excisable articles are,

(a) manufactured or produced in the Union Territory under any licence or permit granted under this Act;

(b) manufactured or produced elsewhere in India and imported into the Union territory under a licence or permit granted under this Act:

Provided that no such duty shall be levied on excisable articles which have been imported into India and were liable on such importation to duty under the Indian Tariff Act, 1934 or the Customs Act, 1862.]

1 Insertion vide No. B 7289/69 published in Extraordinary Gazette No. 64, dated 10-06-1970.

### SCHEDULE

| Sl. No. (1) | Name of the articles (2)   | Rate of the excise duty/ countervailing duty (3)  |
|-------------|--|---|
|             |  | Rs. P.  |
| * [1        | Spirituous liquors liquors whether Indian made or foreign manufactured or imported in the Union Territory, rectified or semi-rectified spirit, | per pure litre of alcohol.  |
| 2.          | Arrack patte   | <sup>1</sup> 53.00<br><sup>2</sup> 350.00   |
| 3.          | "Wine" cidor and Porrys  | per hecto litre of pure alcohol.  |
| 4.          | Beer   | 22.00<br><sup>3</sup> 175.00  |
| 5.          | Denatured spirit, Methylated spirit  | per bulk hecto litro.<br>do,<br>do,   |
| 6.          | Toddy :—<br>On each variety of the following trees :—<br>1. Coconut tree<br>2. Sago palm tree<br>3. Palm<br>4. Date tree                       | 1.00<br>4.00<br>1.00<br>1.00<br>per tree per six months.<br>per tree per year.<br>per tree per year.<br>per tree per year.] |

The above rates will come into force with immediate effect.

\* Amended vide Extraordinary Gazette No.57, dated 29-03-1978. (Published in the Gazette No.47, dated 10-06-1970)

1. Amended vide EOG No.12 dated 08-04-2002.

2. Amended vide EOG No.34 dated 06-04-1985.

3. Amended vide EOG No.12 dated 31-03-1999.

**GOVERNMENT OF PUDUCHERRY  
DEPARTMENT OF REVENUE AND DISASTER MANAGEMENT**

No.4703/DC(E)/S1/2007-I.

Puducherry, the 23rd April 2007.

**NOTIFICATION - I**

In exercise of the powers conferred by sub-section(1) of section 70-A of the Pondicherry Excise Act, 1970 (No.12 of 1970), the Lieutenant-Governor, Puducherry hereby makes the following alteration to Schedule-I of the said Act, namely:-

In the said Schedule, after column (4), the following column (5) and the entries thereunder shall be inserted against the items at Sl. Nos. 1,2 and 3 :-

| Sl.<br>No. | Maximum rate of<br>additional duty<br>(5) |
|------------|---|
| 1          | Rs.750 per bulk litre                     |
| 2          | Rs.750 per bulk litre                     |
| 3          | Rs. 50 per bulk litre                     |

**NOTIFICATION - II**

In exercise of the powers conferred by section 21 of the Pondicherry Excise Act, 1970 (No.12 of 1970), the Lieutenant-Governor, Puducherry hereby directs that the Additional Excise Duty or Additional Countervailing Duty, as the case may be, that are levied on the excisable articles mentioned in column (2) of the Schedules I and II hereto annexed, shall be at the rates specified in the corresponding entries in column (4) thereof when such excisable articles are,

(a) manufactured or produced in the Union Territory under any licence or permit granted under this Act;

(b) manufactured or produced elsewhere in India and imported into the Union Territory under a licence or permit granted under this Act.

**SCHEDULE-I**

| Sl. No. | Name of the articles  | Declared price range per case containing 8.64/9/12 bulk litres in (Rs.) |          | Rates of Additional Excise Duty/Additional Countervailing Duty per bulk litre in (Rs.) |
|---------|---|---|----------|--|
| (1)     | (2)   | (3)   |          | (4)  |
| 1.      | Spiruous liquors, liquors whether Indian made or foreign manufactured or imported in the Union territory, excluding Beer. | From  | To       |  |
|         |   |   | upto 249 | 26.00  |
|         |   | 250   | 349      | 29.00  |
|         |   | 350   | 449      | 33.00  |
|         |   | 450   | 649      | 40.00  |
|         |   | 650   | 849      | 49.00  |
|         |   | 850   | 1049     | 58.00  |
|         |   | 1050  | 1349     | 69.00  |
|         |   | 1350  | 1649     | 82.00  |
|         |   | 1650  | 1999     | 97.00  |
|         |   | 2000 and above  |          | 149.00   |

**SCHEDULE-II**

| Sl. No. | Name of the articles | Declared price range per case containing 8.64/9/12 bulk litres in (Rs.) |          | Rates of Additional Excise Duty/Additional Countervailing Duty per bulk litre in (Rs.) |
|---------|----------------------|---|----------|--|
| (1)     | (2)                  | (3)   |          | (4)  |
| 1.      | Beer                 | From  | To       |  |
|         |                      |   | upto 149 | 9.00   |
|         |                      | 150   | 249      | 12.00  |
|         |                      | 250 and above   |          | 15.00  |

**GOVERNMENT OF PONDICHERRY**

**LAW DEPARTMENT**

No. 280/Leg./80-LLD

Pondicherry, the 10th April, 1980.

The following Act of the Legislative Assembly, Pondicherry, received the assent of the President of India on the 3rd April, 1980, and is hereby published, for general information:-

**\*[THE PONDICHERRY EXCISE (EXTENSION) ACT, 1980]**

(Act No.4 of 1980)

(3-4-1980)

AN ACT

to provide for the extension of the Pondicherry Excise Act, 1970 to Pondicherry and Karaikal regions and for matters connected therewith or incidental thereto.

Be it enacted by the Legislative Assembly of Pondicherry in the Thirty-First Year of the Republic of India as follows:—

**Short title, extent and commencement**

1. (1) This Act, may be called the Pondicherry Excise (Extension) Act, 1980.
- (2) It extends to the whole of the Union territory of Pondicherry.
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint. \*\*

**Definitions**

2. In this Act, unless the context otherwise requires,—
  - (a) "Government" means the Administrator of the Union territory of Pondicherry appointed under article 239 of the Constitution;
  - (b) "Prohibition Regulation" means the Pondicherry Prohibition Regulation, 1979, promulgated by the President under clause (1) of article 240 of the Constitution; and
  - (c) "Region" means any of the four regions of the Union territory of Pondicherry, namely Pondicherry, Karaikal, Mahe and Yanam.

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\* Published in E.O.G. No.50 dated 14-4-1980.

\*\* The appointed date is 25-4-80 vide No. 106480/B dated 24-4-80 in E.O.G.No.57 dated 24-4-80.

### **Extension of the Pondicherry Excise Act 1970 to other regions**

3. (1) The Pondicherry Excise Act, 1970 as in force in Mahe and Yanam regions, immediately before the commencement of this Act, is hereby extended to, and shall be in force, on such commencement, in the other regions namely, Pondicherry and Karaikal, in relation to which it was repealed by the Prohibition Regulation.

(2) Notwithstanding anything contained in sub-section (1), any licence or permit issued or granted but not cancelled or suspended under the Prohibition Regulation shall be deemed to have been issued or granted, as the case may be, under the corresponding provisions of the Pondicherry Excise Act, 1970, as extended by this Act, and shall continue in force unless and until it is cancelled or suspended or superseded by anything done or any action taken under the provisions of that Act.

### **Suspension of operation of Prohibition Regulation**

4. (1) Notwithstanding anything contained in the Prohibition Regulation, the operation of the said Regulation is hereby suspended on and from the commencement of this Act.

(2) Save as provided in section 3, nothing in sub-section (1) shall affect—

(a) the previous operation of the Prohibition Regulation or any provision thereof or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued, or incurred under the Prohibition Regulation; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Prohibition Regulation; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act has not been passed.

**THE MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTIES) ACT, 1955  
(16 OF 1955)<sup>1</sup>**

[27th April, 1955]

**An Act to provide for the levy and collections of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic.**

**Preliminary**

**1. Short title, extent and commencement.-** (1) This Act may be called the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

(2) It extends to the whole of India.

(3) It shall come into force on such date<sup>2</sup>, as the Central Government may, by notification in the official Gazette, appoint.

**2. Definitions.-** In this Act unless the context otherwise requires.-

(a) "Alcohol" means ethyl alcohol of any strength and purity having chemical composition  $C_2H_5OH$ .

<sup>3</sup>[(aa) "Coca derivative" means-

(i) crude cocaine that is an extract of coca leaf which can be used directly or indirectly, for the manufacture of cocaine :

(ii) ecgonine, that is laevo-ecgonine having the chemical formula,  $C_9H_{15}NO_3H_2O$ , and all the derivatives of laevo-ecgonine from which it can be recovered , and

(iii) cocaine, that is, methyl-benzoyl-laevo-ecgonine having the chemical formula,  $C_{17}H_{21}NO_4$  and its salts;

(ab) "coca-leaf" means-

(i) the leaf and young twigs of any coca plant, that is, of the *Erythoxylo coca* (Lamk.) and the *Erythroxyton novo-granatense* (Hiern.) and their varieties, and of any other species of this genus which the Central Government may, by notification in the official Gazette, declare to be coca plants for the purposes of this Act, and

(ii) any mixture thereof, with or without neutral materials ;

(b) "collecting Government " means the Central Government or, as the case may be, the State Government which is entitled to collect the duties levied under this Act:

<sup>3</sup>[(bb) derivative of opium, means -

(i) medicinal opium, that is, opium which has undergone the processes necessary to adopt it for medicinal use :

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1. Published in the Gazette of India, Extraordinary, Pt.II, Sec.I, dated the 29th April, 1955.

2. 1st April, 1957, vide Notifin.No.5.S.O.892, dated the 9th March, 1957, see Gazette of India 1957,Pt.II.Sec.3.

3. Ins. by Act 66 of 1976.

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked :

(iii) morphine, that is, the principal alkaloid of opium having the chemical formula  $C_{17}H_{19}NO_8$  and its salts, and its derivatives ;]

(c) “dutiable goods” means the medicinal and toilet preparations specified in the schedule as being subject to the duties of excise levied under this Act :

(d) “excise officer” means an officer of the Excise Department of any State and includes any persons empowered by the collecting Government to exercise all or any of the powers of an excise officer under this Act :

<sup>1</sup>[(e) “Indian hemp” means -

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis-sativa* L). including all forms known as bhang, sidhi or ganja ;

(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulation other than those necessary for packing and transport ;

(iii) any mixture, with or without neutral materials, of any of the above forms of Indian hemp or any drink prepared therefrom ; and

(f) “ manufacture” includes any process incidental or ancillary to the completion of the manufacture of any dutiable goods ;

(g) “medicinal preparation” includes all drugs which are a remedy or “prescription” prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals;

<sup>1</sup>[ (h) “Narcotic drugs” or “narcotic” means a substance which is coca leaf, or coca derivative, or opium or derivative of opium, or Indian hemp and shall include any other substance, capable of causing or producing in human beings dependence, tolerance and withdrawal syndromes and which the Central government may, by notification in the official Gazette, declare to be a narcotic drug or narcotic;]

<sup>2</sup>[(i) “opium” means-

(1) 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.

(2) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport ; and

(3) any mixture, with or without neutral materials of any of the above forms of opium.

(j) “prescribed” means prescribed by rules made under this Act ;

(k) “toilet preparation” means any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description, or any substances intended to cleanse, improve or alter the complexion, skin, hair or teeth, and includes deodorants and perfumes.

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1.Subs. by Act 66 of 1976.

2. Subs. by Act 5 of 1964, Sec 64.

## Levy and Collection of Duties

**3. Duties of excise to be levied and collected on certain goods.-** (1) There shall be levied duties of excise, at the rates specified in the schedule, on all dutiable goods manufactured in India.

(2) The duties aforesaid shall be leviable.-

(a) Where the dutiable goods are manufactured in bonds, in the State in which such goods are released from a bonded warehouse for home consumption, whether such state is the State of manufacture or not ;

(b) where the dutiable goods are not manufactured in bond, in the State in which such goods are manufactured.

(3) Subject to the other provisions contained in this Act, the duties aforesaid shall be collected in such manner as may be prescribed.

Explanation.- Dutiable goods are said to be manufactured in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, <sup>1</sup>[narcotic drug or narcotic] which is to be used as an ingredient in the manufacture of such goods.

**4. Rebate of duty on alcohol, etc., supplied for manufacture of dutiable goods.-** Where alcohol <sup>2</sup>[narcotic drug or narcotic] had been supplied to a manufacturer or any dutiable goods for use as an ingredient of such goods by, or under the authority of, the collecting Government and a duty of excise on the goods so supplied had already been recovered by such Government under any law for the time being in force, the collecting Government shall, on an application being made to it in this behalf, grant in respect of the duty of excise leviable under this Act, a rebate to such manufacturer of the excess, if any, of the duty so recovered over the duty leviable under this Act.

**5. Recovery of sums due to Government.-** In respect of the duty of excise and any other sums of any kind payable to the collecting Government under any of the provisions of this Act or of the rules made thereunder, the Excise Officer empowered by the said rules to levy such duty or require the payment of such sums may be recoverable or due, which may be in his hands or under his disposal or control or may recover the amount by attachment and sale of dutiable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the sum and send to it the Collector of the district in which such person resides or conducts his business, and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified therein in the same manner as an arrear of land revenue.

**6. Certain operations to be subject to licences.-** The Central Government may, by notification in the official Gazette, provide that from such date as may be specified in the notification, no person shall engage in the production or manufacture of any dutiable goods or of any specified component parts or ingredients of such goods or of specified container of such goods or of labels of such containers except under the authority and in accordance with the terms and conditions of a licence granted under this Act.

(2) Every licence under sub-section (1) shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars as may be prescribed.

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1. Subs. by Act 68 of 1966 , Sec.39(a)

2. Subs by Act 66 of 1966, Sec. 39 (a).

**7. Offences and penalties.-** If any person-

(a) contravenes any of the provisions of a notification issued under Sec.6 : or

(b) evades the payment of any duty of excise payable under this Act ; or

(c) fails to supply any information which he is required by rules made under this Act to supply or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information ; or

(d) attempts to commit or abets the commissions of any offence mentioned in Cl. (a) or Cl.(b), he shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

**8. Power of Courts to order forfeiture.-** Any Court trying any offence under Sec.7 may order the forfeiture to the collecting Government of any dutiable goods in respect of which the Court is satisfied that an offence under this Act has been committed, and may also order the forfeiture of any alcohol, drugs or materials by means of which the offence has been committed and of any receptacles, packages or coverings in which any such goods or articles are contained and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles, and any implements or machinery used in the manufacture of such goods.

**Powers and Duties of Officers and Landholders**

**9. Power to arrest.-** (1) Any excise officer duly empowered by rules made in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made thereunder, who, on demand of any excise officer duly empowered by rules made under this Act, refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false may be arrested by such officer in order that his name and residence may be ascertained.

**10. Power to summon persons to give evidence and produce documents in inquiries under this Act :-** (1) Any excise officer duly empowered by rules made in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purpose of this Act.

(2) A summons to produce documents or other things under sub-section (1) may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person concerned.

(3) All person so summoned shall be bound to attend either in person or by an authorized agent as such officer may direct and all persons so summoned shall be bound to state the truth on any subject respecting which he is examined or make statements and produce such documents and other things as may be required;

Provided that the exemption under Sec.132 and Sec.133 of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Sec.193 and Sec.228 of the Indian Penal Code (45 of 1860)

**11. Officers required to assist excise officers.-** All officers of Customs and Central Excise, and such other officers of the Central Government as may be specified in the behalf, and all police offic-

ers and all officers engaged in the collection of land revenue are hereby empowered and required to assist excise offices in the execution of this Act.

**12. Owners or occupiers of land to report manufacture of contraband dutiable goods.-**

Every owner or occupier of land and the agent of any such owner or occupier in charge of the management of that land, if dutiable goods are manufactured thereon in contravention of the provisions of this Act or the rules made thereunder, shall, in the absence of reasonable excuse, be bound to give notice of such manufacture to a Magistrate or to an officer of the Excise, Customs, Police or Land Revenue Department immediately the fact comes to his notice.

**13. Punishment for connivance at offences.-** Any owner or occupier of land or any agent of such owner or occupier in charge of the management of the land, who wilfully connives at any offence against the provisions of this Act or any rules made thereunder shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**14. Searches and arrests how to be made.-** All arrests and searches made under this Act or under any rules made thereunder shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) relating respectively to searches and arrests under the Code.

**15. Disposal of persons arrested.-** (1) Every person arrested under this Act shall be forwarded without delay to the nearest Excise Officer empowered to send persons so arrested to a Magistrate or if there is no such excise officer within a reasonable distance to the officer-in-charge of the nearest police station.

(2) The officer-in-charge of a police station to whom any person is forwarded under sub-section (1) shall either admit him to bail to appear before a Magistrate having jurisdiction or in default of bail forward him without delay in custody to such Magistrate.

**16. Inquiry how to be made by excise officers against arrested persons forwarded to them.-**

(1) When any person is forwarded under Sec.15 to an excise officer empowered to send persons so arrested to a Magistrate, the Excise Officer shall proceed to inquire into the charge against him.

(2) For the purpose of sub-section (1), the Excise Officer may exercise the same powers, and shall be subject to the same provisions, as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1989 (5 of 1898), when investigating a cognizable case :

Provided that -

(a) if the Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person he shall either admit him to bail to appear before Magistrate having jurisdiction in the case, or forward him in custody without delay to such Magistrate ;

(b) if it appears to the Excise Officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond with or without sureties as the Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction and shall make a full report of all the particulars of the case to his official superior.

(3) All officers exercising any powers under Sec.15 or this section shall so exercise their powers as to ensure that every person who is arrested and detained in custody is produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate.

**17. Vexatious search, seizure, etc., by Excise Officer.-** (1) Any officer exercising powers under this Act or under the rules made thereunder who-

(a) without reasonable ground of suspicion searches or causes to be searched any place, conveyance or vessel :

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

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

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty ;

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

**18. Failure of excise officers on duty.-** Any Excise Officer who ceases or refuses to perform, or withdraws himself from the duties of his office, unless he had obtained the express written permission of his superior officer or has given such superior officer two months` notice in writing of his intention or has other lawful excuse, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months`s pay, or with both.

### **Supplementary Provisions**

**19. Power to make rules.-** (1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may-

(i) provide for the assessment and collection of duties levied under this Act, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of the duty not paid ;

(ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government may think fit, the manufacture, or any process of the manufacture, or dutiable goods or of any component parts or ingredients or containers thereof, except of land or premiss approved for the purpose;

(iii) regulate the removal of dutiable goods from the place where they are stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market ;

(iv) regulate the production or manufacture<sup>1</sup>[or any process] of production or manufacture, the possession and storage of dutiable goods or of any component parts or ingredients or containers thereof so far as such regulation is essential for the proper levy and collection of duties levied under this Act :

(v) provide for the employment of excise officers to supervise the carrying out of any rules made under this Act :

(vi) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of of his factory or warehouse for Excise Officers employed to supervise the carrying out of rules made under this Act and prescribe the scale of such accommodation ;

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1. Subs. by Act 58 of 1960, sec.3 and Sch.II, for " of any process".

(vii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering dutiable goods into a clearing goods from such warehouses or in the movement of dutiable goods from one bonded warehouse to another.

(viii) provide for the distinguishing of excisable goods which have been manufactured under licence, or materials which have been imported under licence and of goods on which duty has been paid or which are exempt from duty under this Act;

(ix) impose on persons engaged in the manufacture, storage or sale (whether on their own account or as brokers or commission agents) so far as much imposition is of furnishing information, keeping records and making returns and prescribe the nature of such information and form of such records and returns the particulars to be contained therein and the manner in which they shall be verified.

(x) require that dutiable goods shall not be sold or offered or kept for sale except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed ;

(xi) provide for the issue of licences and transport permits and the fees, if any, to be charged therefor ;

(xii) provide for the detention of dutiable goods, plant, machinery or material for the purpose of exacting the duty ;

(xiii) provide for the confiscation of dutiable goods in respect of which a breach of any rule made under this Act has been committed, and also for the confiscation of any alcohol, drugs or materials by means of which the breach has been committed of any receptacle, packages or covering in which goods or articles are contained, and the animals, vehicles, vessels, or other conveyance used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods;

(xiv) provide for the levy of a penalty not exceeding two thousand rupees for a breach of any rule made under this Act ;

(xv) provide for the procedure in connection with such confiscation and the imposition of such penalty, the maximum limits up to which particular classes of excise officers may adjudge such confiscation or penalty, appeals from orders of such officers and revision of such orders by some higher authority, the time-limit for such appeals and revisions and the disposal of goods and articles confiscated ;

(xvi) authorise and regulate the compounding of offences against, or liabilities incurred under, this Act or the rules made thereunder ;

(xvii) authorize and regulate the inspection of factories and provide for the taking of samples or for the making of tests of any substance produced therein and for the inspection or search of any place, conveyance or vessel used for the production, storage, sale or transport of dutiable goods in so far as such inspection or search is essential for the proper levy and collection of the duties levied under this Act ;

(xviii) provide for the grant of a rebate of the duty paid on dutiable goods which are exported out of India or shipped for consumption on a voyage to any port outside India ;

(xix) exempt any dutiable goods from the whole or any part of the duty levied under this Act where in the opinion of the Central Government, it is necessary to grant such exemption in the interest of the trade or in the public interest ;

(xx) notify in the official Gazette lists of the names and descriptions of preparations which would fall for the assessment under any particular item or the schedule or for regulating their manufacture, transport and distribution ;

(xxi) authorise particular classes of excise officers to provide by written instruction for supplemental matters arising out of any rule made by the Central Government under this section.

(3) Where any confiscation or penalty has been adjudged in respect of a breach of any rule under this Act, which is also an offence under Sec.7 the person concerned shall into be prosecuted under that section.

<sup>1</sup>[(4) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is session for a total period of thirty days which may be comprised is one session or <sup>2</sup>[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.]

**20. Bar of suits and limitation of suits and other legal proceedings.-** (1) No suit or other legal proceeding shall lie against the collecting Government or against any officer in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted against the collecting Government or against any officer for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

**21. Repeals and saving.-** If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed ;

Provided that all rules made, notification issued, licences or permits granted, powers conferred under any law hereby repealed shall, so far as they are not inconsistent with this Act, have the same force and effect as if they had been respectively made, issued, granted or conferred under this Act and by the authority empowered hereby in that behalf.

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1. Subs.by Act19 of 1961, Sec.2, for sub-section (4), w.e.f.1st June, 1961.

2. Subs. by Act 20 of 1983, Sec.2 the Schedule Sl.No.31, for the words, "in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following"

**<sup>1</sup>[THE SCHEDULE  
(See Sec.3)**

| Item No.   | Description of dutiable goods   | Rate of duty                         |
|--|---|--------------------------------------|
| <b>Medicinal Preparation</b>   |   |                                      |
| 1. Allopathic Medicinal Preparations   |   |                                      |
|  | (i) Medicinal preparations containing alcohol which are not capable of being consumed as ordinary alcoholic beverages.-               |                                      |
|  | (a) Patent or proprietary medicines   | Twenty per cent, <i>ad valorem</i> . |
|  | (b) Others  | Twenty per cent, <i>ad valorem</i> : |
|  | (ii) Medicinal preparations containing alcohol which are capable of being consumed as ordinary alcoholic beverages-                   |                                      |
|  | (a) Medicinal preparations which contain known active ingredients in therapeutic quantities,  | Twenty per cent, <i>ad valorem</i> . |
|  | (b) Others.   | Twenty per cent, <i>ad valorem</i> . |
| 2. Medicinal preparations in Ayurvedic, Unani or other indigenous systems of medicine- |   |                                      |
|  | (i) Medicinal preparations containing self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages. | Four per cent, <i>ad valorem</i> .   |
|  | (ii) Medicinal preparations containing self-generated alcohol which are capable of being consumed as ordinary alcoholic beverages.    | Four per cent, <i>ad valorem</i> .   |
|  | (iii) All other containing alcohol which are prepared by distillation or to which alcohol has been added.                             | Six per cent, <i>ad valorem</i> .    |
|  | (iv) Medicinal preparation not containing alcohol but containing narcotic drug or narcotic.   | Twenty per cent, <i>ad valorem</i> . |
|  | 3. Homeopathic preparations containing alcohol  | Four per cent, <i>ad valorem</i> .   |
| <b>Toilet preparations</b>   |   |                                      |
|  | 4. Toilet preparations containing alcohol or narcotic drug or narcotic.   | Fifty per cent, <i>ad valorem</i> .  |

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1. Subst, by the Act, 10 of 2000, Sec.111 and Sch.VI.

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Explanation I.- "Patent or proprietary medicines" means any medicinal preparation which bears either on itself or on its container or both, a name which is not specified in a monograph in pharmacopoeia, formulary or other publications notified in this behalf by the Central Government in the Official Gazette, or which is a brand name, that is, a name or a registered trade-mark under the Trade and Merchandise Marks Act, 1958, or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicinal preparation for the purpose of indicating or so as to indicate a connection in the course of trade between the preparation and some person having the right either as proprietor or otherwise to use the name of mark with or without any indication of the identity of that person.

Explanation II.- Where any article is chargeable to duty at a rate dependent on the value of the article, such value shall be deemed to be the value as determined in accordance with the provisions of Sec.4 of the Central Excise Act, 1944 (1 of 1944).

Explanation III.- (1) Notwithstanding anything contained in Explanation II, the Central Government may, by notification in the Official Gazette, specify any dutiable goods in relation to which it is required under the provisions of the Standards of Weights and Measures Act, 1976 or the rule made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of Cl.(2) shall apply.

(2) Where dutiable goods specified under Cl. (1) are chargeable to duty with reference to value, then, notwithstanding anything contained in Explanation II, such value shall be deemed to be the retail price declared on such goods less such amount of abatement, if any from such retail price as the Central government may allow by notification in the Official Gazette.

(3). The Central Government may, for the purpose of allowing any abatement under Cl.(2), take into account the duty of excise, sales tax and other taxes, if any, payable on such goods.

(4) Where on the package of any dutiable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of Cl. (2).

(5) Where different retail sale prices are declared on different packages for the sale of any dutiable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the dutiable goods intended to be sold in the area to which the retail sale price relates.

(6). For the purpose of this Explanation, `retail sale price` means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like as the case may be, and the price is the sole consideration for such sale.]

**The Narcotic Drugs and Psychotropic  
Substances Act, 1985  
(No. 61 of 1985)<sup>1</sup>**

[16th September, 1985]

*An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operation relating to narcotic drugs and psychotropic substances<sup>2</sup> [to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances] and for matters connected therewith.*

Be it enacted by Parliament in the Thirty-six Year of the Republic of India as follows:

**STATEMENT OF OBJECTS AND REASONS OF ACT 61 OF 1985**

The statutory control over narcotic drugs is exercised in India through a number of Central and State enactments. The principal Central Acts, namely the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted a long time ago. With the passage of time and the developments in the field of illicit drug traffic and drug abuse at national and international level, many deficiencies in the existing laws have come to notice, some of which are indicated below :

- (i) The scheme of penalties under the present Acts is not sufficiently deterrent to meet the challenge of well-organized gangs of smugglers. The Dangerous Drugs Act, 1930, provides for a maximum term of imprisonment of 3 years with or without fine and 4 years' imprisonment with or without fine for repeated offences. Further, no minimum punishment is prescribed in the present laws, as a result of which drug traffickers have been some time let off by the courts with nominal punishment. The country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from some of our neighbouring countries and destined mainly to Western countries.
- (ii) The existing Central laws do not provide for investing the officers of a number of important Central enforcement agencies like narcotics, customs, Central excise, etc., with the power of investigation of offences under the said laws.
- (iii) Since the enactment of the aforesaid three Central Acts a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols. The Government of India has been a party to these treaties and conventions which entail several obligations which are not covered or are only partly covered by the present Acts.
- (iv) During recent years new drugs of addiction which have come to be known as psychotropic substances have appeared on the scene and posed serious problems to national Governments. There is no comprehensive law to enable exercise of control over psychotropic substances in India in the manner as envisaged in the Convention on Psychotropic Substances, 1971 to which also India, has acceded.

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1. Published in the *Gazette of India*, Extraordinary, Pt. II, Sec. 1, No. 75, dated 16th September, 1985.

2. Ins. by Act 2 of 1989, Sec. 2 (w.e.f. 29th May, 1989).

2. In view of what has been stated above, there is an urgent need for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances which, *inter alia*, should consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drugs of abuse, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances to which India has become a party.

### **STATEMENT OF OBJECTS AND OBJECTS AND REASONS<sup>1</sup> OF ACT 2 OF 1989<sup>2</sup>**

In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill-over from such traffic has caused problems of abuse and addiction. The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishments for drug trafficking offences. Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt.

2. A Cabinet sub-committee which was constituted for combating drug traffic and preventing drug abuse, also made a number of recommendations for strengthening the existing law. In the light of the recommendations of the Cabinet Sub-Committee and the working of the Narcotic Drugs and Psychotropic Substances Act, in the last three years, it is proposed to amend the said Act. These amendments, *inter alia*, provide for the following :

- (i) to constitute a National Fund for control of drugs abuse to meet the expenditure incurred in connection with the measures for combating illicit traffic and preventing drug abuse;
- (ii) to bring certain controlled substances which are used for manufacture of narcotic drugs and psychotropic substances under the ambit of Narcotic Drugs and Psychotropic Substances Act and to provide deterrent punishment for violation thereof ;
- (iii) to provide that no sentence awarded under the Act shall be suspended, remitted or commuted;
- (iv) to provide for pre-trial disposal of seized drugs;
- (v) to provide death penalty on second conviction in respect of specified offences involving specified quantities of certain drugs ;
- (vi) to provide for forfeiture of property and a detailed procedure relating to the same; and
- (vii) to provide that the offences shall be cognizable and non-bailable.

3. The Bill seeks to achieve the above objectives.

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1. Vide Bill 125 of 1988 introduced in the Lok Sabha.

2. Act 2 of 1989 enforced w.e.f. 29th May, 1989, Published in the *Gazette of India Extraordinary*, Pt. II, Sec. 2, No. 59, dated 6th December, 1988, vide S.O. 379 (E), dated 29th May, 1989, published in the *Gazette of India, Extraordinary*, Pt. II, Sec 3 (ii), No. 300, dated 29th May, 1989.

## CHAPTER I

### Preliminary

**1. Short title, extent and commencement.**— (1) This Act may be called the Narcotic Drugs and Psychotropic Substances Act, 1985.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision of the commencement of this Act shall be construed in relating to any State as a reference to the coming into force of that provision in that State.

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

(i) "*addict*" means a person addicted to any narcotic drug or psychotropic substance;

(ii) "*Board*" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(iii) "*cannabis (hemp)*" means—

(a) *charas*, that is, the separated resin, in whatever form, whether crude or purified; from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) *ganja*, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any natural material, of any of the above forms of cannabis or any drink prepared therefrom;

(iv) "*cannabis plant*" means any plant of the genus *cannabis*;

(v) "*coca derivative*" means—

(a) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;

(b) ecgonine and all the derivatives of ecgonine from which it can be recorded;

(c) cocaine, that is, methyl ester of benzoyl-ecgonine and its salts; and

(d) all preparations containing more than 0.1 per cent of cocaine;

(vi) "*coca leaf*" means—

(a) the leaf of the coca plant except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;

(b) any mixture thereof with or without any natural material; but does not include any preparation containing not more than 0.1 per cent. of cocaine;

(vii) "coca plant" means the plant of any species of the genus *Erythroxylon*;

<sup>1</sup>[(viii) "controlled substance" means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the official Gazette, declare to be a controlled substance;]

(viii) "conveyance" means a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel;

<sup>2</sup>[(viiiia) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means—

(i) cultivating any coca plant or gathering any portion of coca plant;

(ii) cultivating the opium poppy or any cannabis plant ;

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clause (i) to (iv); other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes—

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the aforementioned activities];

(ix) "International Convention" means—`

(a) the Single Convention on Narcotic Drugs, 1961, adopted by the United Nations Conference at New York in March, 1961;

(b) the Protocol, amending the Convention mentioned in sub-clause (a) adopted by the United Nations Conference at Geneva in March, 1972,

(c) the Convention on Psychotropic Substances, 1971 adopted by the United Nations Conference at Vienna in February, 1971; and

(d) any other international convention, on protocol or other instrument amending an international convention, relating to narcotic drugs psychotropic substances which may be ratified or acceded to by India after the commencement of this Act;

(x) "manufacture", in relation to narcotic drugs or psychotropic substances, includes—

(1) all processes other than production by which such drugs or substances may be obtained;

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1. Ins. by Act 2 of 1989, Sec. 3 (a) (w.e.f. 29th May, 1989).

2. Ins. by *ibid.*

(2) refining of such drugs or substances; and

(3) transformation of such drugs or substances; and

(4) making of preparation (otherwise than in a pharmacy or prescription) with or containing such drugs or substances;

(xi) "manufactured drug" means—

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;

(b) any other narcotic or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the official Gazette, declare to be a manufactured drug;

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature, or to a decision, if any, under any International Convention, by notification in the official Gazette, declare not to be manufactured drug;

(xii) "medicinal cannabis", that is medicinal hemp, means any extract or tincture of cannabis (hemp);

(xiii) "Narcotics Commissioner" means the Narcotics Commissioner appointed under Sec. 5;

(xiv) "Narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;

(xv) "opium" means—

(a) the coagulated juice of the opium poppy; and

(b) any mixture, with or without any natural material of the coagulated juice of the opium poppy,

but does not include any preparation containing not more than 0.2 per cent. of morphine;

(xvi) "opium derivative" means—

(a) medicinal opium, that is opium which has undergone the processes necessary to adapt it for medicinal use in accordance with requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, the-baine and their salts;

(d) diacetylmorphine, that is, the alkaloid also known as diamorphine or heroin and its salts;and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

(xvii) "opium poppy" means—

- (a) the plant of the species *papaver somniferum* L ; and
- (b) the plant of any other species of *papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the official Gazette, declare to be opium poppy for the purposes of this Act ;
- (xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;
- (xix) "poppy straw concentrate" means the material arising when poppy straw has entered into a process for the concentration of its alkaloids ;
- (xx) "preparation", in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;
- (xxi) "prescribed" means prescribed by rules made under this Act;
- (xxii) "production" means the separation of opium, poppy straw, coca leaves or cannabis from the plants from which they are obtained;
- (xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or materials included in the list of psychotropic substances specified in the Schedule;
- (xxiv) "to import inter-State" means to bring into State or Union Territory in India from another State or Union territory in India ;
- (xxv) "to import into India", with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

*Explanation.*— For the purposes of this clause and Cl. (xxvi). "India" includes the territorial waters of India ;

- (xxvi) "to export from India" with its grammatical variations and cognate expressions, means to take out of India to a place outside India;
- (xxvii) "to export inter-State" means to take out of a State or Union territory in India,
- (xxviii) "to transport" means to take from one place to another within the same State or Union territory;
- <sup>1</sup>[(xxviii-a) "use" in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption] ;
- (xxix) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974), have the meanings respectively assigned to them in that Code.

*Explanation.*— For the purposes of Cls. (v), (vi), (xv) and (xvi), the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent, of a

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1. Ins. by Act 2 of 1989, Sec. 3 (c) (w.e.f. 29th May, 1989).

substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage :

Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

**3. Power to add to or omit from the list of psychotropic substances.**—The Central Government may, if satisfied that it is necessary or expedient so to do on the basis of—

- (a) the information and evidence which has become available to it with respect to the nature and effects of, and the abuse or the scope for abuse of, any substance (natural or synthetic) or natural material or any salt or preparation of such substance or material; and
- (b) the modification or provisions (if any) which have been made to, or in, any International Convention with respect to such substance, natural material or salt or preparation of such substance or material,

by notification in the Official Gazette, add to, or as the case may be, omit from, the list of psychotropic substances specified in the Schedule such substance or natural material or salt preparation of such substance material.

## CHAPTER II

### Authorities and Officers

**4. Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc.**—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely :

- (a) coordination of actions by various officers, State Governments and other authorities—
  - (i) under this Act, or
  - (ii) under any other law for the time being in force in connection with the enforcement of the provisions of this Act;
- (b) obligations under the International Conventions;
- (c) assistance to the concerned authorities in foreign countries and concerned international organisations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances ;
- (d) identification, treatment, education, after-care, rehabilitation social re-integration of addicts;
- (e) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or a hierarchy of authorities by such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order, and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities had been empowered by this Act to exercise those powers and take such measures.

**5. Officers of Central Government.**—(1) Without prejudice to the provisions of sub-section (3) of Sec. 4, the Central Government shall appoint a Narcotics Commissioner and may also appoint such other officers with such designations as it thinks fit for the purposes of this Act.

(2) The Narcotics Commissioner shall, either by himself or through officers subordinate to him, exercise all powers and perform all functions relating to the superintendence of the cultivation of the opium poppy and production of opium and shall also exercise and perform such other powers and functions as may be entrusted to him by the Central Government.

(3) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government, or, if so directed by that Government also of the Board or any other authority or officer,

**6. The Narcotic Drugs and Psychotropic Substances Consultative Committee.**—(1) The Central Government may constitute, by notification in the Official Gazette, an advisory committee to be called "The Narcotic Drugs and Psychotropic Substances Consultative Committee" (hereinafter in this section referred to as the Committee) to advise the Central Government on such matters relating to the administration of this Act as are referred to it by that Government from time to time.

(2) The Committee shall consist of a Chairman and such other members, not exceeding twenty, as may be appointed by the Central Government.

(3) The Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do for the efficient discharge of any of its functions, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person (including a non-official) who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the offices of and the allowances, if any, payable to the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint a person who is not a member of the Committee as a member of any of its sub-committees, shall be such as may be prescribed by rules made by the Central Government.

**7. Officers of State Government.**—(1) The State Government may appoint such officers with such designations as it thinks fit for the purposes of this Act.

(2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the State Government, or, if so directed by the Government, also of any other authority or officer.

## <sup>1</sup>[CHAPTER II-A

### **National Fund for Control of Drug Abuse**

**7-A. National Fund for Control of Drug Abuse.**—(1) The Central Government may, by notification in the Official Gazette, constitute a Fund to be called the National Fund for Control of Drug Abuse (hereafter in this Chapter referred to as the Fund) and there shall be credited thereto—

- (a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide;
- (b) the sale proceeds of any property forfeited under Chapter VA;
- (c) any grants that may be made by any person or institution;
- (d) any income from investment of the amounts credited to the Fund under the aforesaid provisions.

(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for combating illicit traffic in, or controlling abuse of, narcotic drugs and psychotropic substances for all or any of the purposes specified in sub-section (1) of Sec. 71.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government in regard to the application of the Fund.

(4) The Governing Body shall consist of a Chairman (not below the rank of an Additional Secretary to the Central Government) and such other members not exceeding six as the Central Government may appoint.

(5) The Governing Body shall have the power to regulate its own procedure.

**7-B. Annual report of activities financed under the Fund.**—The Central Government shall, as soon as may be, after the end of each financial year, cause to be published in the Official Gazette a report giving an account of the activities financed under Sec. 7-A during the financial year, together with a statement of accounts.]

## **CHAPTER III**

### **Prohibition, Control and Regulation**

**8. Prohibition of certain operations.**—No person shall—

- (a) cultivate any coca plant or gather any portion of coca plant; or
- (b) cultivate the opium poppy or any cannabis plant; or
- (c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or that rules or orders made thereunder and the case where any provision, imposes any requirement by way of licence, permit or authorisation, also in accordance with the terms and conditions of such licence, permit or authorisation :

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1. Ins. by Act 2 of 1989, Sec. 4 (w.e.f. 29th May, 1989).

Provided that, any subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of *ganja* or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of *ganja* for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf.

<sup>1</sup>[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]

**9. Power of Central Government to permit, control and regulate.**—(1) Subject to the provisions of Sec. 8, the Central Government may, by rules—

(a) permit and regulate—

- (i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves;
- (ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;
- (iii) the production and manufacture of opium and production of poppy straw ;
- (iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists ;
- (v) the manufacture of manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;
- (vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances ;
- (vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances ;

(b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in Cl. (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) empower the Central Government to fix from time to time the limits within which licences may be given for the cultivation of the opium poppy ;
- (b) require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorised in this behalf by the Central Government ;
- (c) prescribe the forms and conditions of licences for cultivation of the opium poppy and for production and manufacture of opium, the fees that may be charged therefor; the authorities by which such licence may be granted, withheld, refused or cancelled and the authorities before which appeals against the orders of withholding, refusal or cancellation of licences shall lie ;

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1. Ins. by Act 2 of 1989, Sec. 5 (w.e.f. 29th May, 1989).

- (d) prescribe that opium shall be weighed, examined, and classified according to its quality and consistence by the officers authorised in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;
- (e) empower the Central Government to fix from time to time price to be paid to the cultivators for the opium delivered ;
- (f) provide for the weighing, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or addition (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighing, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;
- (g) require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorised in this behalf ;
- (h) prescribe the forms and conditions of licences for the manufacture of manufactured drugs, the authorities by which such licences may be granted and the fees that may be charged therefor ;
- (i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefor ;
- (j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transhipped; the forms and conditions of certificates, authorisations or permits, as the case may be, for such import, export or transhipment; the authorities by which such certificates, authorisations or permits may be granted and the fees that may be charged therefor.

**<sup>1</sup>[9-A. Power to control and regulate controlled substances.—**(1) If the Central Government is of the opinion that having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the power conferred by sub-section (1), an order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any controlled substance.]

**10. Power of State Government to permit, control and regulate.—**(1) Subject to the provisions of Sec. 8, the State Government may, by rules—

- (a) permit and regulate—
  - (i) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw;
  - (ii) the possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of opium;

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1. Ins. by Act 2 of 1989, Sec. 5 (w.e.f. 29th May, 1989).

- (iii) the cultivation of any cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of cannabis (excluding *charas*);
- (iv) the manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess ;
- (v) the possession, transport, purchase, sale, import inter-State, export inter-State, use or consumption of manufactured drugs other than prepared opium and of coca leaf and any preparation containing any manufactured drug ;
- (vi) the manufacture and possession of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption :

Provided that save in so far as may be expressly provided in the rules made under sub-clauses (iv) and (v), nothing in Sec. 8 shall apply to the import inter-State, export inter-State, transport, possession, purchase, sale, use or consumption of manufactured drugs which are the property and in the possession of the Government :

Provided further that such drugs as are referred to in the preceding proviso shall not be sold or otherwise delivered to any person who, under the rules made by the State Government under the aforesaid sub-clauses, is not entitled to their possession ;

- (b) prescribe any other matter requisite to render effective the control of the State Government over any of the matters specified in Cl. (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) empower the State Government to declare any place to be a warehouse wherein it shall be the duty of the owners to deposit all such poppy straw as is legally imported inter-State and is intended for export inter-State or export from India ; to regulate the safe custody of such poppy straw warehoused and the removal of such poppy straw for sale or export inter-State or export from India; to levy fees for such warehousing and to prescribe the manner in which and the period after which the poppy straw warehoused shall be disposed of in default of payment of fees ;
- (b) provide that the limits within which licences may be given for the cultivation of any cannabis plant shall be fixed from time to time by or under the orders of the State Government ;
- (c) provide that only the cultivators licensed by the prescribed authority of the State Government shall be authorised to engage in cultivation of any cannabis plant ;
- (d) require that all cannabis, the produce of land cultivated with cannabis plant, shall be delivered by the cultivators to the officers of the State Government authorised in this behalf ;
- (e) empower the State Government to fix from time to time, the price to be paid to the cultivators for the cannabis delivered ;
- (f) prescribe the forms and conditions of licences or permits for the purposes specified in sub-clauses (i) to (vi) of Cl. (a) of sub-section (1) and the authorities by which such licences or permits may be granted and the fees that may be charged therefor.

**11. Narcotic drugs and psychotropic substances, etc., not liable to distress or attachment.**—Notwithstanding anything to the contrary contained in any law or contract, no narcotic

drug, psychotropic substance, coca plant, the opium poppy or cannabis plant shall be liable to be distrained or attached by any person for the recovery of any money under any order or decree of any court or authority or otherwise.

**12. Restrictions over external dealings in narcotic drugs and psychotropic substances.**—No person shall engage in or control any trade whereby a narcotic drug or psychotropic substance is obtained outside India and supplied to any person outside India save with the previous authorisation of the Central Government and subject to such conditions as may be imposed by that Government in this behalf.

**13. Special provisions relating to coca plant and coca leaves for use in the preparation of flavouring agent.**—Notwithstanding anything contained in Sec. 8, the Central Government may permit, with or without conditions, and on behalf of Government, the cultivation of any coca plant or gathering of any portion thereof or the production, possession, sale, purchase, transport, import inter-State, export inter-State or import into India of coca leaves for use in the preparation of any flavouring agent which shall not contain any alkaloid and to the extent necessary for such use.

**14. Special provision relating to cannabis.**—Notwithstanding anything contained in Sec. 8, Government may, by general or special order and subject to such conditions as may be specified in such order, allow cultivation of any cannabis plant for industrial purposes only of obtaining fibre or seed or for horticultural purposes.

## CHAPTER IV

### Offences and Penalties

**15. Punishment for contravention in relation to poppy straw.**—Whoever, in contravention of any provision of this Act or any rule or order transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**16. Punishment for contravention in relation to coca plant and coca leaves.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**17. Punishment for contravention in relation to prepared opium.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment impose a fine exceeding two lakh rupees.

**18. Punishment for contravention in relation to opium poppy and opium.**—Whoever, in contravention of any provision of this Act, or any rule or order made or condition of licence granted thereunder cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**19. Punishment for embezzlement of opium by cultivator.**—Any cultivator licensed to cultivate the opium poppy on account of the Central Government who embezzles or otherwise illegally disposes of the opium produced or any part thereof, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**20. Punishment for contravention in relation to cannabis plant and cannabis.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable—

(i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;

(ii) where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**21. Punishment for contravention in relation to manufactured drugs and preparations.**—Whoever, in contravention of any provision of this Act, or any rule or order made or condition of licence granted thereunder manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufacture drug or any preparation containing any manufactured drug shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**22. Punishment for contravention in relation to psychotropic substances.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-

State, or uses any psychotropic substance shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment impose a fine exceeding two lakh rupees.

**23. Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorisation issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substances shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**24. Punishment for external dealings in narcotic drugs and psychotropic substances in contravention of Sec. 12.**—Whoever engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorisation of the Central Government or otherwise than in accordance with the conditions (if any) of such authorisation granted under Sec. 12, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but may extend to lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**25. Punishment for allowing premises, etc., to be used for commission of an offence.**—Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

<sup>1</sup>**[25-A. Punishment for contravention of orders made under Sec. 9-A.**—If any person contravenes an order made under Sec. 9-A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding one lakh rupees.]

**26. Punishment for certain acts by licensee or his servants.**—If the holder of any licence, permit or authorisation granted under this Act or any rule or order made thereunder or any person in his employ and acting on his behalf—

(a) omits, without any reasonable cause, to maintain accounts or to submit any return in accordance with the provisions of this Act or any rule made thereunder ;

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1. Ins. by Act 2 of 1989, Sec. 8 (w.e.f. 29th May, 1989).

- (b) fails to produce without any reasonable cause such licence, permit or authorisation on demand of any officer authorised by the Central Government or State Government in this behalf ;
- (c) keeps any accounts or makes any statement which is false or which he knows or has reason to believe to be incorrect ; or
- (d) wilfully and knowingly does any act in breach of any of the conditions of licence, permit or authorisation for which a penalty is not prescribed elsewhere in this Act,

he shall be punishable with imprisonment for a term which may extend to three years or fine or with both.

**27. Punishment for illegal possession in small quantity for personal consumption of any narcotic drug or psychotropic substance or consumption of such drug or substance.—**Whoever, in contravention of any provision of this Act, or any rule or order made or permit issued thereunder, possesses in a small quantity, any narcotic drug or psychotropic substance, which is proved to have intended for his personal consumption and not for sale, or distribution, or consumes any narcotic drug or psychotropic substance; shall, notwithstanding anything contained in this Chapter, be punishable,—

- (a) where the narcotic drug or psychotropic substance possessed or consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the Official Gazette, with imprisonment for a term which may extend to one year or with fine or with both , and
- (b) where the narcotic drug or psychotropic substance possessed or consumed is other than those specified in or under Cl. (a), with imprisonment for a term which may extend to six months or with fine or with both.

*Explanation.—* (1) For the purposes of this section "small quantity" means such quantity as may be specified by the Central Government by notification in the official Gazette.

(2) Where a person is shown to have been in possession of a small quantity of a narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption of such person and not for sale or distribution, shall lie on such person.

**<sup>1</sup>[27-A. Punishment for financing illicit traffic and harbouring offenders.—**Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of Cl. (viii) of Sec.2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]

**28. Punishment for attempts to commit offences.—**Whoever attempts to commit any offence punishable under this Chapter or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

**29. Punishment for abetment and criminal conspiracy.—**(1) Whoever abets or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such

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1. Ins. by Act 2 of 1989, Sec. 8 (w.e.f. 29th May, 1989).

offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Sec. 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which —

(a) would constitute an offence if committed within India ; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

**30. Preparation.**—If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of Sec 15 to Sec. 25 (both inclusive) and from the circumstances of the case it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, or imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any) of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable in the event aforesaid :

Provided that the Court may, for reasons to be recorded in the judgment, impose a higher fine.

**31. Enhanced punishment for certain offences after previous conviction.**—(1) If any person who has been convicted of the commission of or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under Sec. 15 to Sec. 25 (both inclusive) is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under—

(a) Sections 15 to 19, Cl. (ii) of Sec. 20 and Secs. 21 to 25 (both inclusive) he shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which shall not be less than fifteen years but which may extend to thirty years and shall also be liable to fine which shall not be less than one lakh fifty thousand rupees but which may extend to three lakh rupees:

(b) Clause (i) of Sec. 20, he shall be punished for the second and every subsequent offence for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees :

Provided that the Court may, for reasons to be recorded in the judgment, impose,—

(i) in a case falling under Cl. (a) a fine exceeding three lakh rupees ; and

(ii) in a case falling under Cl. (b) a fine exceeding one lakh rupees.

(2) Where any person is convicted by a competent court of criminal jurisdiction outside India under any law corresponding to the provisions of Secs. 15 to 25 (both inclusive), Secs. 28 and 29, such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (1) as if he had been convicted by a court in India.

**<sup>1</sup>[31-A. Death penalty for certain offences after previous conviction.—(1)** Notwithstanding anything contained in Sec. 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under Secs. 15 to 25 (both inclusive) or Sec. 27-A is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to,—

- (a) engaging in the production, manufacture, possession, transportation, import into India, export from India or transshipment, of the narcotic drugs or psychotropic substances specified under column (1) of the Table below and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance, as specified in column (2) of the said Table:

**TABLE**

| Particulars of narcotic drugs/<br>psychotropic substances   | Quantity    |
|---|-------------|
| (1)   | (2)         |
| (i) Opium   | 10 kgs.     |
| (ii) Morphine   | 1 kg.       |
| (iii) Heroin  | 1 kg.       |
| (iv) Codeine  | 1 kg.       |
| (v) Thebaine  | 1 kg.       |
| (vi) Cocaine  | 500 grams   |
| (vii) Hashish   | 20 kgs.     |
| (viii) Any mixture with or without any neutral material of any of the above drugs                                       | 1,500 grams |
| (ix) LSD, LSD-25 (+) - N, N-Diethyllysergamide (d-lysergic acid diethylamide)   | 500 grams   |
| (x) THC (Tetrahydrocannabinols, the following isomers 6a (10a) 6a(7), 7, 8, 9, 10, 9 and their stereochemical variants) | 500 grams   |
| (xi) Methamphetamine (+)-2- Methylamine-1-Phenylpropane   | 1,500 grams |
| (xii) Methaqualone (2-Methyl-3-0-toyl-4-(3H)-quinazolinone)   | 1,500 grams |
| (xiii) Amphetamine (+)-2- amino-1-phenylpropane   | 1,500 grams |
| (xiv) Salts and preparations of the Psychotropic substances mentioned in (ix) to (xiii)                                 | 1,500 grams |

1. Ins. by Act 2 of 1989, Sec. 9 (w.e.f. 29th May, 1989).

(b) financing, directly indirectly, any of the activities specified in Cl. (a), shall be punishable with death.

(2) Where any person is convicted by a competent Court of criminal jurisdiction outside India under any law corresponding to the provisions of Secs. 15 to 25 (both inclusive), Sec. 27-A, Sec. 28 or Sec. 29, such person, in respect of such conviction, shall be dealt with for the purposes of subsection (1) as if he had been convicted by a Court of India]

**32. Punishment for offence for which punishment is provided.**—Whoever contravenes any provision of this Act or any rule or order made, or any condition of any licence, permit or authorization issued thereunder for which no punishment is separately provided in this Chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

**<sup>1</sup>[32-A. No suspension, remission or commutation in any sentence awarded under this Act.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force but subject to the provisions of Sec. 33, no sentence awarded under this Act (other than Sec. 27) shall be suspended or remitted or commuted.]

**33. Application of Sec. 360 of the Code of Criminal Procedure, 1973 and of the Probation of Offenders Act, 1958.**—Nothing contained in Sec. 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age or that the offence for which such person is convicted is punishable under Sec. 26 or Sec. 27 :

**34. Security for abstaining from commission of offence.**— (1) Whenever any person is convicted of an offence punishable under any provisions of Chapter IV and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of any offence under this Act, the Court may at the time of passing sentence on such person order him to execute a bond a sum proportionate to his means, with or without sureties, for abstaining from commission of any offence under Chapter IV during such period not exceeding three years as thinks fit to fix.

(2) The bond shall be in such form as may be prescribed by the Central Government and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), 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 Sec. 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become aside.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Sessions judge when exercising the powers of revision.

**35. Presumption of culpable mental state.**— (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to act charged as an offence in that prosecution.

*Explanation.*— In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in or reason to believe a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

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1. Ins. by Act 2 of 1989, Sec. 10 (w.e.f. 29th May, 1989).

**1[36. Constitution of Special Courts.—** (1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

*Explanation.—* In the sub-section, "High Court" means the High Court of the State in which the Sessions Judge or the Additional Sessions Judge of a Special Court was working immediately before his appointment as such Judge.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge.

**36-A Offences triable by Special Courts.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government :

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section(2-A) of Sec. 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate

Provided that where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under Cl. (b), the same power which a Magistrate having jurisdiction to try a case may exercise under Sec. 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section ;

(d) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer, of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being committed it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Sec. 439 of the Code of Criminal Procedure, 1973 (2 of 1974). and the High Court may exercise such powers including the power under Cl. (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under Sec. 36.

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1. Subs. by Act 2 of 1989, Sec. 11 (w.e.f. 29th May, 1989), for Sec. 36.

**36-B. Appeal and revision.**—The High Court may exercise so far as may be applicable all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court, were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

**36-C Application of the Code to proceedings before a Special Court.**—Save as otherwise provided in this Act, the provision of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a public prosecutor.

**36-D Transitional provisions.**— (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988,<sup>1</sup> until a Special Court is constituted under Sec. 36, shall notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session:

Provided that offences punishable under Secs. 26, 27 and 32 may be tried summarily.

(2) Nothing in sub-section (1) shall be construed to require the transfer to a Special Court of any proceedings in relation to an offence taken cognizance of by a Court of Session under the said sub-section (1) and the same shall be heard and disposed of by the Court of Session.]

<sup>2</sup>[**37. Offences to be cognizable and non-bailable.**— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in Cl. (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]

**38. Offences by companies.**—(1) Where an offence under Chapter IV has been committed by a company, every person, who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, 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 this sub-section (1) where any offence under Chapter IV 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 director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*— For the purpose of this section,—

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1. Act 2 of 1989 enforced w.e.f. 29th May, 1989.  
Subs. by Act 2 of 1989, Sec. 12 (w.e.f.29th May, 1989).

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

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

**39. Power of Court to release certain offenders on probation.—** (1) When any addict is found guilty of an offence punishable under Sec. 27 and if the Court by which he is found guilty is of the opinion, regard being had to the age, character, antecedents or physical or mental condition of the offender, that it is expedient so to do, then notwithstanding anything contained in this Act or any other law for the time being in force, the Court may, instead of sentencing him at once to any imprisonment, with his consent, direct that he be released for undergoing medical treatment for detoxification or de-addiction from a hospital or an institution maintained or recognised by Government and on his entering a bond in the form prescribed by the Central Government with or without sureties, to appear and furnish before the Court within a period not exceeding one year, a report regarding the result of his medical treatment and, in the meantime, to abstain from the commission of any offence under Chapter IV.

(2) If it appears to the Court, having regard to the report regarding the result of the medical treatment furnished under sub-section (1), that it is expedient so to do, the Court may direct the release of the offender after due admonition on his entering into a bond in the form prescribed by the Central Government with or without sureties for the commission of any offence under Chapter IV during such period not exceeding three years as the Court may deem fit to specify or on his failure so to abstain, to appear before the Court and receive sentence when called upon during such period.

**40. Power of Court to publish names, place of business, etc. of certain offenders.—** (1) Where any person is convicted of any of the offences punishable under Secs. 15 to 25 (both inclusive), Sec. 28, Sec. 29 or Sec. 30, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

## CHAPTER V

### Procedure

**41. Power to issue warrant and authorisation.—** (1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed.

(2) Any such officer of gazetted rank of the departments of Central Excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government

as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has narcotic drug or substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable, to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under Sec. 42.

**42. Power of entry, search, seizure and arrest without warrant or authorisation.—** (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of Central Excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) or the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place may, between sunrise and sunset,—

- (a) enter into and search any such building, conveyance or place ;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;'
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; and
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance:

Provided that if such officer has reason to believe that a search-warrant or authorisation cannot be obtained without affording opportunity for the concealment or evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

**43. Power of seizure and arrest in public places.—**Any officer of any of the departments mentioned in Sec. 42 may—

- (a) seize, in any public place or in transit, any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter IV relating to such drug or substance;

- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter IV, and, if such person has any narcotic drug or psychotropic substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

*Explanation.*—For the purpose of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

**44. Power of entry, search, seizure and arrest in offences relating to coca plant, opium poppy and cannabis plant.**—The provisions of Secs. 41, 42 and 43, shall, so far as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance, shall be construed as including references to coca plant, the opium poppy and cannabis plant.

**45. Procedure where seizure of goods liable to confiscation not practicable.**—Where it is not practicable to seize any goods (including standing crop) which are liable to confiscation under this Act, any officer duly authorised under Sec. 42 may serve on the owner or person in possession of the goods an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

**46. Duty of landholder to give information of illegal cultivation.**—Every holder of land shall give immediate information to any officer of the police or of any of the departments mentioned in Sec. 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment.

**47. Duty of certain officers to give information of illegal cultivation.**—Every officer of the Government and every *panch*, *sarpanch* and other village officer of whatever description shall give immediate information to any officer of the police or of any of the departments mentioned in Sec. 42 when it may come to his knowledge that any land has been illegally cultivated with the opium poppy, cannabis plant or coca plant, and every such officer of the Government, panch, sarpanch and other village officer who neglects to give such information shall be liable to punishment.

**48. Power of attachment or crop illegally cultivated.**— Any Metropolitan Magistrate, judicial Magistrate of the first class or any Magistrate specially empowered in this behalf by the State Government <sup>1</sup> [or any officer of a gazetted rank empowered under Sec. 42] may order attachment of any opium poppy, cannabis plant or coca plant which he has reason to believe to have been illegally cultivated and while doing so may pass such order (including an order to destroy the crop) as he thinks fit.

**49. Power to stop and search conveyance.**—Any officer authorised under Sec. 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance, in respect of which he suspects that any provision of this Act has been, or is being or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and—

- (a) rummage and search the conveyance or part thereof;
- (b) examine and search any goods on the animal or the conveyance;
- (c) if it becomes necessary to stop the animal or the conveyance; he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

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1. Ins. by Act 2 of 1989, Sec. 13 (w.e.f. 29th May, 1989).

**50. Conditions under which search of persons shall be conducted.**—(1) When any officer duly authorised under Sec. 42 is about to search any person under the provisions of Sec. 41, Sec. 42 or Sec. 43, he shall if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Sec. 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the gazetted officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by any one excepting a female.

**51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.**—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

**52. Disposal of persons arrested and articles seized.**—(1) Any officer arresting a person under Sec. 41, Sec. 42, Sec. 43 or Sec. 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of Sec. 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of Sec. 41, Sec. 42, Sec. 43, or Sec. 44 shall be forwarded without unnecessary delay—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under Sec. 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

**<sup>1</sup>[52-A. Disposal of seized narcotic drugs and psychotropic substances.**—The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Sec. 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

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1. Ins. by Act 2 of 1989, Sec. 14 (w.e.f. 29th May, 1989).

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or
- (c) allowing to draw representative samples of drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall as soon as may be allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]

**53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station.**—(1) The Central Government, after consultation with the State Government, may, by notification published in the official Gazette, invest any officer of the department of Central Excise, narcotics, customs, revenue, intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the official Gazette, invest any officer of the department of drugs control, revenue or excise or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

**<sup>1</sup>[53-A. Relevancy of statements under certain circumstances.**—A statement made and signed by a person before any officer empowered under Sec. 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made thereunder, other than a proceeding before a court, as they apply in relation to a proceeding before a court].

**54. Presumption from possession of illicit articles.**—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under Chapter IV in respect of—

- (a) any narcotic drug or psychotropic substance;
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance; or

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1. Ins. by Act 2 of 1989, Sec. 15 (w.e.f. 29th May, 1989).

- (d) any material which have undergone any process towards the manufacture of a narcotic drug or psychotropic substances, or any residue left of the materials from which any narcotic drug or psychotropic substance has been manufactured,

for the possession of which he fails to account satisfactorily.

**55. Police to take charge of articles seized and delivered.**—An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

**56. Obligation of officers to assist each other.**—All officers of the several departments mentioned in Sec.42 shall upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

**57. Report of arrest and seizure.**—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

**58. Punishment for vexatious entry, search, seizure or arrest.**—(1) Any person empowered under Sec. 42 or Sec. 43 or Sec. 44 who—

- (a) without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building conveyance or place;
- (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated under this Act, or of seizing any document or other article liable to be seized under Sec. 42, Sec. 43 or Sec. 44; or
- (c) vexatiously and unnecessarily detains, searches or arrests any person.

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(2) Any person wilfully and maliciously giving false information and so causing, an arrest or a search being made under this Act shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

**59. Failure of officer in duty or his connivance at the contravention of the provisions of this Act.**—(1) Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

<sup>1</sup>[(2) Any officer on whom any duty has been imposed by or under this Act or any person who has been given the custody of—

- (a) any addict; or
- (b) any other person who has been charged with an offence under this Act,

and who wilfully aids in, or connives at, the contravention of any provision of this Act or any rule or order made thereunder, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which

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1. Subs. by Act 2 of 1989, Sec. 16 (w.e.f. 29th May, 1989.)

shall not be less than one lakh rupees but which may extend to two lakh rupees.

*Explanation.*— For the purposes of this sub-section, the expression "officer" includes any person employed in a hospital or institution maintained or recognised by the Government or a local authority under Sec. 64-A for providing de-addiction treatment.]

(3) No Court shall take cognizance of any offence under sub-section (1) or sub-section (2) except on a complaint in writing made with the previous sanction of the Central Government, or as the case may be, the State Government.

**60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.**— (1) Whenever any offence punishable under Chapter IV has been committed, the narcotic drug, psychotropic substance, the opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with or in addition to, any narcotic drug or psychotropic substance which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge or of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

**61. Confiscation of goods used for concealing illicit drugs or substances.**—Any goods used for concealing any narcotic drug or psychotropic substance which is liable to confiscation under this Act shall also be liable to confiscation.

*Explanation.*—In this section "goods" does not include conveyance as a means of transport.

**62. Confiscation of sale proceeds of illicit drugs or substances.**— Where any narcotic drug or psychotropic substance is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

**63. Procedure in making confiscation.**— In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under this Act is liable to confiscation under Sec. 60 or Sec. 61 or Sec. 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under Sec. 60 or Sec. 61 or Sec. 62 but the person who committed the offence in connection therewith is not known or cannot be found, the Court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if

the Court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

**64. Power to tender immunity from prosecution.—** (1) the Central Government or the State Government may, if it is of opinion (the reason for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of provisions of this Act or of any rule or order made thereunder it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860), or under any other Central Act or State Act, as the case may be, for the time being in force on condition of his making a full and true disclosure of the whole circumstances relating to such contravention.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made.

(3) If it appears to the Central Government or, as the case may be, the State Government that any person to whom immunity has been tendered under this section has not complied with the conditions on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government or, as the case may be, the State Government, may record a finding to that effect and thereupon the immunity shall be deemed to have been withdrawn such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter.

**<sup>1</sup>[64-A. Immunity from prosecution to addicts volunteering for treatment** — Any addict, who is not charged with any offence punishable under Secs. 15 to 25 (both inclusive) or Sec. 27-A, who voluntarily seeks to undergo medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and under goes such treatment shall not be liable to prosecution under Sec. 27 once in his lifetime :

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-toxification or de-addiction.

**65. Power to make rules regulating disposal of confiscated articles and rewards.—**  
<sup>2</sup>[\* \* \*].

**66. Presumption as to documents in certain cases.—**Where any document—

- (i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or
- (ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed by the Central Government) in the course of investigation of any offence under this Act alleged to have been committed by a person,

and such document is tendered in any prosecution under this Act in evidence against him, or against him and any other person who is tried jointly with him, the Court shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the

1. Ins. by Act 2 of 1989, Sec. 17 (w.e.f. 29th May, 1989).

2. Section 65 omitted by Act 2 of 1989, Sec. 18 (w.e.f. 29th May, 1989).

Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested ;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under Cl. (i), also presume, unless the contrary is proved, the truth of the contents of such document.

**67. Power to call for information, etc.**—Any officer referred to in Sec. 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act—

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder ;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry ;

(c) examine any person acquainted with the facts and circumstances of the case.

**68. Information as to commission of offences.**—No officer acting in exercise of powers vested in him under any provision of this Act or any rule or order made thereunder shall be compelled to say whence he got any information as to the commission of any offence.

## <sup>1</sup>[CHAPTER V-A

### Forfeiture of property derived from, or used in, illicit traffic

**68-A. Application.**—(1) The provisions of this Chapter shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely :

(a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of five years or more ;

(b) every person who has been convicted of a similar offence by a competent Court of criminal jurisdiction outside India,

(c) every person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (46 of 1988), or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (J. & K. Act XXIII of 1988) :

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Acts or such order of detention has not been set aside by a court of competent jurisdiction ;

(d) every person who is a relative of person referred to in Cl. (a) or Cl. (b) or Cl. (c) ;

(e) every associate of a person referred to in Cl. (a) or Cl. (b) or Cl. (c) ;

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1. Ins. by Act 2 of 1989, Sec. 19 (w.e.f. 29th May, 1989).

- (f) any holder (hereafter in this clause referred to as the "present holder") of any property which was at any time previously held by a person referred to in Cl. (a) or Cl. (b) or Cl. (c) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

**68-B. Definitions.**— In this Chapter, unless the context otherwise requires—

- (a) "Appellate Tribunal" means the Appellate Tribunal for Forfeited Property constituted under Sec.68-N;
- (b) "associate" in relation to a person whose property is liable to be forfeited under this Chapter, means—
- (i) any individual who had been or is residing in the residential premises (including out-houses) of such person ;
  - (ii) any individual who had been or is managing the affairs or keeping the accounts of such person ;
  - (iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956 (1 of 1956), of which such person had been or is a member, partner or director ;
  - (iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii) ;
  - (v) any person, who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii) ;
  - (vi) the trustee of any trust, where,—
    - (1) the trust has been created by such person ; or
    - (2) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which contribution is made, to not less than twenty per cent. of the value of the assets of the trust on that date ;
  - (vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person ;
- (c) "competent authority" means an officer of the Central Government authorised by it under Sec. 68-D ;
- (d) "concealment" means the concealment or disguise of the nature, source, disposition, movement or ownership of property and includes the movement or conversion of such property by electronic transmission or by any other means ;
- (e) "freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property by an order issued under Sec. 68-F;

- (f) "identifying" includes establishment of proof that the property was derived from, or used in, the illicit traffic ;
- (g) "illegally acquired property", in relation to any person to whom this Chapter applies, means,—
  - (i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to illicit traffic ; or
  - (ii) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from such property,

and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration ;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (a), or the income or earnings therefrom ;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived from, or used in, the illicit traffic ;

(i) "relative" means—

(1) spouse of the person ;

(2) brother or sister of the person ;

(3) brother or sister of the spouse of the person ;

(4) any lineal ascendant or descendant of the person ;

(5) any lineal ascendant or descendant of the spouse of the person ;

(6) spouse of a person referred to in sub-clause (2), sub-clause (3), sub-clause (4), sub-clause (5) ;

(7) any lineal descendant of a person referred to in sub-clause (2) or sub-clause (3) ;

(j) "tracing" means determining the nature, source, disposition, movement, title or ownership of property;

(k) "trust" includes any other legal obligation.

**68-C. Prohibition of holding illegally acquired property.**—(1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter :

Provided that no property shall be forfeited under this Chapter if such property was acquired by a person to whom this Act applies before a period of six years from the date on which he was charged for an offence relating to illicit traffic.

**68-D. Competent authority.**—(1) The Central Government may, by order published in the official Gazette, authorise any Collector of Customs or Collector of Central Excise or Commissioner of Income-tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.

(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.

**68-E. Identifying illegally acquired property.**—(1) Every officer empowered under Sec. 53 and every officer-in-charge of a police station, shall, on receipt of information that any person to whom this Chapter applies has been charged with any offence punishable under this Act, whether committed in India or outside, proceed to take all steps necessary for tracing and identifying any property illegally acquired by such person.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

**68-F. Seizure or freezing of illegally acquired property.**—(1) Where any officer conducting an inquiry or investigation under Sec. 68-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned :

Provided that the competent authority shall be duly informed of any order made under this sub-section and copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

*Explanation.*—For the purposes of this section, "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the creation of a trust in property ;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property ;

- (c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power ; and
- (d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

**68-G. Management of properties seized or forfeited under this Chapter.**—(1) The Central Government may, by order published in the official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (1) of Sec. 68-F or under Sec. 68-I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

**68-H. Notice of forfeiture of property.**—(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under Sec. 68-E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing ) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

**68-I. Forfeiture of property in certain cases.**—(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under Sec. 68-H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties :

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

**68-J. Burden of proof.**—In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under Sec. 68-H is not illegally acquired property shall be on the person affected.

**68-K. Fine in lieu of forfeiture.**—(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under Sec. 68-I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub-section (1) the person affected shall be given a reasonable opportunity of being heard,

(3) Where the person affected pays the fine due under subsection (1) within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under Sec. 68-I and thereupon such property shall stand released.

**68-L. Procedure in relation to certain trust properties.**—In the case of any person referred to in sub-clause (vi) of Cl. (b) of Sec. 68-B, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within a period of thirty days specified in the notice, to explain the source of money or other assets out of or by means of which such property was acquired or, as the case may be, the source of money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under Sec. 68-H and all the other provisions of this Chapter shall apply accordingly.

*Explanation.*—For the purposes of this section "illegally acquired property", in relation to any property held in trust, includes—

- (i) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor,
- (ii) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

**68-M. Certain transfers to be null and void.**—Where after the making of an order under sub-section (1) of Sec. 68-F or the issue of a notice under Sec. 68-H or under Sec. 68-L, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under Sec. 68-I, then, the transfer of such property shall be deemed to be null and void.

**68-N. Constitution of Appellate Tribunal.**—(1) The Central Government may, by notification in the official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a joint Secretary to the Government) as the Central Government thinks fit, to be appointed by that Government for hearing appeals against the orders made under Sec.

68-F, Sec. 68-I, sub-section (1) of Sec. 68-K or Sec. 68-L.

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

**68.O. Appeals.**—(1) Any person aggrieved by an order of the competent authority made under Sec. 68-F, Sec. 68-I, sub section (1) of Sec. 68-K or Sec 68-L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal :

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

(3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in sub-section (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal :

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that member.

(5) The Appellate Tribunal may regulate its own procedure.

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in his behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.

**68-P. Notice or order not to be invalid for error in description.**— No notice issued or served, no declaration made, and no order passed, under this Chapter shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

**68-Q. Bar of jurisdiction.**— No order passed or declaration made under this Chapter shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Chapter to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

**68-R. Competent authority.**—The competent authority and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of documents ;

- (c) receiving evidence on affidavits ;
- (d) requisitioning any public record or copy thereof from any court or office ;
- (e) issuing commissions for examination of witnesses or documents ;
- (f) any other matter which may be prescribed.

**68-S. Information to competent authority.**—(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Chapter.

(2) Every officer referred to in Sec. 68-T may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Chapter.

**68-T. Certain officers to assist Administrator, competent authority and Appellate Tribunal.**—For the purposes of any proceedings under this Chapter, the following officers are hereby empowered and required to assist the Administrator appointed under Sec. 68-G, competent authority and the Appellate Tribunal, namely :

- (a) officers of the Narcotics Control Bureau;
- (b) officers of the Customs Department;
- (c) officers of the Central Excise Department;
- (d) officers of the Income-tax Department;
- (e) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (6 of 1973) ;
- (f) officers of police;
- (g) officers of the Narcotics Department;
- (h) officers of the Central Economic Intelligence Bureau ;
- (i) officers of the Directorate of Revenue Intelligence ;
- (j) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the official Gazette.

**68-U. Power to take possession.**—(1) Where any property has been declared to be forfeited to the Central Government under the Chapter, or where the person affected has failed to pay the fine due under sub-section (1) of Sec. 68-K within the time allowed therefor under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the Administrator appointed under Sec. 68-G or to any person duly authorised by him in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Administrator may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the Administrator may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

**68-V. Rectification of mistakes.**—With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provide that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

**68-W. Finding under other laws not conclusive for proceedings under this Chapter.**—No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Chapter.

**68-X. Service of notices and orders.**—Any notice or order issued or made under this Chapter shall be served—

- (a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent ;
- (b) if the notice or order cannot be served in the manner provided in Cl.(a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally, worked for gain.

**68-Y. Punishment for acquiring property in relation to which proceedings have been taken under this Chapter.**— Any person who knowingly acquired, by any mode whatsoever, any property in relation to which proceedings are pending under this Chapter shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees.]

## CHAPTER VI

### Miscellaneous

**69. Protection of action taken in good faith.**—No suit, prosecution or other legal proceeding shall lie against the Central Government or State Government or any officer of the Central Government or the State Government or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

**70. Central Government and State Governments to have regard to international conventions while making rules.**—Wherever under this Act the Central Government or the State Government has been empowered to make rules, the Central Government or the State Government, as the case may be, subject to other provisions of this Act, may while making the rules have regard to the provisions of the Single Convention on Narcotic Drugs, 1954, the Protocol of 1955 amending the said Convention and of the Convention on Psychotropic Substances, 1971 to which India is a party and to the provisions of any other international convention relating to narcotic drugs or psychotropic substances to which India may become a party.

**71. Power of Government to establish centres for identification, treatment etc., of addicts and for supply of narcotic drugs and psychotropic substances.**—(1) The Government may, in its discretion establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social reintegration of addicts and for supply, subject to such conditions and

in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to other where such supply is a medical necessity.

(2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from, the centres referred to in sub-section (1) and for the appointment, training, powers, duties and persons employed in such centres.

**72. Recovery of sums due to Government.**—(1) In respect of any licence fee or other sum of any kind payable to the Central Government or to the State Government under any of the provisions of this Act or of any rule or order made thereunder, the officer of the Central Government or the State Government, as the case may be, who is empowered to require the payment of such sum, may deduct the amount of such sum from any money owing to the person from whom such sum may be recoverable or due may recover such amount or sum by attachment and sale of the goods belonging to such persons and if the amount of the same is not so recovered, the same may be recovered from the person or from his surety (if any) as if it were an arrear of land revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under Sec. 34 and Sec. 39) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be a public duty within the meaning of Sec. 74 of the Indian Contract Act, 1872 (9 of 1872), and upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land revenue.

**73. Bar of jurisdiction.**—No civil court shall entertain any suit or proceeding against any decision made or order passed by any officer or authority under this Act or under any rule made thereunder on any of the following matters, namely :

- (a) withholding, refusal or cancellation of any licence for the cultivation of the opium poppy ;
- (b) weighing, examination and classification, according to the quality and consistence of opium and any deductions from, or addition to, the standard price made in accordance with such examination ;
- (c) confiscation of opium found to be adulterated with any foreign substance.

**74. Transitional provisions.**—Every officer or other employee of the Government exercising or performing, immediately before the commencement of this Act, any powers or duties with respect to any matters provided for in this Act, shall, on such commencement, be deemed to have been appointed under the relevant provisions of this Act to the same post and with the same designation as he was holding immediately before such commencement.

**<sup>1</sup>[74-A. Power of Central Government to give directions.**—The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act, and the State Government shall comply with such directions.]

**75. Power to delegate.**—(1) The Central Government may, by notification in the official Gazette, delegate subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act, (except the power to make rules) as it may deem necessary or expedient, to the Board or any other authority or the Narcotics Commissioner.

(2) The State Government, by notification in the official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act, (except the power to make rules) as it may deem necessary or expedient, to any authority or officer of that Government.

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1. Ins. by Act 2 of 1989, Sec. 20 (w.e.f. 29th May, 1989).

**76. Power of Central Government to make rules.**—(1) Subject to the other provisions of this Act, Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matter, namely:

- (a) the method by which percentage in the case of liquid preparations shall be calculated for the purposes of Cl. (v), (vi), (xiv) and (xv) of Sec. 2 ;
- (b) the form of bond to keep the peace to be executed under Sec. 34 ;
- (c) the form of bond to be executed for release of an addict convict for medical treatment under sub-section (1) of Sec. 39 and the bond to be executed by such convict before his release after due admonition under sub-section (2) of that section ;
- (d) the authority or the person by whom and the manner in which a document received from any place outside India shall be authenticated under Cl. (ii) of Sec. 66 ;
- <sup>2</sup>[(da) the manner in which and the conditions subject to which properties shall be managed by the Administrator under sub-section (2) of Sec. 68-G ;
- (db) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under sub-section (3) of Sec. 68-N ;
- (dc) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining the certified copy of any part thereof under sub-section (6) of Sec. 68-O;
- (dd) the powers of a civil court that may be exercised by the competent authority and the Appellate Tribunal under Cl. (f) of Sec. 68-R ;
- (de) the disposal of all articles or things confiscated under this Act ;
- (df) the drawing of samples and testing and analysis of such samples ;
- (dg) the rewards to be paid to the officers, informers and other persons] ;
- (e) the conditions and the manner in which narcotic drugs and psychotropic substances may be supplied for medical necessity to the addicts registered with the Central Government and to others under sub-section (1) of Sec. 71 ;
- (f) the establishment, appointment, maintenance, management and superintendence of centres established by the Central Government under sub-section (1) of Sec. 71 and appointment, training, powers and duties of persons employed in such centres;
- (g) the term of office of, the manner of filling casual vacancies of, and the allowances payable to, the chairman and members of the Narcotic Drugs and Psychotropic Substances Consultative Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of Sec. 6;
- (h) any other matter which is to be, or may, be prescribed.

**77. Rules and notifications to be laid before Parliament.**—Every rule made under this Act by the Central Government and every notification issued under Cl. (xi) of Sec. 2, Sec. 3 and Cl. (a) of, and Explanation (1) to Sec. 27 shall be laid, as soon as may be, after it is made or issued,

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2. Ins. by Act 2 of 1989, Sec. 21 (w.e.f. 29th May, 1989).

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

**78. Power of State Government to make rules.**—(1) Subject to the other provisions of this Act, the State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules, may provide for all or any of the following matters, namely :

- (a) conditions and the manner in which narcotic drugs and psychotropic substances shall be supplied for medical necessity to the addicts registered with the State Government and others under sub-section (1) of Sec. 71;
- (b) the establishment, appointment, maintenance, management, superintendence of centres established under sub-section (1) of Sec. 71 and appointment , training , powers and duties of persons employed in such centres;
- (c) any other matter which is to be, or may be prescribed.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be, after it is made, before the Legislature of that State.

**79. Application of the Customs Act, 1962.**—All prohibitions and restrictions imposed by or under this Act on the import into India, the export from India and transshipment or narcotic drugs and psychotropic substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs Act, 1962 (52 of 1962), and the provisions of that Act shall apply accordingly :

Provided that, where the doing of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.

**80. Application of the Drugs and Cosmetics Act, 1940 not barred.**—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940), or the rules made thereunder.

**81. Saving of State and special laws.**—Nothing in this Act or in the rules made thereunder shall affect the validity of any Provincial Act or an Act of any State Legislature for the time being in force, or of any rule made thereunder which imposes any restriction or provides for a punishment not imposed by or provided for under this Act or imposes a restriction or provides for a punishment greater in degree than a corresponding restriction imposed by or a corresponding punishment provided for by or under this Act for the cultivation of cannabis plant or consumption of, or traffic in, any narcotic drug or psychotropic substance within India.

**82. Repeal and savings.**—(1) The Opium Act, 1857 (13 of 1857), the Opium Act, 1878 (1 of 1878), and the Dangerous Drugs Act, 1930 (2 of 1930), are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any of the enactments repealed by sub-section (1) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

**83. Power to remove difficulties.**— (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Houses of Parliament

**THE SCHEDULE**  
[See Cl. (xxiii) of Sec.2]

**List of Psychotropic substances**

| Sl. No. | International non-proprietary names | Other non-proprietary names | Chemical name   |
|---------|-------------------------------------|-----------------------------|---|
| 1.      |                                     | DET N,                      | N-Diethyltrptamine  |
| 2.      |                                     | DMHP                        | 3-(1,2-Dimethylephty) hydroxy-7,8,9,10-tetrhydro-6,6,9-trimethyl-6-h-dibenzo (d,d) pyran.   |
| 3.      |                                     | DMT                         | N,N-dimethyltrpatamine  |
| 4.      | (+)-LYSERGIDE                       | LSD,LSD-25                  | (+)-N,N-Dithyllysergamide (d-lysergic acid diethylamdie)  |
| 5.      |                                     | mescaline                   | 3,4,5 Trimethoxyphne thylamine  |
| 6.      |                                     | Parahexyl                   | 3-Hexyl-1-hydroxy-7,8,9,10 tetraphydro-6,6,9-trimethyl-H-dibenzo (b,d) pyrah.   |
| 7.      | ETICYCLIDINE                        | PCE                         | N-Ethyl-1 phenylcyclohexyl-amine.   |
| 8.      | ROLICYCLIDINE                       | PHP,PCPY                    | 1-(1-Phenylcyclohexyl) pyrrolidine.   |
| 9.      |                                     | psilocine, psilotisin       | 3-(2-Dimethyleminoethyl)-4 hydroxy-indole.  |
| 10.     | PSILOCYBINE                         |                             | 3-(2-Dimethylaminethyl)-indolze-4 yl dihydrogen phosphate.  |
| 11.     |                                     | STP,DOM                     | 2-Amino-(2-5-dimethoxy-4) methyl) phenylpropane.  |
| 12.     | TENOCYCLIDINE                       | TCP                         | 1-[1-(2-Thienyl)-cyclohexyl] piperidine.  |
| *13.    |                                     |                             | Tetrahydrocannabeonal, the following isomers and their stercocochemical variants:<br>7,8,9 10-tertrahydro-6,6,9-trimethy-3-pentyl-6H-dibenzol (b,d)pyran-1-01.<br>(9R,10aR)-8,9,10,10a- |

\*Subs,by s o 785 (E) dated 26th October, 1992.

| Sl. No. | International non-proprietary names | Other non-proprietary names | Chemical name  |
|---------|-------------------------------------|-----------------------------|--|
|         |                                     |                             | tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d) pyran- 1-1 6aR,10aR)-8,9,10,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6h-dibenzo (b,d) pyran-101 (6ar, 10aR-6a 7,10,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran- 101 6a,7,8, 9-tetrahydro-6,6,9-trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-101 (6aR,10aR)-6a,7,8,9,10,10-a-hexathydro-6, 6-dimethyl-1-9-methylene-3-pentyl-6H- dibenzo [b,d]pyran-1-01] |
| 14.     |                                     | DOB                         | 2, 5-dimethoxy-4 bromo-am  |
| 15.     |                                     | phetamine<br>MDA            | 3,4-methylenpedi-<br>oxyamphetamine.   |
| 16.     | AMPHETAMINE                         |                             | (+)-2 aMINO-1-Phenylpropane  |
| 17.     | DEXAMPHETAMINE                      |                             | (+)-2-Amino-1-phenylpropane.   |
| 18.     | MECLOQUALONE                        |                             | 3 (O-Chlorophenyl)-2-methyl- 4-<br>(3H)-quinazolinone.   |
| 19.     | METHAMPHETAMINE                     |                             | (+)-2-Netgtkanubi-1-phebt-<br>propane.   |
| 20.     | METHAQUALONE                        |                             | 2-Methyl-3-0-toy-4 (3H)-<br>quinazolinone.   |
| 21      | METHYLPHENDIDATE                    |                             | 2-Phenl-2(2-piperidyl)acetic acid,<br>methyl ester.  |
| 22.     | PHENCYCLIDINE PCF                   |                             | 1-(1-Phenylcyclohexyl) piperdine.  |
| 23.     | PHENMETRAZINE                       |                             | 3-Methyl-2-Phenylmorpholine.   |
| 24.     | AMOBARBITAL                         |                             | 3-Ethyl-5(3-metylbutyl)-<br>barbituric acid.   |
| 25.     | CYCLOBARITAL                        |                             | 5-(1-Cyclohexen-1-yl)-5-<br>ethylbarbituric acid.  |
| 26.     | GLUTETHIMIDE                        |                             | 2-eTHYL-2-phenylgutarimide.  |
| 27.     | PENTAZOCINE                         |                             | 1,2,3,4,5,6-Hexahydro, 6,11-<br>dimethyl 3-(3-methyl- 2butenyl)<br>2,6 methano-3- benzazocine 8-01.  |

| Sl. No. | International non-proprietary names | Other non-proprietary names | Chemical name  |
|---------|-------------------------------------|-----------------------------|--|
| 28.     | PENTOBARBITAL                       |                             | 5-ethyl-5 (-methylbutyl) barbituric acid.  |
| 29.     | SECOBARBITAL                        |                             | 5-Allyl-5-(1-methylbutyl) barbituric acid.   |
| 30.     | ALPRAZOLAM                          |                             | 8-Chloro-5-methyl-6-phenyl- 4H-s-triazolo(4,3-a) (1,a) benzodiazepine.   |
| 31.     | AMFEPRAMOVE                         |                             | 2-(diethylamino) propiophenone.  |
| 32.     | BARBITAL                            |                             | 5,5-Diethylbarbituric acid.  |
| 33.     | BENZPHETAMINE                       |                             | N-Benzyl-N, a- dimethylphenethylamine.   |
| 34.     | BROMAZEPAM                          |                             | 7-Bromo-1,3-dihydro-5 (2pinpyridyl)-YH-1,4- benzodiazepin-2-one.   |
| 35.     | CAMAZEPAM                           |                             | 7-Chloro-1, 3-dihydro-3- hydroxy-1-methyl-5-phenyl- phenyl-2H-1, 4- benzodiazepine-2 one dimethyl carbamate (ester). |
| 36.     | CHLORDIAZEPOXIDE                    |                             | 7-Chloro-2-(Methylamino)-5- Phenyl-3h-1, 4-benzo- diazepine-4 oxide.   |
| 37.     | CLOBAZAM                            |                             | 2 7-Chloro-1-methyl-5-phenyl- 1h-1, 5-benzodiazepine-2, 4 (3H,5H)-dione.   |
| 38.     | CLONAZEPAM                          |                             | 5-(O-Chlorophenyl)-1-, 3- dihydro-7-nitro-2H-1,4- benzodiazepin-2-one.   |
| 39.     | CLORAZEPATE                         |                             | 7-Chloro-2, 3-dihydro-2-xo-5-phenyl-1h,4-benzo-diazepine- 3-carboxylic acid.   |
| 40.     | CLOTIAZEPAM                         |                             | 5-(O-Chlorophenyl)-7-ethyl-1, 3-dihydro-1-methyl-2H- theno(2,3-c)-1,4-Diazepin-2- one.                               |
| 41.     | CLOXAZOLAM                          |                             | 10-Chloro-11b-(o- Chlorophenyl)-2,3,4) benzodiazepin-6(5H)-one.  |
| 42.     | DELORAZEPAM                         |                             | 7-Chloro-5(O-Chlorophenyl)-1. 3-dihydro-2H-1,4- benzodiazepin-2-one.   |
| 43.     | DIAZEPAM                            |                             | 7-Chloro-1,3-dihydro-1-methyl 5-phenyl-2Hil, 4- benzodiazepin-2-0ne.   |

| Sl. No. | International non-proprietary names | Other non-proprietary names | Chemical name   |
|---------|-------------------------------------|-----------------------------|---|
| 44.     | ESLAZOLAM                           |                             | 8-Chloro-6-phenyl-[4H-s-triazolo[4,3-a] [1,4] benzodiazepine.   |
| 45.     | ETHCHLORVYNOL                       |                             | Ethyl-2 chlorovinylethnylcarbinol.  |
| 46.     | ETHINAMATE                          |                             | 1-Ethynulcyclohexanolcar bamate.  |
| 47.     | ETHYLOFLAZEPATE                     |                             | Ethyl7-choro-5(0- fluorophenyl)-1,3-dihydro-2- oxo-1 1h-1,4-benezociazepine-3- carboxylate.   |
| 48.     | FLUDIAZEPAM                         |                             | 7-Chloro-5-(o-fluorophyenyl)- 1,3,\-dihydro-1-methyl-2h-1,4-benzodiazepin-2-one.  |
| 49.     | FLRNITRAZEPAM                       |                             | 5(o-Flurophenyl)-1, 3-dihydro- 1-methyl-7-nitro-2H-1, 4-benzodiazepine-2-one.   |
| 50.     | FLURAZEPAM                          |                             | 7-Chloro-1 [2-diethylamino] ethyl]-5-(0-fluorohphenyl)-1, 3- dihydro-2H-1, 4- benzodiazepin-2-one.                                  |
| 51.     | HALAZEPAM                           |                             | 7-chlro-1, 3-dihydro-5-phenyl-1(2,2,2 trifluioethyl 1-2H-1, 4-benzodiazepIn-2-one.  |
| 52.     | HALOXAZOLAM                         |                             | 10-Bromo -11 b-(O- fluorophenyl)-2,3,4) 11 vatetrahydrooxazolo-[3,2-d] [1- 4] benzodiazepin-6 (5H)-one.                             |
| 53.     | KETAZOLAM                           |                             | 11-Chloro-8, 12b-dihydro-2, 8-dimethyl-12b-phenyl-4h- [1,3]-oxazion-[3,2-d] [1-4] benzodiazepine-4,7(6H)- dolone.                   |
| 54.     | LEFETAMINE                          | SPA                         | (-)-1-Dimethylamino-1, 2-diphenylentane.  |
| 55.     | LOPRAZOLAM                          |                             | 6-(O-Chlorophenyl)-2, 4- dihydro-2-[[ (4-methyl-1- pinerozinyll methylenel]-8- nitro-1 H-imidazo [1,2-a] [1,4] benzodiazepin-1-one. |
| 56.     | LORAZEPAM                           |                             | 7-Chloro-3-(O-chlorophenyl)- 1.3-dihydro-droxy-2H-1, 4-benzodiazepine-2-one.  |
| 57.     | LORMETAZEPAM                        |                             | 7-Chloro-5-(Ochlorohenyl)1,3-dihydro 3-hy-droxy-1-methyl- 2H-1, 4-bensodiazepine-2- one.  |

| Sl. No. | International non-proprietary names | Other non-proprietary names | Chemical name   |
|---------|-------------------------------------|-----------------------------|---|
| 58.     | MAZINDOL                            |                             | 5-(P-Chlorophenyl)-2, 5- dihydro-3H-imidazo [2, 1-x] isoindol-5-01.                                 |
| 59.     | MEDAZEPAM                           |                             | 7-Chloro-2, 3-dihydro-1- methyl-5-phenyl-1-H-1, 4- benzodiazipine.                                  |
| 60.     | MEPROBAMATE                         |                             | 2-Methyl-2-propyl-1, 3- propandedial dicarbamate.   |
| 61.     | METHYLPHENOBARBITAL                 |                             | 5-Ethyl-5-phenylbarbituric acid.  |
| 62.     | METHYPRAYLON                        |                             | 3. 3-Diethyl-5-methyl-2, 4- peperidine-dione.   |
| 63.     | NIMETAZEPAM                         |                             | 1, 3-Dihydro-1-methyl-7-nitro- 5-phenyl-3H-1, 4- benzodiazepine-2-one.                              |
| 64.     | NITRAZEPAM                          |                             | 1. 3-Dihydro-7-nitro-5-phenyl-2 H-1, 4-benzodizepin-2-one.  |
| 65.     | NORDAZEPAM                          |                             | 7-Chlorol, 3-dihydro-5-phenyl-1(2H)-1, 4-Benzodiazepin-2- one.                                      |
| 66.     | OXAZEPAM                            |                             | 7-Chloro, 3-dihydro-3-hydroxy-5-phenyl-2H-1, 4- benzodiazepnin-2-one.                               |
| 67.     | OYAZOLAM                            |                             | 10-Chloro-2,3,7, 11b- tetrahydo-2-methyl-11b- phenloxazolo [3,2-d] [1,4] benzodiazepin-6 (5-H) one. |
| 68.     | PHENDIMETRAZINE                     |                             | (+) 3-4 Dimethyl-2-phenylmorphonline.   |
| 69.     | PHENOBARBITAL                       |                             | 5-Ethyl-5-phenylbarbituric acid   |
| 70.     | PHENTERMINE                         |                             | Dimethylphenethylamine.   |
| 71.     | PINAZEPAM                           |                             | 7-Chloro-1,3-dihydro-5-phenyl-1-(2propynyl)-2H-1, 4-benzodiazepine-2 one.                           |
| 72.     | PIPRADBOL                           |                             | 1,1-Diphenyl-1 (2-piperidyl)-methanol.  |
| 73.     | PRAZEPAM                            |                             | 7-Chloro-1-(cyclopropylmethyl)-3-dihydro-5-phenyl-2H-1, 4 benzodiazepin.                            |
| 74.     | TEMAZEPAM                           |                             | 7-Chloro-1, dihydro-3-hydroxy-1-methyl-5-phenyl-2H-1, 4- benzodiazepine-2-one.                      |

| Sl. No.          | International non-proprietary names | Other non-proprietary names                                      | Chemical name  |
|------------------|-------------------------------------|--|--|
| 75.              | TETAZEPAM                           |  | 7-Chloro-5-(cyclohexen-ly) 1,3 dihydro-methyl-2H-1, 4-benzodiazepin-2-one.               |
| 76.              | TRIAZOLAM                           |  | 8-Chloro-6(o-chlorophenyl)-methyl-4-H-s-traizolo (4,3-a0(1,4) benzidiazepine.            |
| <sup>1</sup> 77. | CATHINONE                           |  |  |
| 78.              |                                     | DMA  | (-)-(S)-2 aminopropio(+).2.5-dimethoxy-a-methyl-phenethylamine.                          |
| 79.              |                                     | DOET   | (+)-4-ethyl-2, 5-dimethoxy-a-phenethylamine.   |
| 80.              |                                     | MDMA   | (+)-n, a-dimethyl-3, 4-(methylenedioxy) phenethylamine.                                  |
| 81.              |                                     | 4-methyla-minorex  | (+)-cis-2-amino-4-me0thyl-5-phenyl-2- oxazo-line.  |
| 82.              |                                     | MMDA   | 2-methoxy-amethyl-4, 5-(methylenedioxy)phenethyla-mine.                                  |
| 83.              |                                     | N-ethyl MDA  | (+)-N-ethyl-a-methyl-3, 4-(methylenedioxy)phyenethylamine.                               |
| 84.              |                                     | N-hydroxy MDA  | (+)-N-[a-methyl-3, 4-(methylenedioxy)phenethyl] hymdroxylaine.                           |
| 85.              |                                     | PMA  | p-methoxy-amethylphene- thylamine.   |
| 86.              |                                     | TMA  | (+)-3, 4,5; trimethoxy-a-methylphene-thylamine.  |
| 87.              | FENETYLLINE                         |  | 7-[2-(a-methylphenethyl) aminol] ethy theophyline.                                       |
| 88.              | LEVAMFETAMINE                       | levomethamine  | (-)-(R)-a-methylphenethyl-1- amine.  |
| 89.              |                                     | levomethamphetamine  | (-), N, a-dimethyl phenthy- lamine.  |
| 90.              | METAMFETAMINE                       | methamphetamine  | (+) G-a-dimethyphenethy- recemate lamine.  |
| 91.              |                                     | delta-9***-teira-hydro-cannabinol and its stero-chemical various | (6a-R, 1-aR)-6a,7,8,10a tetrahydro-6-6, 9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran- 1-01. |

1. Added by S.O.785(E) dated 26-10-92.

| Sl. No. | International non-proprietary names | Other non-proprietary names | Chemical name   |
|---------|-------------------------------------|-----------------------------|---|
| 92.     | BUPRENORPHINE                       |                             | 21-cyclopropyl-7-a [(s)-1 hydroxy-1, 2,2-trimethyl- propyl]-6, 14-endo, ethano- 6,7,8,14-tetrahydrooripa- VIne. |
| 93.     | BUTALBITAL                          |                             | 5-allyl-5-isobutylbarbituric acid.  |
| 94.     | CATHINE                             | (+)-norpseudo-              | (+)-[(R)-a-[(R)-1- ephendrine amnioethyl)]benzyl alcohol.   |
| 95.     | ALLOBARBITAL                        |                             | 5,5 diallybarbituric acid.  |
| 96.     | ETILAMFETAMINE                      | N-ethylamaphetamine         | N-ethyl-armethylplenethyla- mine.   |
| 97.     | FENCAMFAMIN                         |                             | N-ethyl-3-phenyl-2- norbornamamine.   |
| 98.     | FENPROPOREX                         |                             | (+)-3-[(a-methylphenety) aminol propionitrile.  |
| 99.     | MEFENOREX                           |                             | N-(3-chloropropyl)-a-meth-yl- phene- thylamine.   |
| 100.    | MIDAZOLAM                           |                             | 8-chloro-6-a(o-flurophenyl)-1- Methyl-4H-imidazol.  |
| 101.    | PEMOLINE                            |                             | 2-amino-5-phenyl-2-oxazplin- 4- one(2-imino-5-phenyl-4- oxazolidionone)   |
| 102.    | PYROVALERONE                        |                             | 4-methyl-2(1-pyrrolidinyl) valerophenone.   |
| 103.    | SEOBUTABARBITAL                     |                             | 6-sec-butyl-5-ethylbarbituric acid.   |
| 104.    | VINYLBITAL                          |                             | 5-(1-methylbutyl)-5-vinyl-bar- bituric acid.  |
| 105.    |                                     | rutobarbital                | 5-butyl-5-ethylbarbituric acid.   |

<sup>1</sup>[106]. SALTS AND PREPARATIONS OF ABOVE.

# THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988

(No. 46 of 1988)<sup>1</sup>

[6th September, 1988]

*An Act to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances and for matters connected therewith*

Whereas illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy;

And whereas having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs and psychotropic substances, such activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith.

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows :

**1. Short title, extent and commencement.**—(1) This Act may be called the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 4th day of July, 1988.

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

(a) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government, or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of State Government, or a person detained under such order, the State Governments ;

(b) "Customs airport" means any airport appointed under Cl. (a) of Sec. 7 of the Customs Act, 1962 (52 of 1962), to be a customs airport;

(c) "detention order" means an order made under Sec. 3;

(d) "foreigner" has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(e) "illicit traffic" , in relation to narcotic drugs and psychotropic substances, means—

(i) cultivating any coca plant or gathering any portion or coca plant ;

(ii) cultivating the opium poppy or any cannabis plant;

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1. Published in the Gazette of India, Extraordinary, pt.II, Sec, 1, dated the 6th Septemeber, 1988.

- (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import in India, export from India or transshipment, of narcotic drugs or psychotropic substances;
- (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or
- (v) handling or letting any premises for the carrying on of any of the activities referred to in sub- clauses (i) to (iv), other than those permitted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder and includes,—
  - (1) financing, directly or indirectly, any of the aforementioned activities ;
  - (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and
  - (3) harbouring persons engaged in any of the aforementioned activities;
- (f) "Indian customs waters" has the same meaning as in Cl. (28) of Sec. 2 of the Customs Act, 1962 (52 of 1962)
- (g) "State Government" in relation to a Union territory, means the Administrator thereof;
- (h) words and expressions used herein but not defined, and defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), have the meanings respectively assigned to them in that Act.

**3. Power to make orders detaining certain persons.—** The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of Cl. (5) of Art. 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

**4. Execution of detention orders.—** A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

**5. Power to regulate place and conditions of detention.—** Every person in respect of whom a detention order has been made shall be liable.—

(a) to be detained in such place under such conditions including conditions as to maintenance,

interviews or communication with others discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

- (b) to be removed from one place of detention to another place of detention, whether within the same State or in another State by order of the appropriate Government:

Provided that no order shall be made by a State Government under Cl. (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

**6. Grounds of detention severable.**— Where a person has been detained in pursuance of an order of detention under sub-section (1) of Sec. 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each grounds and accordingly—

- (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—
- (i) vague,
  - (ii) non-existent,
  - (iii) not relevant,
  - (iv) not connected or not proximately connected with such persons, or
  - (v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied provided in sub-section (1) of Sec. 3 with reference to the remaining ground or grounds and made the order of detention;
- (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

**7. Detention orders not to be invalid or inoperative on certain grounds.**— No detention order shall be invalid or inoperative merely by reason—

- (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention; or
- (b) that the place of detention of such person is outside the limits.

**8. Powers in relation to absconding persons.**— (1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may—

- (a) make a report in writing of the fact to a metropolitan Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of Secs. 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;
- (b) by order notified in the official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified for him to

comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under Cl. (b) of sub-section (1) shall be cognizable.

**9. Advisory Boards.**—For the purposes of sub-clause (a) of Cl. (4) and sub-clause (c) of Cl. 7) of Art. 22 of the Constitution,—

- (a) the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of a Chairman and two other persons possessing the qualifications specified in sub-clause (a) of Cl. (4) of Art. 22 of the Constitution;
- (b) save as otherwise provided in Sec. 10, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order, make a reference in respect thereof to the Advisory Board constituted under Cl. (a) to enable the Advisory Board to make the report under Sub-clause (a) of Cl. (4) of Art. 22 of the Constitution ;
- (c) the Advisory Board to which a reference is made under Cl. (b) shall after considering the reference and the materials placed before it, and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned.
- (d) when there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board;
- (e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;
- (f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

**10. Cases in which and circumstances under which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Board.**— (1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the '[30th day of July, 1996], may be detained without obtaining, in accordance with the provisions of sub-clause (a) of Cl. (4) of Art. 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from engaging in traffic in narcotic drugs and psychotropic substances, and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes

of this section by that Government, is satisfied that such person engages or is likely to engage in illicit traffic in narcotic drugs and psychotropic substances into, out of, through or within any area highly vulnerable to such illicit traffic and makes a declaration to that effect within five weeks of the detention of such person.

*Explanation 1.*— In this sub-section, "area highly vulnerable to such illicit traffic means—

- (i) the Indian customs water ;
- (ii) the customs airports ;
- (iii) the metropolitan cities of Bombay, Calcutta, Delhi, Madras and the city of Varanasi ;
- (iv) the inland area one hundred kilometres in width from the coast of India falling within the territories of the States of Andhra Pradesh, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Orissa, Tamil Nadu and West Bengal and the Union territories of Daman and Diu and Pondicherry ;
- (v) the inland area one hundred kilometres in width from—
  - (a) the India-Pakistan border in the States of Gujarat, Punjab and Rajasthan;
  - (b) the India-Nepal border in the States of Bihar, Sikkim, Uttar Pradesh and West Bengal;
  - (c) the India-Burma border in the States of Arunachal Pradesh, Manipur, Mizoram and Nagaland ;
  - (d) the India -Bangladesh border in the States of Assam, Meghalaya, Tripura and West Bengal;
  - (e) the India-Bhutan border in the States of Arunachal Pradesh, Assam, Sikkim and West Bengal;
- (vi) such other area or customs station, as the Central Government may, having regard to the vulnerability of such area or customs station, as the case may be, to illicit it traffic, by notification in the official Gazette, specify in this behalf.

*Explanation 2.* — For the purposes of Expl. 1 "customs station" has the same meaning as in Cl. (13) of Sec. 2 of the Customs Act, 1962 (52 of 1962).

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, Sec. 9 shall have effect subject to the following modifications, namely :

- (i) in Cl. (b), for the words "shall, within five weeks", the words "shall, within four months and two weeks" shall be substituted;
- (ii) Cl. (c),—
  - (a) for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be substituted;
  - (b) for the words "eleven weeks" , the words "five months and three weeks" shall be substituted;
- (iii) in Cl. (f) , for the words "for the detention" at both the places where they occur, the words "for the continued detention" shall be substituted.

**11. Maximum period of detention orders.**—The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Sec. 10 do not apply and which has been confirmed under Cl. (f) of Sec. 9 shall be one year from the date of detention, and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of Sec. 10 apply and which has been confirmed under Cl. (f) of Sec. 9, read with sub-section (2) of Sec. 10, shall be two years from the date of detention :

Provided that nothing contained in this section shall affect the power of appropriate Government in either case to revoke or modify the detention order at any earlier time.

**12. Revocation of detention orders.**— (1) Without prejudice to the provisions of Sec. 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time be revoked or modified,—

(a) notwithstanding that the order has been made by an officer of a State Government by that State Government, by that State Government or by the Central Government.

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, or by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order under Sec. 3 against the same person.

**13. Temporary release of persons detained.**— (1) The Central Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or by an officer subordinate to that Government, or by a State Government or by an officer subordinate to that Government may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) A state Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or by an officer subordinate to that Government may be released for any specified period either without conditions or upon such conditions specified in the direction as the person accepts, and may, at any time, cancel his release.

(3) In directing the release of any person under sub-section (1) or sub-section (2), the Government directing the release may require him to enter into a bond with sureties for the due observance of the conditions specified in the direction.

(4) Any person released under sub-section (1) or sub-section (2) shall surrender himself at the time and place, and to the authority, specified in the order directing his release, or cancelling his release, as the case may be.

(5) If person fails without sufficient cause to surrender himself in the manner specified in sub-section (4), he shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both.

(6) If any person released under sub-section (1) or sub-section (2) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

(7) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.

**14. Protection of action taken in good faith.**—No suit or other legal proceeding shall lie against the Central Government or a State Government and no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in

pursuance of this Act.

**15. Amendment of Act 52 of 1974.**— In Sec. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, to sub-section (1), the following proviso shall be added, namely :

"Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under Sec. 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under Sec. 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (J. & K. Ordinance 1 of 1988)."

**16. Repeal and saving.**—(1) The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (Ordinance 7 of 1988), is hereby repealed.

(2) Notwithstanding such repeal , anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

## THE STANDARDS OF WEIGHTS AND MEASURES ACT, 1976

(Act No- 60 of 1976)<sup>1</sup>

[8th April, 1976]

*An Act to establish standards of weights and measures, to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number, and to provide for matters connected therewith or incidental thereto*

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows :

### PART I

#### Provisions Applicable to every Part

**1. Short title, extent and commencement.**—(1) This Act may be called the Standards of Weights and Measures Act, 1976.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different,—

- (a) provisions of this Act,
- (b) areas,
- (c) classes of undertakings,
- (d) classes of goods,
- (e) classes of weights and measures, or
- (f) classes of users of weights and measures,

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision in such areas or in respect of such classes of undertakings, goods, weights and measures or users of weights and measures in relation to which this Act has been brought into force :

Provided that the provisions of this Act (including the standards established by or under this Act) shall come into force in the State of Sikkim on such date, not being later than five years from the passing of this Act as the Central Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act or for different areas or for different classes of undertakings or for different classes of goods, or for different classes of weights and measures or for different classes of users of weights and measures.

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1. Received the assent of the President on 8th April, 1976, published in the Gazette of India Extraordinary, Pt. II. Sec. 4, dated 8th April, 1976 at p. 501.

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

(a) 'calibration' means all the operations which are necessary for the purpose of determining the values of the errors of a weight or measure and, if necessary, to determine the other metrological properties of such weight or measure, and includes the actual fixing of the positions of the gauge-marks or scale-marks of a weight or measure, or in some cases, of certain principal marks only, in relation to the corresponding values of the quantity to be measured.

*Explanation.*—Calibration may also be carried out with a view to permitting the use of a weight or measure as a standard;

(b) 'commodity in package form' means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail;

(c) 'dealer', in relation to any weight or measure, means a person who, or a firm or a Hindu undivided family which, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes,—

(i) a commission agent who carries on such business on behalf of any principal,

(ii) an importer who sells, supplies, distributes or otherwise delivers any weight or measure to any user, manufacturer, repairer, consumer or any other person,

but does not include a manufacturer who sells, supplies, distributes or otherwise delivers any weight or measure to any person or category of persons referred to in this clause.

*Explanation.*—For the removal of doubts, it is hereby declared that a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure to any person other than a dealer, shall be deemed to be a dealer;

(d) 'Director' means the Director of Legal Metrology appointed under Sec. 28;

(e) 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(f) 'false package' means any package which does not conform to the provisions of this Act or any rule or order thereunder in relation to such package;

(g) 'false weight or measure' means any weight or measure which does not conform to the standards established by or under this Act in relation to that weight or measure;

(h) 'General Conference on Weights and Measures' means the Conference General *des Poids et Mesures* established under the Convention *du Metre*;

(i) 'import', with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(j) 'International Bureau of Weights and Measures' means the Bureau International *des Poids et Mesures*, established under the Convention *du Metre*, at Sèvres in France;

(k) 'International Organization of Legal Metrology' means the Organization *Internationale de Metrologie Legale* established under the Convention *Instituant Une Organisation Internationale de Metrologie Legale*;

(l) 'International prototype of the kilogram' means the prototype sanctioned by the First General Conference on Weights and Measures held in Paris in 1889, and deposited at the International Bureau of Weights and Measures;

(m) 'inter-State trade or commerce', in relation to any weight or measure or other goods which are bought, sold, supplied, distributed or delivered by weight, measure or number, means the purchase, sale, supply, distribution or delivery which,—

(i) occasions the movement of such weight, measure or other goods from one State to another, or

(ii) is effected by a transfer of documents of title to such weight, measure or other goods during its movement from one State to another.

*Explanation I.*—Where any such weight or measure is, or other goods are, delivered to a carrier or other bailee for transmission, the movement of such weight, measure or other goods shall, for the purposes of sub-clause (ii), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

*Explanation II.*—Where the movement of any such weight, measure or other goods commences and terminates in the same State, it shall not be deemed to be a movement of such weight, measure or other goods from one State to another merely by reason of the fact that in the course of such movement it passes through the territory of any other State;

(n) 'label' means any written, marked, stamped, printed, or graphic matter affixed to, or appearing upon, any commodity or package containing any commodity;

(o) 'manufacture', in relation to any weight or measure, means a person who, or a firm or a Hindu undivided family which,—

(i) makes or manufactures such weight or measure,

(ii) makes or manufactures one or more parts, and acquires the other parts, of such weight or measure and, after assembling those parts, claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,

(iii) does not make or manufacture any part of such weight or measure but assembles parts thereof made or manufactured by others and claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,

(iv) puts, or causes to be put, his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself or itself, as the case may be.

*Explanation.*—Where any manufacturer despatches any weight or measure or any part thereof to any branch office maintained by him or it, such branch office shall not be deemed to be a manufacturer even though the parts so despatched to it are assembled at such branch office;

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

(q) 'person' includes,—

(i) every department or office,

(ii) every organization established or constituted by Government,

(iii) every local authority within the territory of India,

(iv) every co-operative society,

(v) every other society registered under the Societies Registration Act, 1860 (21 of 1860);

(r) 'premises' includes,—

(i) a place where any business, industry, production or trade is carried on by a person, whether by himself or through an agent, by whatever name called,

(ii) a warehouse, godown or other place where any weight, measure or other goods are stored or exhibited,

(iii) a place where any books of account or other documents pertaining to any trade or transaction are kept,

(iv) a dwelling- house, if any part thereof is used for the purpose of carrying on any business, industry, production or trade.

*Explanation.*—'Place' includes a vehicle or vessel or any other mobile device, with the help of which any trade or business is carried on, and also includes any measuring instrument mounted on a vehicle, vessel or other mobile device;

(s) 'prescribed' means prescribed by rules made under this Act and 'prescribed authority' means such authority as may be specified by such rules;

(t) 'reference standard' means the set of standard weight or measure which is made or manufactured by or on behalf of the Central Government for the verification of any secondary standard;

(u) 'repairer' includes a person who adjusts, cleans, lubricates or paints any weight or measure or renders any other service to such weight or measure to ensure that such weight or measure conforms to the standards established by or under this Act;

(v) 'sale', with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods;

(w) 'seal' means a device or process by which a stamp is made, and includes any wire or other accessory which is used for ensuring the integrity of any stamp;

(x) 'secondary standard' means the set of standard weight or measure which is made or manufactured by or on behalf of the Central or State Government for the verification of any working standard;

(y) 'stamp' means a mark, which is made on, or in relation to, any weight or measure with a view to,—

(i) certifying that such weight or measure conforms to the standard specified by or under this Act, or

(ii) indicating that any mark which was previously made thereon certifying that such weight or measure conforms to the standards specified by or under this Act, has been obliterated.

*Explanation.*—A stamp may be made by impressing, casting, engraving, etching, branding or any other other process;

- (z) 'transaction' means—
- (i) any contract, whether for sale, purchase, exchange or any other purpose, or
  - (ii) any assessment of royalty, duty or other dues, or
  - (iii) the assessment of any work done, wages due or services rendered;
- (z-a) 'unverified weight or measure' means a weight or measure which, being required to be verified and stamped under this Act, has not been not so verified and stamped;
- (z-b) 'verification', with its grammatical variations and cognate expressions, includes, in relation to any weight or measure, the process of comparing, checking, testing or adjusting such weight or measure with a view to ensuring that such weight or measure conforms to the standards established by or under this Act, and also includes re-verification and calibration;
- (z-c) 'weighing or measuring instrument' means any object, instrument, apparatus or device, or any combination thereof, which is, or is intended to be, used, exclusively or additionally for the purpose of making any weightment or measurement, and includes any appliance, accessory or part associated with any such object, instument, apparatus or device;
- (z-d) 'weight or measure' means a weight or measure specified by or under this Act, and includes a weighing or measuring instrument;
- (z-e) 'working standard' means the set of standard weight or measure which is made or manufactured by or on behalf of Government for the verification of any standard weight or measure, other than a national prototype or national reference or secondary standard.

**3. Provisions of this Act to override the provisions of any other law.**— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

## PART II

### Establishment of Standards of Weights and Measures

#### CHAPTER I

##### Standard Units

**4. Units of weight or measure to be based on metric system.**—(1) Every unit of weight or measure shall be based on the units of the metric system.

(2) For the purpose of sub-sectoion (1)—

- (a) the international system of units as recommended by the Central Conference on Weights and Measures, and
- (b) such additional units as may be recommended by the International Organization of Legal Metrology

shall be the units of the mertic system.

**5. Base unit of length.**—(1) The base unit of length shall be the metre.

(2) The 'metre' is the length equal to 1650763.73 wave lengths in vacuum of the radiation corresponding to the transition between the levels  $2p_{10}$  and  $5d_5$  of the krypton-86 atom.

**6. Base unit of mass.**—(1) The base unit of mass shall be the kilogram.

(2) The 'kilogram' is the unit of mass; it is equal to the mass of the international prototype of the kilogram.

**7. Base unit of time.**—(1) The base unit of time shall be the second.

(2) The 'second' is the duration of 9 192 631 770 periods of the radiation corresponding to the transition between the two hyperfine levels of the ground state of the caesium-133 atom.

**8. Base unit of electric current.**—(1) The base unit of electric current shall be the ampere.

(2) The 'ampere' is that constant current which if maintained in two straight parallel conductors of infinite length, of negligible circular cross-section, and placed one metre apart in vacuum, would produce between these conductors a force equal to  $2 \cdot 10^{-7}$  newton per metre of length.

**9. Base unit of thermodynamic temperature.**—(1) The base unit of thermodynamic temperature shall be the kelvin.

(2) The 'kelvin' is the fraction  $1/273.16$  of the thermodynamic temperature of the triple point of water.

(3) The kelvin shall also be used for expressing the interval or difference of temperature.

(4) Zero degree Celsius corresponds to 273.15 kelvin.

(5) The degree Celsius may also be used for expressing the interval or difference of temperature, unit degree Celsius being equal to unit kelvin.

**10. Base unit of luminous intensity.**—(1) The base unit of luminous intensity shall be candela.

(2) The 'candela' is the luminous intensity, in the perpendicular direction of a surface of  $1/600,000$  square metre of a black body at the temperature of freezing platinum under a pressure of  $101\,325$  newtons per square metre.

**11. Base unit of amount of substance.**—(1) The base unit of amount of substance shall be the mole.

(2) The 'mole' is the amount of substance of a system which contains as many elementary entities as there are atoms in  $0.012$  kilogram of carbon 12.

(3) When the mole is used, the elementary entities shall invariably be specified and may be atoms, molecules, ions, electrons, other particle, or specified groups of such particles.

**12. Supplementary, derived, special and other units of weight or measure—Their symbols, definitions, etc.**—(1) The Central Government may, by rules made in this behalf, specify, in relation to the base units of weight or measure, such supplementary, derived, or other units or standard symbols or definitions as the General Conference on Weights and Measures or the International Organization of Legal Metrology may recommend.

*Explanation.*—'Derived unit' means a unit which is derived from the base or supplementary, units, or both.

(2) The Central Government may, by rules made in this behalf, specify, such multiples and sub-

multiples of, and physical constants, and ratios or co-efficients in relation to, units of weight or measure as the General Conference on Weights and Measures or the International Organization of Legal Metrology may recommend.

(3) The Central Government may, by notification, declare, for such period as it may consider necessary such special units of weight or measure as the General Conference on Weights and Measures or the International Organization of Legal Metrology may recommend.

**13. Base unit of numeration.**—(1) The base unit of numeration shall be the unit of the international form of Indian numerals.

(2) Every numeration shall be made in accordance with the decimal system.

(3) The decimal multiples and sub-multiples of the numerals shall be of such denominations and be written in such manner as the Central Government may, after previous publication, specify by rules made in this behalf :

Provided that no such rule shall be made before the expiry of six months from the date on which the draft of the proposed rules was first published in Official Gazette.

**14. Standard unit of weight or measure.**—(1) The base unit of mass specified in Sec. 6 and base units of measures specified in Sec. 5 and Secs. 7 to 11 (both inclusive) and the supplementary and other units specified by rules made under Sec. 12, shall be the standard units of weight or measure, as the case may be.

(2) The units of numeration specified by or under Sec. 13 shall be the standard units of numeration.

## CHAPTER II

### Physical Representation of Standard Units

**15. National prototypes.**—(1) For the purpose of deriving the value of the kilogram, the Central Government shall cause to be prepared a national prototype of the kilogram and shall cause its accuracy to be certified by the International Bureau of Weights and Measures in terms of the international prototype of the kilogram and shall deposit the same in such custody and at such place as that Government may think fit.

(2) For the purpose of deriving the value of the metre, the Central Government may cause to be prepared a national prototype of the metre and, where such prototype is caused to be made, shall also cause its accuracy to be certified by the International Bureau of Weights and Measures and deposit the same in such custody and at such place as that Government may think fit.

**16. National standards.**—(1) For the purpose of deriving the value of the base units, other than the base units of mass, the Central Government shall cause to be prepared such objects or equipments, or both, as may be necessary for the purpose and shall cause the accuracy of such objects or equipments, or both, to be certified by the International Bureau of weights and Measures at such periodical intervals as may be prescribed, and, shall, after such certification deposit such objects or equipments, or both, in such custody and at such place as that Government may think fit

(2) For the purpose of deriving the value of the supplementary and other units specified under Sec. 12, the Central Government shall cause to be prepared such objects or equipments, or both as may be necessary for the purpose and shall cause the accuracy of such objects or equipments, or both, to be certified at such periodical intervals and by such authority as may be prescribed, and, shall, after certification, deposit such objects or equipments, or both, in such custody and at such place as that Government may think fit.

**17. National prototype and national standard how to be kept.**— Every national prototype specified in Sec. 15 and every object or equipment, or both, referred to in Sec. 16, shall be kept in such manner and under such conditions as may be prescribed.

**18. Reference, secondary and working standards.**—(1) Every—

(a) reference standard,

(b) secondary standard, and

(c) working standard,

shall conform to the standards established by or under this Act and be verified and authenticated at such periodical intervals and in such manner as may be prescribed.

(2) Every reference standard, every secondary standard and every working standard shall be kept in such manner and under such conditions as may be prescribed.

**19. Power of Central Government to prescribe physical characteristics, etc., of weights and measures.**—(1) The Central Government shall, in relation to any weight or measure, prescribe the physical characteristics, configuration, constructional details, materials, equipment, performance, tolerances, methods or procedures of tests in accordance with the recommendations made by the International Organization of Legal Metrology :

Provided that where no such recommendations has been made, the Central Government shall prescribe such physical characteristics, configuration, constructional details, materials, equipment, performance, tolerances, methods or procedures of tests in relation to any weight or measure as it may think fit.

(2) Where it is not reasonably practicable to give effect to any recommendation made by the International Organization of Legal Metrology, the Central Government may make such changes of a minor nature in the recommendation of the International Organization of Legal Metrology as may appear to it to be necessary.

### CHAPTER III

#### Standard Weights and Measures

**20. Standard weight or measure.**—(1) Any weight or measure which conforms to the standard units of such weight or measure and also conforms to such of the provisions of Secs. 15 to 19 (both inclusive) as are applicable to it shall be the standard weight or measures.

(2) Any numeral which conforms to the provisions of Sec. 13 shall be the standard numeral.

**21. Use of non-standard weight or measure prohibited.**— No weight, measure or numeral, other than the standard weight, measure or numeral, shall be used as a standard weight, measure or numeral.

**22. Manufacture of non-standard weight or measure prohibited.**— No weight or measure shall be made or manufactured unless it conforms to the standards of weight or measure established by or under this Act :

Provided that Central Government may permit the making or manufacturing of any weight or measure which does not conform to the standards established by or under this Act, if such weight or measure is made or manufactured exclusively for the purpose of any scientific investigation or research or for export and is made or manufactured under such conditions and restrictions as may be prescribed.

**23. Prohibition with regard to inscriptions, etc.**—No weight, measure or other goods shall bear thereon any inscription or indication of weight, measure or number except in accordance with the standard unit of such weight, measure or numeration established by or under this Act :

Provided that in relation to any weight, measure or other goods which are manufactured for scientific investigation or research or for export, inscription or indication thereon of any weight, measure or number may also be made in accordance with any other system of weight, measure or numeration if such inscription or indication is demanded by the person by whom such scientific investigation or research is to be made or by the person to whom the export is to be made.

## CHAPTER IV

### Custody and Verification of Standard Equipments

**24. Supply, etc. of reference standards.**—(1) The Central Government shall cause to be prepared, for the purposes of this Act, as many sets of reference standards as it may think necessary and shall supply to each State Government as many sets of reference standards as it may think fit.

(2) The Central Government shall keep in its custody, for the purposes of this Act, such number of reference standards as may be necessary.

(3) Every reference standard referred to in sub-section (2) shall be kept at such place and in such custody as may be prescribed and no such reference standard shall be deemed to be reference standard and shall be used as such unless it has been verified and authenticated in accordance with the rules made under this Act.

**25. Preparation and custody of secondary or working standards.**—The Central Government shall cause to be prepared, for the purposes of this Act, as many sets of secondary standard or working standard as it may think necessary and shall keep such sets of secondary standard or working standard at such place and in such custody as may be prescribed.

**26. Verification, stamping, etc. of secondary or working standards.**—(1) Every secondary standard referred to in Sec. 25 shall be verified with the reference standard by such authority as may be prescribed standard and shall, if found on such verification to conform to the standards established by or under this Act, be stamped by that authority.

(2) Every working standard referred to in Sec. 25 shall be verified with the secondary standard which has been stamped in accordance with the provisions of sub-section (1), by such authority as may be prescribed and shall, if found on such verification to conform to the standards established by or under this Act, be stamped by that authority.

(3) Where any secondary standard or working standard is stamped in accordance with the provisions of sub-section (1) or sub-section (2) , as the case may be, a certificate shall be separately given showing the date on which such weight or measure was stamped.

(4) Every secondary or working standard which is not verified and stamped in accordance with the provisions of sub-section (1) or sub-section (2) as the case may be, shall not be deemed to be a secondary standard or working standard and shall not be used as such.

**27. Secondary or working standard which may be stamped.**—Where the Central Government is of opinion that by reason of the size or nature of any secondary standard or working standard referred to in Sec. 25, it is not desirable or practicable to put a stamp thereon, it may direct that instead of putting a stamp on such secondary standard or working standard, a certificate may be issued to the effect that such secondary or working standard conforms to the standards or working standard conforms to the standards established by or under this Act and every secondary standard or working standard so certified shall be deemed to have been duly stamped under this Act on the date on which such certificate was issued.

### PART III

#### Appointment and Powers of Directors and other Staff

**28. Appointment of Director and other staff.**—(1) The Central Government may, by notification, appoint a Director of Legal Metrology and as many Additional, Joint, Deputy or Assistant Directors and other officers and staff as may be necessary for exercising the powers and efficiently discharging the duties conferred or imposed on them by or under this Act.

(2) Every Additional, Joint, Deputy or Assistant Director and other officer, appointed under sub-section (1), shall exercise such powers, and discharge such functions of the Director as the Central Government may, by notification, authorize in this behalf.

(3) The Director may, by general or special order, define the local limits within which each Additional, Joint, Deputy or Assistant Director or other officer, appointed under sub-section (1), shall exercise his powers and discharge the duties conferred or imposed on him by or under this Act.

(4) Subject to the provisions of this Act, every Additional, Joint, Deputy or Assistant Director and every other officer, appointed under sub-section (1), shall exercise his powers and discharge the duties of his office under the general superintendence, direction and control of the Director and shall exercise those powers and discharge those duties in the same manner and with the same effect as if they had been conferred or imposed on him directly by this Act and not by way of authorization.

(5) The Director and every Additional, Joint, Deputy and Assistant Director and every other officer authorized to perform any duty by or under this Act shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code ( 45 of 1860).

(6) No suit, prosecution or other legal proceeding shall lie against the Director, Additional, Joint, Deputy or Assistant Director or any other officer authorized to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule, or order made thereunder.

(7) The Central Government may, with the consent of the State Government and subject to such conditions, limitations and restrictions as it may specify in this behalf, delegate such of the powers of the Director under this Act as it may think fit to the person for the time being holding the office of the Controller of Legal Metrology, in the State, and such Controller may, if he is of opinion that it is necessary or expedient in the public interest so to do, delegate such of the powers delegated to him as he may think fit to any officer subordinate to him, not being an officer below the rank of an inspector, and where any such delegation of powers is made by such Controller, the person to whom such powers are delegated shall exercise those powers in the same manner and with the same effect as if they had been conferred on him by this Act and not by way of delegation.

(8) Where any delegation of powers is made under sub-section (7), the powers so delegated shall be exercised under the general superintendence, direction and guidance of the Director.

**29. Power of inspection, etc.**—(1) The Director or any person authorized to exercise the powers or discharge the functions of the Director, may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any inter-State trade or commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been or is likely to be committed are either kept or concealed in any premises or are in the course of transportation from one State to another.—

(a) enter at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which inter-State trade or commerce has taken place, or is intended to take place, and any record, register or other document relating thereto;

(b) seize any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under this Act has been, or is likely to be, committed in the course of, or in relation to, any inter-State trade or commerce.

(2) Where any goods seized under sub-section (1) are subject to speedy or natural decay, the Director or the authorized person may dispose of such goods in such manner as may be prescribed.

(3) Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures made under that Code.

**30. Forfeiture.**—Every false or unverified weight or measure, and every false package, used in the course of, or in relation to, any inter-State trade or commerce and seized under Sec. 29, shall be liable to be forfeited to the Central Government :

Provided that such unverified weight or measure shall not be forfeited to Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed.

## PART IV

### Inter-State Trade or Commerce in Weight, Measure or other Goods

#### CHAPTER I

##### Applicability of this Part

**31. Part IV to apply to inter-State trade or commerce only.**—The provisions of this Part shall apply to—

- (a) every weight or measure which is, or is intended to be,—
  - (i) made or manufactured for the purpose of inter-State trade or commerce,
  - (ii) used, sold, distributed, delivered or otherwise transferred in the course of inter-State trade or commerce,
- (b) goods which are, or are intended to be, sold, distributed, delivered or otherwise transferred by weight, measure or number in the course of inter-State trade or commerce;
- (c) every service which is rendered by weight, measure or number in relation to, or in the course of, inter-State trade or commerce.

## CHAPTER II

### General

**32. Use of weights only or measures only in certain cases.**—(1) The Central Government may, by rules made in this behalf, direct that in respect of the class of goods or undertakings or users specified therein, no transaction, dealing or contract shall be made or had except by such weight, measure or number as may be specified in the said rules.

(2) Any rule made under sub-section (1) shall take effect in such area, from such future date and subject to such conditions, if any, as may be specified therein.

**33. Prohibition of quotations, etc. otherwise than in terms of standard units of weights, measures or numeration.**—No person shall, in relation to any goods, thing or services to which this Part applies,—

- (a) quote, or make announcement of, whether by word of mouth or otherwise, any price or charge, or
  - (b) issue or exhibit any price list, invoice, cash memo or other document, or
  - (c) prepare or publish any advertisement, poster or other document, or
  - (d) indicate the contents of any package either on itself, or on any label, carton or other things, or
  - (e) indicate the contents on any container, or
  - (f) express any quantity or dimension,
- otherwise than in accordance with the standard unit of weight, measure or numeration.

**34. Any custom, usage, etc., contrary to standard weight, measure or numeration to be void.**—Any custom usage, practice or method of whatever nature which permits a person to demand, receive, or cause to be demanded or received, any quantity of article, thing or service (to which this Part applies) in excess of, or less than, the quantity specified by weight, measure or number in the contract or other agreement in relation to the said article, thing or service, shall be void.

**35. Manufacturers, etc., to maintain records and registers.**—(1) Every person who—

- (a) makes, manufactures, sells, distributes or otherwise disposes of any weight or measure or other goods which are sold, delivered or distributed by weight, measure or number, or
- (b) repairs any weight or measure,

to which this Part applies, shall maintain such records and registers as may be prescribed and if required so to do by the Director, shall produce such records and registers before the Director or such other officer as the Director may authorize in this behalf, for inspection.

(2) Notwithstanding anything contained in sub-section (1), if the Director is of opinion that having regard to the nature or volume of the business carried on by any maker, manufacturer, dealer or repairer, it is necessary so to do, he may, by order exempt such maker, manufacturer, dealer or repairer from the operation of that sub-section.

## CHAPTER III

### Approval of Models

**36. Approval of models.**—(1) Save as otherwise provided in this section, this chapter shall not apply to—

- (a) any weight or measure which being subject to verification and stamping under the State law as in force immediately before the commencement of this Act, is in use at such commencement;
- (b) any cast iron, brass, bullion, or carat weight or any beam-scale, except those specified by rules made in this behalf;
- (c) length measures (not being measuring tapes) ordinarily used in retail trade for measuring textiles or timber;
- (d) capacity measures, not exceeding twenty litres in capacity which are ordinarily used in retail trade for measuring kerosene, milk or potable liquors;
- (e) any weighing or measuring instrument or device which is made or manufactured exclusively for domestic use :

Provided that such instrument or device is not intended for the use of any member of the medical profession in the course of such profession.

(2) Where any officer of the Central or State Government charged with the duty of implementing the law relating to weights and measures has any reason to believe that the model of any weight or measure referred to in sub-section (1) requires a test by the prescribed authority, he may acquire one such weight or measure from the market and forward it to the prescribed authority for test, the fees for which shall be payable by the Government employing the officer by whom such weight or measure has been forwarded for test.

(3) Every person shall, before making or manufacturing any weight or measure to which this Part applies, submit for approval of the prescribed authority, such number of models, drawings and other information relating to such weight or measure as may be prescribed :

Provided that in relation to any weight or measure, to which this Part applies, which has already been made or manufactured, or which is in the process of being made or manufactured, at the commencement of their Part, models of such weight or measure shall be submitted to the prescribed authority from out of the weights or measures which have already been or which are in the process of being, made or manufactured :

Provided further that in the case of a weight or measure the model whereof cannot be submitted, whether by reason of its nature or otherwise, it shall be sufficient if the drawings and other prescribed information about the weight or measure is submitted to the prescribed authority and thereupon that authority shall test the models of such weight or measure at the place where it is made or manufactured or at such other place as may be specified by the Director :

Provided also that the prescribed authority may, if it is satisfied that the model of any weight or measure which has been approved in a country outside India conforms to the standards established by or under this Act, approve such model without any test or after such test as it may deem fit.

(4) The prescribed authority shall levy and collect such fees for the testing of any model, submitted under this section for approval as may be prescribed.

(5) The prescribed authority shall test the models submitted to it with a view to —

- (a) ascertaining whether such models conform to the standards established by or under this Act;
- (b) finding out the ability of such models to maintain accuracy over periods of sustained use; and
- (c) determining the performance of such models under such varied conditions as may be prescribed.

(6) The prescribed authority shall submit to the Central Government a detailed report on the performance of the model submitted to it together with its recommendations with regard to the desirability or otherwise of issuing a certificate of approval in respect of that model.

(7) The Central Government may, if it is satisfied after considering the report submitted to it by the prescribed authority that the aforesaid model is in conformity with the provisions of this Act or any rule made thereunder and is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions, issue a certificate of approval in respect of that model.

(8) Every certificate of approval of a model shall be published in the Official Gazette and shall also be published in such other manner as the Central Government may think fit.

(9) The Central Government may, if it is satisfied that the product made or manufactured in accordance with the model which was approved by it has failed to render the expected performance or to conform to the standards established by or under this Act, revoke the certificate of approval issued by it under sub-section (7) :

Provided that no such revocation shall be made except after giving the manufacturer of such weight or measure a reasonable opportunity of being heard :

Provided further that where the Central Government is satisfied that as a result of the alteration made by the manufacturer in the model of the weight or measure, such model has become fit for approval, it may vacate the order of revocation of the certificate of approval issued by it.

(10) If for any reason any material of the approved model of a weight or measure to which this Part applies becomes non-available in India, the manufacturer may continue the manufacture of such weight or measure with such substitute materials as may be, in his opinion, most suitable for the manufacture of such weight or measure but where the manufacturer does so, he shall send such substitute materials to the prescribed authority for test.

(11) If the prescribed authority is of opinion that the substitute material referred to in sub-section (10) is not suitable and that there is available in India any other material which is more suitable, that authority shall intimate its findings to the Central Government and also to the manufacturer, and there upon the manufacturer shall not manufacture the weight or measure with any material other than the material recommended by the prescribed authority until the material which was originally approved by the prescribed authority becomes available in India :

Provided that where, in the opinion of the prescribed authority, the substitute material referred to in sub-section (10) is not suitable and no other suitable material is also available in India, the approval in relation to the model shall stand suspended until a suitable material becomes available in India.

(12) Where the model of any weight or measure to which this Part applies has been approved, the models of different denominations of such weight or measure shall not require any approval if such denominations are manufactured in accordance with the same principles according to which, and the same materials with which, the approved model has been manufactured.

**37. Licence to manufacture weights or measures when to be issued.—**(1) Before issuing a licence to make or manufacture any weight or measure to which this Part applies, the State Government shall satisfy itself that a certificate of approval of the model of such weight or measure has been granted by the Central Government under Sec. 36.

(2) Where any certificate of approval of any model has been revoked by the Central Government, the licence issued by the State Government for the making or manufacturing of any weight or measure in accordance with such model shall stand suspended :

Provided that such suspension shall stand vacated if such model is subsequently approved by the Central Government.

**38. Weight or measure to contain number of the approved model, etc.—** Every weight or measure to which this Part applies and for which a model has been approved shall bear thereon, in such manner as may be prescribed, the number of the approved model and the number of the certificate by under which such model was approved :

Provided that where the Central Government is of opinion that inclusion of any such particulars on any weight or measure is not possible by reason of its size or nature, that Government may exempt the inclusion of such particulars on such weight or measure.

#### CHAPTER IV

##### Commodities in packaged form intended to be sold or distributed in the course of inter-State trade or commerce

**39. Quantities and origin of commodities in packaged form to be declared.—**(1) No person shall—

- (a) make, manufacture, pack, sell, or cause to be packed or sold; or
- (b) distribute, deliver, or cause to be distributed or delivered; or
- (c) offer, expose or possess for sale,

any commodity in packaged form to which this Part applies unless such package bears thereon or on a label securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of—

- (i) the identity of the commodity in the package;
- (ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;
- (iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;
- (iv) the unit sale price of the commodity in the package; and
- (v) the sale price of the package.

*Explanation.*—In this sub-section, the expression 'unit sale price' means the price according to such unit of weight, measure or number as may be prescribed.

(2) Every package to which this Part applies shall bear thereon the name of the manufacturer

and also of the packer or distributor.

(3) Where the package of a commodity to which this Part applies or the label thereon bears a representation as to the number of servings, of the commodity contained therein, such package or label shall bear a statement as to the net quantity (in terms of weight, measure or number) of each such serving.

(4) The statement on a package or label as to the net weight, measure or number of the contents thereof not include any expression which tends to qualify such weight, measure or number :

Provided that the Central Government may, by rules, specify the commodities, the weight or measure of which is likely to increase or decrease beyond the prescribed tolerance limits by reason of climatic variations; and it shall be lawful for the manufacturer or packer of the commodity so specified to qualify the statement as to the net content of such commodity by the use of the words "when packed".

*Explanation.*—The words 'when packed' shall not be used in any case except a case to which the proviso to sub-section (4) applies.

(5) Where the Central Government has reason to believe that there is undue proliferation of weight, measure or number in which any commodity is, or reasonably comparable commodities are, being packaged for sale, distribution or delivery and such undue proliferation impairs in the opinion of that Government, the reasonable ability of the consumer to make a comparative assessment of the prices after considering the net quantity or number of such commodity, that Government may direct the manufacturers and also packers or distributors to sell, distribute or deliver such commodity in such standard quantities or number as may be prescribed.

(6) Whenever the retail price of a commodity in packaged form to which this chapter applies is stated in any advertisement there shall be included in the advertisement, a conspicuous declaration as to the net quantity or number of the commodity contained in the package and retail unit sale price thereof.

(7) No person shall sell, distribute or deliver for sale a package containing a commodity which is filled less than the prescribed capacity of such package except where it is proved by such person that the package was so filled with a view to—

(a) giving protection to the contents of such package, or

(b) meeting the requirements of machines used for enclosing the contents of such package.

(8) The Central Government may, by rules, specify such reasonable variations in the net contents of the commodity in a package as may be caused by the method of packing or the ordinary exposure which may be undergone by such commodity after it has been introduced in trade or commerce.

(9) The Central Government may, by rules, specify the classes of commodities of packages in relation to which all or any of the provisions of this section shall not apply or shall apply with such exceptions or modifications as may be specified therein.

## CHAPTER V

### Verification and Stamping of Weights and Measures sent from one State to another

**40. Definitions.**—In this chapter, unless the context otherwise requires,—

- (a) 'Controller' means the person appointed as such by the State Government under the State law;
- (b) 'Inspector' means the person appointed as such by the the State Government under the State law;
- (c) 'local Inspector' means an Inspector within the local limits of whose jurisdiction any weight or measure is made, manufactured, received, delivered or kept for sale or use;
- (d) 'State law' means the law enacted by the Legislature of a State and for the time being in force in that State, with regard to the enforcement of the standards of weights or measures established by or under this Act;
- (e) 'transferee State' means the State in which any weight or measure is delivered or received for sale or use therein from any other State;
- (f) 'transferor State' means the State from which any weight or measure made or manufactured therein, or kept therein for sale or use, is sent to, or delivered in any other State.

**41. Verification and stamping of weights and measures sent from one state to another.**—

(1) Where any weight or measure, sent from a transferor State for delivery, sale or use in a transferee State, is such that—

- (a) it is not required to be dismantled before its despatch to the transferee State and is not likely to lose its accuracy by reason of such despatch, it shall be known, for the purposes of this Chapter, as a weight or measure of the first category;
- (b) it is required to be dismantled before its despatch to the transferee State and re-assembled and installed for use in the transferee State, it shall be known, for the purposes of this chapter, as a weight or measure of the second category.

(2) Subject to the provisions of sub-section (1), the Central Government may specify, by rules made in this behalf, the classes of weights or measures which would fall in the first category or the second category, and may, from time to time, if the circumstances so require, alter the category in which any class of weight or measure has been specified.

(3) Weight or measure of the first category shall, before it is despatched to any transferee State be produced before the local Inspector in the transferor State and if such Inspector is, after verification of such weight or measure, satisfied that such weight or measure conforms to the standards established by or under this Act, stamp the same with such special seal as may be specified by rules made under this Act.

(4) A weight or measure of the second category shall not be verified and stamped in the transferor State but shall be verified and stamped, after its reassembly and installation for use, by the local Inspector in the transferee State.

(5) The fees for the verification and stamping of every weight or measure of—

(a) the first category shall be levied and collected by the transferor State;

(b) the second category shall be levied and collected by the transferee State; in accordance with such scales as may be specified by rules under this Act.

(6) A weight or measure, whether of the first or second category, shall not require periodical re-verification if it is exclusively intended for domestic use and is not used by any member of the medical profession in the course of such profession.

(7) No weight or measure, whether of the first or of the second category, shall be verified and stamped unless fees for such verification and stamping have been paid in accordance with the scales specified under sub-section (5).

**42. Weight or measure of the first category to be presumed to be correct throughout the territory of India.**—(1) Every weight or measure of the first category which is stamped with the special seal referred to in sub-section (3) of Sec. 41 shall be presumed to be correct throughout the territory of India and shall not be required, until its re-verification in the transferee State becomes due to efflux of time, to be verified or stamped in the transferee State :

Provided that where the local Inspector in the transferee State has any reason to believe that any weight or measure of the first category has lost its accuracy in transit or has, for any other reason, ceased to conform to the standards of weight or measure established by or under this Act, he may, for reasons to be recorded by him in writing, and communicated to the Controller of the transferor State through the controller of the transferor state,—

(a) verify such weight or measure; and

(b) if, on verification, such weight or measure is found to be inaccurate,—

(i) cause such adjustment as is necessary to be made so as to make it conform to the standards established by or under this Act, or

(ii) where he is of opinion that such adjustment is not possible to reject it and obliterate the stamp thereon :

Provided further that where any verification, adjustment or obliteration is made in exercise of the powers conferred by the foregoing proviso, no fee shall be charged for such verification, adjustment or obliteration.

(2) In computing the time when the re-verification of a weight or measure of the first category shall become due in the transferee State, the period during which such weight or measure remains unsold or undistributed in the transferee State, shall be excluded.

**43. Weight or measure of the first category not to be sold or used in any State unless it is stamped in the transferor State.**—No weight or measure of the first category shall be used, sold, purchased, delivered or otherwise transferred in any transferee State unless such weight or measure bears thereon the stamp made with the special seal referred to in sub-section (3) of Sec. 41.

**44. Weight or measures of the second category received from transferor State to be produced before the local Inspector of the transferee State.**—(1) Every person in a transferee State who receives or delivers for sale or use therein any weight or measure of the second category shall, after its re-assembly and installation for use, have such weight or measure verified and stamped by the local Inspector in the transferee State.

(2) The local Inspector in the transferee State shall verify every weight or measure of the second category and shall if he is satisfied that such weight or measure conforms to the standards established by or under this Act, stamp the same with the seal prescribed by or under the State law in force in the transferee State.

(3) For the avoidance of doubt, it is hereby declared that where any weight and measure of the second category is delivered or received in a State from any other State, not for the purpose of sale or use therein but for the transmission of such weight or measure to any other State, then, such other State shall be deemed, for the purposes of this Chapter, to be the transferee State in relation to such weight or measure and the provisions of sub-section (1) and sub-section (2) shall apply accordingly.

**45. Produce when any weight or measure is transferred from a transferee State to another State .—**Where any weight or measure, which being in use in a transferee State, is sent to, or delivered in, any other State for sale or use in such other State, then, such other State shall also be deemed to be the transferee State in relation to such weight or measure and the provisions of this Chapter shall, so far as may be, apply to the weight or measure sent to, or delivered in, such other State.

**46. Manufacturers, etc., who send any weight and measure to any other State to submit return to the Controller.—**Every manufacturer, dealer or other person in a transferor State, who sends to, or delivers in, any transferee State any weight or measure, whether of first or the second category, shall—

- (a) submit such periodical returns as may be prescribed, to the Controller of the transferor State with regard to such despatch, delivery or transfer and specify in such returns the particulars of the weight or measure which has been sent to or delivered in, the transferee State;
- (b) specify in such periodical returns the particulars of the person to whom such weight or measure has been sent, or delivered in the transferee State; and
- (c) forward a copy of such periodical returns to the Controller of the transferee State.

## PART V

### Import and Export of Weights and Measures

#### CHAPTER I

#### Registration of Exporters and Importers

**47. Persons exporting or importing any weight or measure to get themselves registered.—**(1) No dealer or manufacturer shall export or import any weight or measure unless he is registered under this section as such exporter or importer, as the case may be.

(2) Every person who intends to commence or continue business as an exporter or importer of any weight or measure shall make, within such time from the commencement of this Act as may be prescribed, an application for the inclusion of his name in the register to be maintained for the purpose

(3) The application referred to in sub-section (2) shall be made to the Director and every such application shall be made in such form, in such manner and on payment of such fees, not exceeding ten rupees, as may be prescribed.

(4) On receipt of an application referred to in sub-section (2), the Director shall, if he is satisfied after such inquiry as he may think fit, that it is expedient in the public interest so to do, include the name of the applicant in the register referred to in sub-section (2) and issue to the applicant a certificate to the effect that his name has been so included and send a copy of the said certificate to the Controller of Legal Metrology in the State in which such exporter or importer is carrying on his business.

(5) A certificate granted under sub-section (4) shall be valid for the period specified therein and may be renewed, from time to time, for such further period as may be prescribed.

## CHAPTER II

### Export and Import of Weights, Measures and Commodities in Packaged Form

**48. Conditions under which export of non-standard weights and measures and other goods may be made.**—(1) Subject to such conditions, limitations and restrictions as may be prescribed, the Central Government may allow the export of any weight or measure which has been made or manufactured exclusively for export with the previous permission of that Government notwithstanding that such weight or measure does not conform to the standard established by or under this Act.

(2) Where any commodity in packaged form is exported and the person to whom such export is to be made so requires, the exporter may, in addition to specifying the net contents of such package in terms of any standard unit of weight or measure established by or under this Act, also specify the weight or the net contents thereof in terms of such units of weight or measure as may be specified by the person to whom such commodity is to be exported.

(3) Notwithstanding anything contained elsewhere in this Act, in relation to any goods which are exported—

- (a) quotation of any price;
- (b) issue of any price list, invoice or cash memo;
- (c) indication of the weight or measure or number of net contents of any package on any label, carton or other thing;
- (d) expression of any dimension;

may be made in accordance with any other system of weight, measure or numeration if the person to whom if the person to whom the export is to be made so requires.

**46. Non-metric weight or measure not to be imported.**—(1) Save as otherwise provided in sub-section (2), no weight or measure, whether singly or as a part or component of any machine or machinery, shall be imported unless it conforms to the standards of weight or measure established by or under this Act.

(2) Where any commodity, machinery or any part or component of any machinery is imported from a country in which the metric system of weight or measure is not in force, or in which such system being in force, such commodity, machinery, part or component of any machinery has not been made or manufactured in accordance with such system, the importer shall, before making such import make an endeavour to obtain, on such commodity, machinery, part or component, and also on the drawings thereof, the weight or measurement thereof expressed in terms of the standard unit of weight or measure established by or under this Act :

Provided that where any weight or measure has not been expressed in terms of the standard unit of weight or measure established by or under this Act, on any commodity, machinery, part or component or on any drawings thereof the importer shall, within six months from the date of import, get the weight or measure thereof expressed on such commodity, machinery, part or component and on the drawings thereof in terms of the standard unit of weight or measure established by or under this Act.

## PART VI

### Offences and their Trial

**50. Penalty for use of non-standard weights or measures.**—Whoever uses any weight or measure or makes any numeration otherwise than in accordance with the standards of weight or measure or the standards of numeration, as the case may be, established by or under this Act, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to two years and also with fine.

**51. Penalty for contravention of Sec. 18.**—Whoever tampers with, or alters, in any way, any reference standard, secondary standard, or working standard except where such alteration is made for the correction of any error noticed therein on verification, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

**52. Penalty for contravention of Sec. 22.**—Except where any weight or measure is made or manufactured, with the permission of the Central Government, exclusively for export, every person who makes or manufactures any weight or measure which does not conform to the standards of weight or measure established by or under this Act, shall, where such offence is not punishable under any other law relating to weights and measures for the time being in force, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence with imprisonment for a term which may extend to three years and also with fine.

**53. Penalty for contravention of Sec. 23.**—Except where any weight or measure is made or manufactured, with the permission of the Central Government, exclusively for export, every person who makes or manufactures any weight or measure which bears thereon any inscription of weight, measure or number which does not conform to the standards of weight or measure or numeration established by or under this Act, shall, where such offence is not punishable under any other law relating to weights and measures for the time being in force, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence with imprisonment for a term which may extend to three years and also with fine.

**54. Penalty for contravention of Sec. 29.**—Whoever obstructs the Director or any person authorized to exercise the powers or discharge the functions of the Director (hereafter, in this Part referred to as the 'authorized officer') in the exercise of his powers or discharge of his functions as such Director or authorized officer, or with intent to prevent or deter the Director or such authorized officer from exercising his powers or discharging his functions, or in consequence of anything done or attempted to be done by the Director or such authorized officer in the lawful exercise of his powers or discharge of his functions as such, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years.

**55. Penalty for contravention of Sec. 32.**—Whoever, in the course of any inter-State trade or commerce, makes any transaction, deal or contract in contravention of the provisions of Sec. 32 shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

**56. Penalty for contravention of Sec. 33.**—Whoever, in the course of any inter-State trade or commerce, contravenes the provisions of Sec. 33 shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

**57. Penalty for contravention of Sec. 34.**—Whoever, in the course of any inter-State trade or commerce,—

- (i) sells, delivers, or causes to be sold or delivered to the purchaser any quantity or number of any article or thing, less than the quantity or number contracted for or paid for; or
- (ii) renders any service by weight, measure or number, less than the service contracted for or paid for; or
- (iii) demands, or causes to be demanded, or receives or causes to be received, while buying any article or thing, any quantity or number of goods in excess of the quantity or number contracted for or paid for; or
- (iv) obtains any service in excess of the service contracted for or paid or,

shall be punished with fine which may extend to five thousand rupees, and for the second or subsequent offence with imprisonment for term which may extend to five years and also with fine.

**58. Penalty for contravention of Sec. 35**—Whoever, being required by or under this Act so to do, without any reasonable excuse, omits or fails to maintain any record or register, or being required by the Director or the authorized officer, to produce any record or register for his inspection omits or fails, without any reasonable excuse, so to do shall be punishable with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.

**59. penalty for contravention of Sec. 36.**—Whoever, being required by Sec. 36 to submit the model of any weight or measure for approval, omits, or fails, without any reasonable excuse, so to do, shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

**60. Penalty for manufacture of weights or measures unless approval of model is in force.**—(1) Whoever makes or manufactures any weight or measure which is, or is intended to be, sold, distributed, delivered or otherwise transferred in the course of inter-State trade or commerce, shall, unless a certificate of approval of the model of such weight and measure granted under Sec. 36 is in force, be punished with imprisonment for a term which may extend to two years and shall also be liable to fine, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(2) Whoever, without any reasonable excuse, manufactures any weight or measure in accordance with an approved model with any material other than the material approved or recommended by the prescribed authority, shall be punished with imprisonment for a term which may extend to five years and also with fine.

**61. Penalty for contravention of Sec. 38.**—Whoever makes or manufactures any weight or measure without complying with the requirements of Sec. 38 shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence with imprisonment for a term which may extend to five years and also with fine.

**62. Penalty for sale, etc. of unverified weights or measures in the course of inter-State trade or commerce.**—Whoever, in the course of inter-State trade or commerce, sells, distributes, delivers or otherwise transfers any weight or measure which does not conform to the standards of weight or measure established by or under this Act or which has not been duly verified under any other law relating to weights and measures for the time being in force, shall be punished with fine which may extend to ten thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to seven years and also with fine.

**63. Penalty for contravention of Sec. 39.**—Whoever, in the course of inter-State trade or commerce, sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred any commodity in a packaged form which does not conform to the provisions of this Act or any rule made thereunder, shall be punished with fine which may extend to five thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

**64. Penalty for cotravention of Sec. 47.**—Whoever exports or imports any weight or measure without being registered under this Act shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.

**65. Penalty for contravention of Sec. 48.**—Every person who exports any weight or measure or commodity in packaged form which does not conform to the standards of weight or measure established by or under this Act shall, except where such export has been made with the previous approval of the Central Government, be punished with fine which may extend to five thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

**66. Penalty for contavention of Sec. 49.**—Whoever contravenes, without any reasonable excuse, the provisions of Sec. 49, shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

**67. Penalty where no specific penalty is provided.**—Whoever contravenes any provisions of this Act for the contravention of which no punishment has been separately provided in any of the provisions of this Act, shall be punished with fine which may extend to two thousand rupees.

**68. Presumption to be made in certain cases.**—(1) If any person in the course of inter-State trade or commerce, uses, or causes to be used, sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred, any false or unverified weight or measure, it shall be presumed, until the contrary is proved, that he had done so with the knowledge that the weight or measure was a false or unverified weight or measure.

(2) If any person makes or manufactures or has in his possession custody or control any false or unverified weight or measure in such circumstances as to indicate that such weight or measure is likely to be used in the course of inter-State trade or commerce, it shall be presumed, until the contrary is proved, that such false or unverified weight or measure was made, manufactured, possessed, held or controlled by such person with the knowledge that the same would be, or is intended to be, used in the course of inter-State trade or commerce.

**69. Penalty for personation of officials.**—Whoever personates, in any way, the Director, or any authorized officer, shall be punished with imprisonment for a term which may extend to three years.

**70. Penalty for giving false information or false returns.**—(1) Whoever gives information to the Director or the authorized officer which he may require or ask for in the course of his duty and which such person either knows or has reason to believe to be false shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being required by or under this Act so to do, submits a return which is false in material particulars, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

**71. Vexatious actions.**—(1) An authorized officer who knows that there are no reasonable grounds for so doing, and yet—

- (a) searches, or causes to be searched, any house, conveyance or place; or
- (b) searches any person; or
- (c) seizes any weight, measure or other moveable property,

shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

(2) If a local Inspector as defined in Sec. 40,—

- (a) without any reasonable cause verifies any weight or measure of first category within the meaning of Sec. 41,
- (b) without any reasonable cause obliterates any stamp on any such weight or measure,

in contravention of the provisions of the first proviso to Sec.42, he shall, for every such offence be punished with imprisonment for a term which may extend to one year, or with which extend to two thousand rupees, or with both.

**72. Cognizance of offence, etc.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

<sup>1</sup>[(a) no Court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing made by—

- (i) Director;
- (ii) any other authorized officer;
- (iii) any person aggrieved; or
- (iv) a recognised consumer association whether the person aggrieved is a member of such association or not,

*Explanation.*—For the purposes of this clause 'recognised consumer association' means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or any other law for the time being in force.]

- (b) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;
- (c) an offence punishable under Sec. 50, Sec.52, Sec. 53, Sec. 56, Sec. 58, Sec. 60, Sec. 63, Sec.64, Sec.65 or Sec.66, may be tried summarily by a Magistrate and no sentence of in imprisonment for a term exceeding one year shall be passed in the case of any conviction for an offence which is summarily tried under this section.

**73. Compounding of offences.**—Any offence punishable under Sec. 50 Sec. 55, Sec. 56, Sec. 57, Sec. 58, Sec. 59, Sec. 60, Sec. 63, Sec. 64, Sec. 65, Sec. 66, or Sec. 67 may, either before or after the institution of the prosecution, be compounded by the Director or such other officer as may be specially authorized by him in this behalf, on payment for credit to the Government of such sum as the Director or such other may specify :

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1. Subs. by Act No.75 of 1986, Sec.2 (w.e.f. 1st July, 1987, vide G.S.R. 616(E), dated 1st July, 1987)

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence, committed by him, was compounded.

*Explanation.*—For the purpose of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Where an offence has been compounded under sub-section(1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be discharged forthwith.

(4) No offence under this Act shall be compounded except as provided by this section.

**74. Offences by compaines and power of Court to publish name, place of business, etc. of companies convicted.**—(1) If an offence under this Act is committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

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

(2) Notwithstanding anything contained in sub-section (1), where an offence 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 the neglect on the part of, any director, manager, secretary or other officer, such director, manager, secretary or other officer shall also be deemed to be guilty and that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where any company is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the Court may direct.

(4) No publication under sub-section (3) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal having been preferred has been disposed of.

(5) The expenses of any publication under sub-section (3) shall be recoverable from the company as if it were a fine imposed by the Court.

*Explanation.*—For the purposes of this section,—

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

(b) 'director', in relation to a firm, means a partner in the firm.

**75. Provisions of Indian Penal Code not to apply to any offence punishable under this Act.**—The provisions of the Indian Penal Code, 1860 (45 of 1860), in so far as such provisions relate to offences with regard to weights and measures, shall not apply to any offence which is punishable under this Act.

## PART VII

### Training Institute

**76. Establishment of a Training Institute and provisions for training thereat.**—(1) There shall be established by the Central Government, at such place as it may think fit, an Institute to be known as the 'Indian Institute of Legal Metrology' (hereafter referred to as the 'Institute') for imparting training in legal Metrology and other allied branches of knowledge.

(2) The management and control of the Institute, which shall vest in the Central Government, shall be carried on in accordance with such regulation as may be made by the Central Government.

(3) The Central Government shall provide the Institute with such teaching staff and other employees, and with such equipments and other facilities as it may think, to enable the Institute to function effectively as an institution for imparting adequate training in legal metrology and other allied branches of knowledge.

(4) The courses and curricula for training at the Institute and the period for which the training may be imparted thereat for each course shall be such as may be prescribed.

(5) The Central Government shall prescribe the minimum qualifications which a person shall possess in order to be eligible for admission to the Institute for receiving training thereat and different qualifications may be prescribed for different courses of training imparted at the Institute.

(6) The Central Government and every State Government may depute, in such branches as may be convenient to the Institute, employees of, or above the rank of an Inspector for receiving training at the Institute and the Central Government may also arrange for the training, at the Institute, of such other persons as it may think fit.

(7) The Institute may,—

(a) carry out such researches in legal metrology and other allied branches of knowledge as may be entrusted to it by the Central Government, and

(b) hold such seminars, meetings or other gatherings as it may think fit.

**77. Training at other places.**—Where the Central Government is of opinion that in addition to the training imparted at the Institute, it is necessary to impart to an employee, not below the rank of an Inspector further specialised training which is not provided for at the Institute, it may send such employee to such other place, authority or institution as it may think fit for receiving such specialised training.

## PART VIII

### Miscellaneous

**78. Survey and statistics.**—The Central Government shall make, or cause to be made, such surveys and collect, or cause to be collected, such statistics as it may consider necessary with a view to ascertaining the extent to which any standard of weight, measures or numeration established by or under this Act has been implemented in any area or in relation to any class of undertakings, users or goods and it shall be the duty of every person using weight or measure or making any numeration to render such assistance as the person making such survey or collecting such statistics may require.

**79. Conversion of non-metric weights and measures into standard units of weights or measures.**—(1) The value expressed in terms of any unit of weight or measure other than in terms of the standard units of weight or measure may be converted into the value expressed in terms of a standard unit of weight or measure at the rate specified in the Schedule.

(2) All references in any enactment or in any notification, rule or order made under any enactment, or in any contract, deed or other instruments, for the time being in force, to a value expressed in terms of any unit of weight, measure or numeration other than that of a standard unit of weight, measure or numeration shall be construed as references to that value expressed in terms of standard units of weight, measure or numeration, as the case may be, converted at the rates specified in the Schedule.

**80. Non-metric weight or measure not to be mentioned in any document, etc. or to form the basis of any contract after the commencement of this Act.**—(1) No unit of weight, measure or remuneration shall, after the commencement of this Act, be stated in any enactment, notification, rule, order, contract, deed or other instrument in terms of any unit of weight, measure or numeration other than of a standard unit of weight, measure or numeration.

(2) On and from the commencement of this Act, no weight, measure or number other than the standard weight, measure or number shall be used in, or form the basis of, any contract or other agreement in relation to any inter-State or international trade or commerce :

Provided that in relation to any goods which are exported, the weight, measure or number of such goods may be indicated thereon, or in any contract in addition to the standard units of weight, measure or numeration, in accordance with any other system of weight, measure or numeration if the person to whom the export is to be made so requires.

(3) Any contract or other agreement in contravention of the provisions of sub-section (2) shall be void.

(4) No written record of the results of any measurement shall be maintained in any unit other than the standard unit weight, measure or numeration established by or under this Act.

**81. Appeals.**—(1) Subject to the provisions of sub-section (2), any person aggrieved by an order made under Sec. 30 or Sec. 36 may prefer an appeal against such order to the Director, or where the order has been made by the Director, to the Central Government.

(2) Every such appeal shall be preferred within sixty days from the date on which the impugned order was made :

Provided that the appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, permit the appellant to prefer the appeal within a further period of sixty days.

(3) On receipt of any such appeal, the appellate Authority shall, after giving the parties to the appeal a reasonable opportunity of being heard and after making such enquiry as it deems proper make such order, as it may think fit, confirming, modifying or reversing the order appealed against or may send back the case with such direction as it may think fit for a fresh order after taking additional evidence, if necessary.

(4) Every appeal shall be preferred on payment of such fee, as may be prescribed.

(5) The Central Government may, on its own motion or otherwise, call for and examine the record of any proceeding (including a proceeding in appeal) in which any decision or order has been made, for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it may think fit :

Provided that no decision or order shall be varied under this sub-section so as to prejudicially affect any person unless such person has been given a reasonable opportunity of showing cause against the proposed action.

**82. Levy of fees.**—(1) The Central Government may, by rules made under Sec. 83, specify such fees, not exceeding—

- (a) five thousand rupees, for the approval of the model of any weight or measure intended to be made or manufactured for sale, purchase, distribution or delivery in the course of any inter-State trade or commerce;
- (b) one thousand rupees, for the verification and stamping of a weight or measure of the first category within the meaning of Sec. 41;
- (c) five thousand rupees, for the verification and stamping of a weight or measure of the second category within the meaning of Sec. 41 ;
- (d) one rupee for every 100 words or less, for the grant of copies of any document, not being a document of a confidential nature;
- (e) ten rupees for the registration of exporters or importers of weights and measures;
- (f) twenty-five rupees for any appeal preferred under this Act.

(2) No approval, verification or stamping shall be made, copy granted, registration made or appeal entertained unless the fee prescribed therefor under sub-section (1) has been made.

**83. Power to make rules.**—(1) The Central Government may by notification, 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 all or any of the following matters, namely :

- (a) supplementary, derived, special or other units of weight or measure, standard symbols or definitions, as recommended by the General Conference on Weights and Measures or the International Organization of Legal Metrology;
- (b) multiples and sub-multiples of and physical constants, ratios or co-efficients in relation to units of weight or measure, as recommended by the General Conference on Weights and Measures or the International Organization of Legal Metrology;
- (c) denominations of decimal multiples and sub-multiples of numerals and the manner in which they shall be written;
- (d) periodical intervals at which the accuracy of the objects or equipments referred to in sub-section (1) or sub-section (2) of Sec. 16 shall be certified;
- (e) the manner in which and the conditions under which every national prototype, referred to in Sec. 15, and every object or equipment referred to in Sec 16, shall be kept;
- (f) the manner in which and the conditions under which every reference standard, secondary standard or working standard shall be kept;
- (g) the place at which, the authority by which, the manner in which, and the periodical intervals at which, every reference standard, secondary standard and working standard shall be verified and authenticated;

- (h) the custody in which every reference standard, secondary standard, or working standard shall be kept;
- (i) the physical characteristics, configuration, constructional details, materials, equipment, performance, tolerances, methods or procedures of tests, in relation to weights or measures;
- (j) the conditions, limitations and restrictions under which non-standard weights or measures may be manufactured for export or may be exported;
- (k) the manner of disposal of any commodity which is subject to speedy or natural decay;
- (l) class of goods or undertakings in relation to which, or class of users in relation to whom, no transaction, dealing or contract shall be made or had except by specified weight, measure or number;
- (m) registers and records to be maintained by persons referred to in Sec. 35;
- (n) the authority to whom models are to be submitted for approval;
- (o) the number of models, drawings and other information which are to be submitted for the approval of the model;
- (p) the condition under which performance of any model is to be tested;
- (q) the manner in which the number of model and certificate shall be inscribed on every weight or measure;
- (r) the manner of declaration of the contents or a package and specification of the unit of weight, measure or number in accordance with which the retail sale price shall be declared on the package;
- (s) the standard quantities or number in which commodities may be packed;
- (t) the capacity up to which a package shall be filled;
- (u) the reasonable variations in the net contents of a package commodity which may be caused by the method of packing or ordinary exposure;
- (v) the classes of weights or measures which would fall in the first category or the second category;
- (W) the special seal by which weights or measures of the first category shall be stamped;
- (x) periodical returns to be submitted by every manufacturer, dealer or other person in a transferor State;
- (y) the form and manner in which and the time within which applications for inclusion of a name in the the register of exporters and importers of weights and measures shall be made;
- (z) the period for which certificate or registration of an exporter or importer of weights or measures may be renewed;
- (z-a) the courses and curricula for, and the period of, training at the Institute;
- (z-b) the minimum qualifications for admission to the Institute;

(z-c) the scales in accordance with which fees may be collected under Sec. 82;

(z-d) any other matter which is required to be, or may be, prescribed.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to two thousand rupees.

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

**84. Continuance of certain weights and measures during transitional period.—**(1) Notwithstanding that this Act has come into force in respect of any area or class of goods or undertakings or class of weights and measures or users of weights and measures in the State of Sikkim, the Central Government may, by notification, permit the continuance of the use, after such commencement, in respect of that area or class of goods or undertakings, or for classes of users of weights and measures, of such weights and measures, in addition to the standard weights or measures, and for such period, not exceeding five years, as may be specified in the notification.

(2) Nothing in sub-section (1) shall be deemed to empower the Central Government to issue any notification in respect of any weight or measure which was not in use in the State of Sikkim immediately before the commencement of this Act.

**85. Repeal and savings.—**(1) The Standards of Weights and Measures Act, 1956 (89 of 1956), is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897), with respect to repeals, any notification, rule or order made under the Standards of Weights and Measures Act, 1956 (89 of 1956), shall, if in force, at the commencement of this Act, continue to be in force and have effect as if made under the corresponding provisions of this Act.

**THE SCHEDULE**

(See Sec. 79)

## (1) Length:

|                      |                   |
|----------------------|-------------------|
| 1 inch               | = 0.0254 metre    |
| 1 foot               | = 0.3048 metre    |
| 1 yard               | = 0.9144 metre    |
| 1 mile               | = 1609.344 metres |
| 1 nautical mile (UK) | = 1853.18 metres  |

*For Survey of India only*

|        |                   |
|--------|-------------------|
| 1 foot | = 0.3047996 metre |
|--------|-------------------|

## (2) Area :

|               |                                  |
|---------------|----------------------------------|
| 1 square inch | = 0.00064516 square metre        |
| 1 square foot | = 0.09290304 square metre        |
| 1 square yard | = 0.83612736 square metre        |
| 1 square mile | = 2 589 988.110336 square metres |

*For Survey of India only*

|               |                          |
|---------------|--------------------------|
| 1 square foot | = 0.092 903 square metre |
| 1 acre        | = 4046.8561 square metre |
|               | = 0.404 685 61 hectare   |

## (3) Volume :

|                |                                 |
|----------------|---------------------------------|
| 1 cubic inch   | = 0.000 016 387 064 cubic metre |
| 1 cubic foot   | = 0.028 316 846 392 cubic metre |
| 1 cubic yard   | = 0.764 554 857 984 cubic metre |
| 1 gallon (UK)  | = 0.004546 087 cubic metre      |
| 1 gallon (USA) | = 0.003 785 411 784 cubic metre |

|                          |                                 |
|--------------------------|---------------------------------|
| 1 bushel (USA)           |                                 |
| (2150. 42 cubic inches)  | = 0.035 239 070 17 cubic metre  |
| 1 barrel (for petroleum) | = 0.158 987 294 928 cubic metre |
| 1 acre-foot              | = 1233.482 cubic metres         |

(4) Mass :

|                        |                             |
|------------------------|-----------------------------|
| 1 grain                | = 0.000 064 789 91 kilogram |
| 1 tola                 | = 0.011 663 803 8 kilogram  |
| 1 seer                 | = 0.933 184 304 kilogram    |
| 1 maund                | = 37.324 172 16 kilograms   |
| 1 ounce (troy)         | = 0.031 103 476 8 kilogram  |
| 1 pound (avoirdupois)  | = 0.453 593 37 kilogram     |
| 1 hundred weight (UK)  | = 50.802345 44 kilograms    |
| 1 hundred weight (USA) | = 45. 359 237 kilograms     |
| 1 ton (UK)             | = 1016.046 908 8 kilograms  |
| 1 ton (USA)            | = 907.184 74 kilograms      |

(5) Temperature :

|                                 |  |
|---------------------------------|--|
| 1 degree Fahrenheit (unit)      | = 5/9 kelvin or degree (celsius)         |
| temperature in degrees          | = 5/9( $t^{\circ} F + 459.67$ ) kelvins  |
| Fahrenheit<br>( $t^{\circ} F$ ) | = 5/9 ( $t^{\circ}F-32$ ) degree celsius |

(6) Force :

|               |                               |
|---------------|-------------------------------|
| 1 pound-force | = 4.448 221 615 260 5 newtons |
| 1 poundal     | = 0.138 254 376 newton        |

(7) Pressure :

|                              |                            |
|------------------------------|----------------------------|
| 1 barometric inch of mercury | = 3386.388 640 341 pascals |
| 1 inch of water              | = 249.088 91 pascals       |

(8) Energy :

1 British thermal unit = 1055.05585262 joules

1 foot-pound-force = 1.35 817 948 331 400 4 joules

(9) Power :

1 horse power (UK) = 745.699 871 582 270 22 watts

1 horse -power (European) = 735.498 75 watts

1 ton of refrigeration = 3516.852 842 67 watts

# THE STANDARDS OF WEIGHTS AND MEASURES (ENFORCEMENT) ACT, 1985

[No. 54 of 1985, dt, 4.9.1985]

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*An Act to provide for the enforcement of the standards of weights and measures established by or under the Standards of Weights and Measures Act, 1976, and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:-

## CHAPTER I PRELIMINARY

### 1. Short title, extent and commencement

(1) This Act may be called the Standards of Weights and Measures (Enforcement) Act, 1985.

(2) It extends to the whole of India.

(3) It shall come into force in a State on such date as the State Government may, by notification, appoint, and different dates may be appointed for different provisions thereof, in or in relation to, different-

(a) areas in the State ; or

(b) classes of undertakings in the State; or

(c) classes of goods produced, sold, distributed, marketed or transferred in the State; or

(d) classes of services rendered in the State ;or

(e) classes of weights and measures manufactured, sold, distributed, marketed, transferred, repaired or used in the State ; or

(f) classes of users of weights and measures in the State,

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of this Act, or, as the case may be, of that provision, in such areas or in respect of such classes of undertakings, goods, services, classes of weights and measures or classes of users of weights and measures, in relation to which, or whom, this Act has been brought into force.

### 2. Act not to apply to inter-State trade or commerce

Nothing in this Act shall apply to any inter-State trade or commerce in-

(a) any weight or measure, or

(b) any other goods which are sold, delivered or distributed by weight, measure or number.

### 3. Definitions

In this Act, unless the context otherwise requires,-

- (a) "Additional Controller" includes a Joint Controller, Deputy Controller and an Assistant Controller appointed under section 5;
- (b) "authorised seal or stamp" means a seal or stamp made under, and in accordance with, the provisions of this Act;
- (c) "Controller" means the Controller of Legal Metrology appointed under section 5;
- (d) "Counterfeit", in relation to a seal or stamp, means a seal or stamp which is so made as to resemble an authorised seal or stamp, as the case may be, intending by that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

*Explanation I* : It is not essential that the resemblance of the counterfeit seal or stamp to the authorised seal or stamp should be exact.

*Explanation II* : When a person causes a counterfeit seal or stamp to resemble an authorised seal or stamp and the resemblance is such that if a person relies on such seal or stamp, he might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the seal or stamp to resemble the authorised seal or stamp intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised;

- (e) "heap " means any unit of a commodity for sale where such sale is intended to be made without any weighment or measurement or, where the sale is made by number, without counting the number;
- (f) "Inspector" means a person who is appointed as such under section 5, by whatever name called;
- (g) "Mint" means a Mint of the Central Government;
- (h) "notification" means a notification published in the Official Gazette;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "protection" means the utilization of any weight or measures, or any reading obtained with the help of any weight or measure, for the purpose of determining whether or not any step is required to be taken to safeguard the well-being of any human being or animal, or to protect any commodity, vegetation or thing, whether individually or collectively ;
- (k) "Standards Act" means the Standards of Weights and Measures Act, 1976 (60 of 1976).
- (l) "Standard weight or measure" means a weight, measure or number which conforms to the standards established in relation thereto by or under the Standards Acts;
- (m) "State Act" means the Act enacted by the Legislature of a State for the enforcement of the standards established by or under the Standards of Weights and Measures Act, 1956 (89 of 1956).
- (n) "State Government", in relation to a Union Territory, means the Administrator thereof;
- (o) words and expressions used in this Act and not defined but defined in the Standards Act shall have the meanings respectively assigned to them in that Act.

#### **4. Provisions of this Act to over ride the provisions of any other law, except the Standards Act**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act and the Standards Act or in any instrument having effect by virtue of any enactment other than this Act or the Standards Act.

### **CHAPTER II APPOINTMENT OF CONTROLLER, INSPECTORS AND OTHER OFFICERS**

#### **5. Appointment of Controller, Inspectors, and other officers and staff**

(1) The State Government may, by notification, appoint a Controller of Legal Metrology for the State and as many Additional, Joint, Deputy or Assistant Controllers, Inspectors, and other officers and staff as may be necessary for exercising the powers, and efficiently discharging the duties, conferred or imposed on them by or under this Act or the Standards Act.

(2) Every Additional Controller, Inspector or other officer, appointed under sub-section (1), shall exercise such powers and discharge such functions of the Controller as the State Government may by notification, authorize in this behalf.

(3) The Controller may, by general or special order, define the local limits within which each additional Controller, Inspector or other officer, appointed under sub-section (1), shall exercise his powers and discharge the duties conferred or imposed on him by or under this Act.

(4) Subject to the provisions of this Act, every Additional Controller, Inspector and other officer appointed under sub-section (1), shall exercise his powers and discharge the duties of his office under the general superintendence, direction and control of the Controller and shall exercise those powers and discharge those duties in the same manner and with the same effect as if they had been conferred or imposed on him directly by or under this Act and not by way of authorization.

(5) The Controller and every Additional Controller and other officer authorised by or under this Act may also-

(a) perform all or any of the function of, and

(b) exercise or any of the powers conferred by this Act or any rule or order made thereunder, on,

an Inspector.

#### **6. Power to authorise Inspector to adjust weights or measures**

Where the Controller is of opinion that it is necessary so to do, he may, by an order in writing, authorise any officer not below the rank of an Inspector, to adjust any weight or measure in any area within the local limits of his jurisdiction.

#### **7. Controller and officers appointed under this Act to be public servants**

(a) The Controller and every Additional Controller, and every Inspector, and

(b) every other officer authorised by or under this act to perform any duty, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860)

#### **8. Protection of action taken in good faith**

No suit, prosecution or other legal proceeding shall lie against the Controller, any Additional Controller, Inspector or any other person authorised by or under this Act to exercise any power or to

perform any duty in respect of anything which is in good faith done or intended to be done under this Act or the Standards Act or any rule or order made under either of the Acts aforesaid.

### **CHAPTER III**

#### **GENERAL PROVISIONS IN RELATION TO STANDARD WEIGHTS AND MEASURES**

##### **9. Prohibition of use of weights and measures other than standard weights and measures**

(1) Notwithstanding any custom, usage or method of whatever nature, no weight or measure, other than the standard weight or measure, shall be used or kept in any premises in such circumstances as to indicate that such weight or measure is intended or is likely to be used, for any weighing or measurement.

(2) On and from the commencement of this Act, no weight, measure or number, other than the standard weight or measure shall be used in, or form the basis of any contract or other agreement in relation to any trade, commerce, production or protection.

(3) Any contract or other agreement, which contravenes the provisions of sub-section (2), shall be void.

##### **10. Use of weights only or measures only in certain cases**

(1) The State Government may, by rules made in this behalf, direct that in respect of the classes of goods, service or undertaking or users specified therein-

- (a) no transaction, dealing or contract shall be made or had, or
- (b) no industrial production shall be undertaken, or
- (c) no use for protection shall be made,

except by such weight, measure or number as may be specified therein.

(2) Any rule made under sub-section (1) shall take effect in such area, from such future date and subject to such conditions, if any, as may be specified therein.

##### **11. Prohibition of quotation, etc., otherwise than in terms of standard weight or measure**

Except where he is permitted under the Standards Act so to do, no person shall, in relation to any goods or things which sold, transferred, distributed or delivered, or any service rendered-

- (a) quote, or make announcement of, whether by word of mouth or otherwise, any price or charge, or
- (b) issue or exhibit any price list, invoice, cash memo or other document, or
- (c) mention any weight or measure in any advertisement, poster or other document, or
- (d) indicate the weight, measure or number of the net contents of any package on the package itself or on any label, carton or other thing, or
- (e) express, in relation to any transaction, industrial production or protection, any quantity or dimension, otherwise than in accordance with the standard weight or measure.

## CHAPTER IV

### CUSTODY AND VERIFICATION OF STANDARD EQUIPMENTS

#### 12. Custody and verification of reference standards

Every reference standard shall be kept at such place and in such custody as may be prescribed, and no such reference standard shall be deemed to be a reference standard and shall be used as such unless it has been verified, authenticated and maintained in accordance with the rules made under the Standards Act.

#### 13. Preparations of secondary and working standards

The State Government may cause to be prepared at the metrological wing of the mint at Bombay, as many sets of secondary standards or working standards as it may think necessary :

PROVIDED that where the mint intimates the State Government in writing that it is unable to prepare any secondary standard or working standard, that government may cause such secondary standard or working standard to be prepared by such organization as the Central Government may, on a reference made to it by the State Government, by notification, specify in this behalf.

#### 14. Verification, stamping and custody of secondary or working standards

(1) Every secondary standard or working standard referred to in section 13, shall conform to the standards established by or under the Standards Act and shall be verified-

- (a) in the case of a secondary standard at any one of the places where reference standards are maintained, against the appropriate reference standard;
- (b) in the case of a working standard at any one of the places where secondary standards are maintained, against the appropriate secondary standard.

in such manner and at such periodical intervals as may be specified by or under the Standards Act and shall, if found on such verification to conform to the standards established by or under that Act, be stamped.

(2) Where any secondary standard or working standard is stamped under sub-section (1), a certificate shall be separately issued showing the date on which such weight or measure was stamped.

(3) Every verification and stamping referred to in sub-section (1) shall be made by such person or authority as may be specified by or under the Standards Act.

(4) A secondary standard or working standard which is not verified and stamped in accordance with the provisions of sub-section (1) and sub-section (3) shall not be deemed to be a secondary standard or working standard, as the case may be, and shall not be used for the verification of any working standard or, as the case may be, for the verification of any weight or measure.

(5) Every verified secondary standard and every verified working standard shall be kept at such place and in such custody as may be prescribed.

#### 15. Secondary or working standard which may not be stamped

- (1) Where the state Government is of opinion that by reason of the size or nature of any

secondary standard or working standard, it is not desirable or practicable to put a stamp thereon, it may direct that instead of putting a stamp on such secondary standard or working standard, a certificate may be issued to the effect that such secondary standard, or working standard conforms to the standards established by or under the Standards Act and every secondary standard or working standard so certified shall be deemed to have been duly stamped under this Act on the date on which such certificate was issued.

(2) Every certificate referred to in sub-section (1) shall be in such form as may be prescribed and shall contain such details as to enable a clear identification of the weight or measure to which it relates.

## **CHAPTER V**

### **REGISTRATION OF USERS OF WEIGHTS AND MEASURES**

#### **16. Persons using weights or measures for transaction or industrial production or of protection to get themselves registered.**

No person, not being an itinerant vendor, shall use any weight or measure in any transaction or for industrial production or for protection unless he is registered in accordance with the provisions of this Chapter.

#### **17. Procedure of registration**

(1) Every person, who intends to commence, or carry on, the use of any weight or measure in any transaction or for industrial production or for protection, shall make, within such time and containing such particulars as may be prescribed, an application for the inclusion of his name in a register to be maintained for the purpose (hereinafter in this section referred to as the "Register of Users").

(2) The Register of Users shall be maintained in such form and in such manner as may be prescribed.

(3) The application referred to in sub-section (1) shall be made to the Controller or to such other person as the Controller may, be general or special order in writing, authorise in this behalf and every such application shall be made in such form, in such manner and on payment of such fee as may be prescribed.

(4) On receipt of the application referred to in sub-section (1), the controller or the person authorised by him shall include the name of such person in the register of users and issue to the applicant a certificate to the effect that his name has been so included.

(5) A Certificate issued under sub-section (4) shall be valid for the period specified therein and may be renewed from time to time for such further period and on payment of such fee as may be prescribed.

#### **18. Punishment for non-registration**

Whoever uses, after the expiry of the period prescribed sub-section (1) of section 17, any weight or measure in any transaction or for industrial production or for protection shall, unless he is registered in accordance with the provisions of this Chapter, be punishable with fine which may extend to five hundred rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine, or with both.

## CHAPTER VI

### MANUFACTURE, REPAIR OR SALE OF WEIGHTS OR MEASURES

#### 19. Prohibition on the manufacture, repair or sale of weights or measures without licence

(1) No person shall make, manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure unless he holds a valid licence issued in this behalf by the Controller authorizing such person to do so ;

PROVIDED that a person who bona fide repairs any weight or measure owned and possessed by him shall not be required to take out a licence referred to in this sub-section.

(2) Every licence issued under this section-

(a) shall be-

(i) in such form,

(ii) issued on payment of such fees, and

(iii) valid for such period,

as may be prescribed,

(b) may be renewed from time to time, and

(c) may contain such conditions and restrictions as may be prescribed.

(3) Every licence issued under the State Act shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity, or until the cancellation thereof, whichever is earlier, and may be renewed under this Act after the expiry of the period of its validity, if an application for such renewal is made in the prescribed form at least one month before the expiry of the period of validity of the licence.

(4) Every person who intends to commence business, after the commencement of this Act, as a maker, manufacturer, repairer or seller of any weight or measure, shall make an application in such form and on payment of such fees as may be prescribed, for the issue of a licence to him, and every licence so issued may be renewed if an application for its renewal, accompanied by such fee as may be prescribed, is made by such person in the prescribed form at least one month before the expiry of the period of its validity.

(5) The Controller may, if he is satisfied that the maker, manufacturer, repairer or seller, as the case may be, of any weight or measure was prevented by sufficient cause from making, an application for the renewal of his licence before the expiry of the period of the validity thereof, permit him to make the application within a further period of one month from the date of expiry of the period of such validity, on payment by him of such further fee, not exceeding the fee which is payable for the issue of the licence.

(6) No application for the issue or renewal of a licence shall be rejected unless-

(a) the applicant or, as the case may be, the holder of the licence has been given a reasonable opportunity of showing cause against the proposed action, and

(b) the Controller is satisfied that -

(i) the application has made not been made within the time specified in this section, or

- (ii) the applicant has made any statement in, or in relation to, the application for the issue or renewal of the licence which is incorrect or false in material particulars, or
- (iii) the applicant has contravened any provision of the Standards Act or of any State Act or of this Act or of any rule or order made under the Standards Act, State Act or this Act,

(7) The Controller may require every repairer licensed under this Act to furnish to the State Government security for such sum, not exceeding two hundred rupees, as may be prescribed.

(8) Nothing contained in this section shall apply to the sale by user (who is not a maker, manufacture, dealer or repairer) of any weight or measure;

PROVIDED that no sale of any weight or measure of the prescribed description shall be made except with the written permission of the Controller.

(9) Every licence issued or renewed under this Act shall be displayed in a conspicuous place in the premises where the licensee carries on his business.

## **20. Suspension and cancellation of licence**

(1) The Controller may, if he has any reasonable cause to believe that the holder of any licence issued, renewed or continued under this Act has made any statement in, or in relation to, any application for the issue, renewal or continuance of the licence, which is incorrect or false in any material particular or has contravened any provision of the Standards Act or any State Act or this Act or any rule or order made thereunder, suspend such licence, pending the completion of any inquiry or trial against the holder of such licence.

PROVIDED that no such licence shall be suspended unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action;

PROVIDED FURTHER that were the inquiry or trial referred to in this sub-section is not completed within a period of three months from the date of suspension of a licence, such suspension shall, on the expiry of the period aforesaid, stand vacated.

(2) The Controller may, if he is satisfied, after making such inquiry as he may think fit, that the holder of a licence has made a false or incorrect statement of the nature referred to in sub-section (1), or has contravened any law or order referred to in that sub-section, cancel such licence ;

PROVIDED that no such license shall be cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(3) Every person whose licence has been suspended shall, immediately after such suspension, stop functioning as such licensee and shall not resume business as such licensee until the order of such suspension has been, or stands, vacated.

(4) Every licensee whose licence has been suspended or cancelled shall, after such suspension or cancellation, as the case may be, surrender such licence to the authority by which such license was issued.

(5) Every licensee whose licence has been cancelled shall, within a period of thirty days from the date of such cancellation, or within such further period not exceeding three months from such date, as the Controller may, on sufficient cause being shown, allow, dispose of the weights or measures which were in his possession, custody or control on the date of such cancellation and in the event of his failure to do so, the Controller or any other officer authorised by him, in writing in this behalf, may seize and dispose of the same and distribute the proceeds thereof in such manner as may be prescribed.

## **21. Manufacture of weights or measures**

Save as otherwise provided in the Standards Act, no person shall,-

- (a) make or manufacture any weight or measure unless such weight or measure conforms to the standards established by or under the Standards Act ;
- (b) make or manufacture any weight or measure with indications thereon of any weights or measures in accordance with any unit other than the units of weight or measure specified by or under the Standards Act.

## **22. Prohibition of sale or use of unstamped weights or measures**

No weight or measure shall be sold, or offered, exposed or possessed for sale, or used or kept for use in any transaction or for industrial production or for protection unless it has been verified and stamped :

PROVIDED that nothing in this section shall apply to any weight or measure which has been initially verified and stamped with a special seal referred to in sub-section (3) of section 41 of the Standards Act.

## **23. Manufacturer, etc, to maintain records and registers**

(1) Every maker, manufacturer, repairer or dealer and every person using any weight or measure in any transaction or for industrial production or for protection shall maintain such record and registers as may be prescribed, and, if required so to do by an Inspector, shall produce such records and registers before the Inspector for inspection.

(2) Notwithstanding anything contained in sub-section (1), if the controller is of opinion that having regard to the nature of volume of the business carried on by any maker, manufacturer, dealer, repairer or user of any weight or measure, it is necessary so to do, he may, by order, exempt such maker, manufacturer, dealer, repairer or user from the operation of sub-section (1).

## **CHAPTER VII**

### **VERIFICATION AND STAMPING OF WEIGHTS OR MEASURES**

## **24. Verification and stamping of weights or measures**

(1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measures is being, or is intended or likely to be, used by him in any transaction or for industrial production or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf ( hereinafter referred to as the specified place or specified time), on payment of such fees as may be prescribed.

(2) Every weight or measure referred to in sub-section (1) shall be re-verified at such periodical intervals as may be prescribed.

*Explanation :* For the removal of doubts it is hereby declared that no periodical re-verification shall be necessary in relation to any weight or measure which is used exclusively for domestic purposes.

(3) Every Inspector shall, for the purpose of verification of any weight or measure, attend the

specified place (within the local limits of his jurisdiction ) at the specified time and verify every weight or measure which is brought to him at such place and within such time and shall, if he is satisfied that such weight or measure conforms to the standards established by or under the Standards Act, put his stamp thereon.

PROVIDED that where any weight or measure is such that it cannot, or should not, be moved from its location, the Inspector shall take such steps for the verification of such weight or measure at the place of its location as may be prescribed.

(4) Where any verification has been made under sub-section (3), the Inspector shall grant to the person referred to in sub-section (1) a certificate in the prescribed form indicating therein the particulars of the weight or measure verified and stamped by him.

(5) Where the Controller is of opinion that by reason of the size or nature of any weight or measure, it is not desirable or practicable to put a stamp thereon, he may, by an order in writing, direct that instead of putting a stamp on such weight or measure, a certificate may be issued to the effect that such weight or measure conforms to the standards established by or under the Standards Act and every weight or measure so certified shall be deemed to have been duly verified and stamped under this Act on the date on which such certificate was issued.

(6) Every certificate referred to in sub-section (5) shall be in such form as may be prescribed and shall contain such details as to enable a clear identification of the weight or measure to which it relates.

## **25. Display of certificate of verification**

Every certificate of verification granted under this Act shall be displayed in a conspicuous place in the premises where such weight or measure is being, or is intended or likely to be, used in any transaction or for industrial production or for protection.

## **26. Validity of weights or measures duly stamped**

(1) A weight or measure which is, or is deemed to be, duly verified and stamped under this Act shall be deemed to conform to the standards established by or under the Standards Act at every place within the State in which it is stamped unless it is found on inspection or verification that such weight or measure has ceased to conform to the standards established by or under the Standards Act.

(2) No weight or measure which is, or is deemed to be, duly verified and stamped under this Act shall require to be re-stamped merely by reason of the fact that it is being used at any place within the State other than the place at which it was originally verified and stamped ;

PROVIDED that where a verified weight or measure, installed at one place is dismantled and re-installed at a different place, such weight or measure shall not be put into use unless it has been duly re-verified and stamped, notwithstanding that periodical re-verification of such weight or measure has not become due.

(3) Where a verified weight or measure has been repaired, whether by a licensed repairer or by the person owning and possessing the same, such weight or measure shall not be put into use unless it has been duly re-verified and stamped, notwithstanding that periodical re-verification of such weight or measure has not become due.

## CHAPTER VIII

### INSPECTION, SEARCH, SEIZURE AND FORFEITURE

#### 27. Power to inspect

(1) An Inspector may, within the local limits of his jurisdiction, inspect and test, at all reasonable times, any weight or measure which-

- (i) is in the possession, custody or control of any person, or
- (ii) is in or on any premises,

in such circumstances as to indicate that such weight or measure is being, or is intended or likely to be, used in any transaction or for industrial production or for protection, and may also verify whether such weight or measure is in conformity with the standards established by or under the Standards Act.

(2) For the purpose of ascertaining the correctness of any weight or measure used in any transaction, an Inspector may also test the weight or measure of the article sold or delivered to any person in the course of such transaction.

#### 28. Power of Inspector to require production of weight or measure or records for inspection

(1) An Inspector may, if he has any reasonable cause to believe that an offence punishable under this Act has been, or is likely to be, committed in respect of any weight or measure or that any weight or measure does not conform to the standards established by or under the Standards Act, require, at all reasonable times, the person having the custody or control of such weight or measure to produce before him for inspection every such weight or measure which-

- (i) is used by such person or is caused by such person to be used by any other person, or
- (ii) is in the possession, custody or control of such person for use, or
- (iii) is kept in or on any premises for use, in any transaction or for industrial production or for protection.

(2) The Inspector may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person having the custody of such weight or measure shall comply with such requisition.

(3) On inspection, whether under section 27 or under this section, the Inspector shall obliterate the stamp on-

- (a) any weight or measure which, being due for verification, has not been submitted for such verification;
- (b) any weight or measure which, since the last verification and stamping, has been repaired or re-adjusted, and does not after such repair or re-adjustment, conform to the standards established by or under the Standards Act;
- (c) any weight or measure which does not admit of proper adjustment by reason of its being broken, dented or otherwise defective ;
- (d) any weight or measure other than those specified in clause(b) or clause(c) which

does not, or cannot be made to, conform to the standards established by or under the Standards Act;

PROVIDED that where the Inspector is of opinion that the defect or error in such weight or measure is not such as to require immediate obliteration of the stamp, he shall serve a notice on the user of such weight or measure informing him of the defect or error found in the weight or measure and calling upon him to remove the defect or error within such time, not exceeding eight days, as he may specify, and shall-

- (i) if the user fails to remove the defect or error within the period, obliterate the stamp, or
- (ii) if the defect or error is so removed as to make the weight or measure conform to the standards established by or under the Standards Act, verify such weight or measure and put his stamp thereon.

*Explanation :* The obliteration of the stamp on any weight or measure shall not take away or abridge the power of the Inspector to seize such weight or measure in accordance with the provisions of this Act.

### **29. Power of Inspector to enter**

An inspector may, if he has any reason to believe, whether from any information given to him by any person and taken down by him in writing or from personal knowledge or otherwise, that an offence punishable under this Act has been, or is likely to be, committed in relation to any weight, measure or other goods which are sold, delivered or distributed by weight, measure or number, enter, at all reasonable times, into any premises-

- (i) where such weight or measures is-
  - (a) made, manufactured, repaired, or sold, or
  - (b) used, or kept or believed to be kept for use, in any transaction or for industrial production or for protection;
- (ii) where such goods are manufactured, packed, distributed or sold or kept or offered for sale in packaged form, and inspect or verify any weight or measure or the net contents, by weight, measure or number of any package, and may also examine any document or other record relating thereto.

### **30. Power to search**

(1) Where the Controller has reason to believe that any weight or measure, liable to be seized under this Act, or any document or thing in relation to any weight or measure, will be, in his opinion, useful for or relevant to, any proceeding under this Act, is secreted in any place, he may search or authorise any officer, not below the rank of an Inspector, to search for, and seize, such weight or measure, document or thing, and the provisions of section 100 and 102 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to every such search.

(2) Every authorisation made by the Controller under sub-section (1) shall be deemed to be a warrant referred to in section 93 of the Code of Criminal Procedure, 1973 (2 of 1974).

### **31. Power of Inspector to seize any weight or measure**

(1) An Inspector may seize and detain any weight or measure in relation to which an offence under this Act is being, or appears to have been committed, or which is intended or likely to be used in the commission of such offence, and may also seize and detain any goods sold or delivered, or cause to be sold or delivered, by such weight or measure:

PROVIDED that where any goods seized under this sub-section are subject to speedy or natural decay, the Inspector may dispose of such goods in such manner as may be prescribed.

(2) Where any weight, measure or any article is seized and detained under sub-section (1), the Inspector may also seize and detain any document or other record relating to such weight, measure or article.

(3) The provisions of section 102 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to every seizure made under this section.

### **32. Forfeiture**

Every false or unverified weight or measure (other than those referred to in section 30 of the Standards Act) seized under the provisions of this Act shall be liable to be forfeited to government.

PROVIDED that such unverified weight or measure shall not be forfeited to the government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed.

## **CHAPTER IX**

### **PROVISIONS WITH REGARD TO THE SALE AND DISTRIBUTION OF COMMODITIES IN PACKAGED FORM WITHIN THE STATE**

#### **33. Provisions of the Standards Act and the rules made thereunder relating to commodities in packaged form to apply to commodities in packaged form sold or distributed within the State.**

(1) The provisions of the Standards Act and the rules made thereunder, as in force immediately before the commencement of this Act, with regard to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State as if the provisions aforesaid were enacted by, or made under, this Act subject to the modification that any reference therein to the "Central Government", "Standards Act" and "Director" shall be construed as reference respectively, to the "State Government", "this Act" and the "Controller".

(2) The State Government may make rules, not inconsistent with the Standards Act or any rule made thereunder, to regulate the packaging of any commodities intended to be sold or distributed, within the State in packaged form, or to regulate the sale or distribution, within the State, of any commodity in packaged form.

*Explanation* : For the purposes of this section, "commodity in package form" shall have the meaning assigned to it in the Standards Act, and shall include a pre-packed commodity.

## **CHAPTER X**

### **PROVISIONS WITH REGARD TO ANY CUSTOM OR USAGE RELATING TO THE SALE OF ANY COMMODITY, WHETHER BY QUANTITY OR NUMBER, AND SALE OF COMMODITIES BY HEAPS**

#### **34. Custom or usage requiring delivery of additional quantities to cease**

(1) Any customs, usage, practice or method of whatever nature which permits a person to demand, receive, or cause to be demanded or received, any quantity of article, thing or service in excess, or less than, the quantity specified by weight, measure or number in any contract or other agreement in relation to the said article, thing or service, shall be void.

(2) Where in relation to any commodity sold by number, there is a custom or usage of delivering a fixed number of such commodity in addition to the number of commodities paid for, such custom or usage shall, on and from the commencement of this Act, cease.

### **35. Sale by heaps**

(1) Where any commodity is sold by heaps, the approximate weight, measure or number of the commodity contained in each heap shall be conspicuously announced by the seller or his agent, if any, either by word of mouth or by a written notice place on each heap;

PROVIDED that no such announcement shall be necessary in the case of a heap where the total price of the commodity contained in such heap does not exceed two rupees.

(2) Where, on weighment, measurement or counting of any commodity sold by heap, it is found that the weight, measure or number, determined by such weighment, measurement or counting, is less than the approximate weight, measure or number announced by the seller or his agent and the deficiency is more than five per cent, of such announced weight, measure or number, the seller shall be deemed to have used a false weight or measure.

## **CHAPTER XI**

### **OFFENCES AND PENALTIES**

#### **36. Penalty for manufacturing etc., of non-standard weights or measures**

Whoever-

- (a) makes or manufactures, or causes to be made or manufactured (except where he is permitted under the Standards Act so to do), any weight or measure in accordance with any standards other than the standards established by or under the Standards Act, or
- (b) (i) sells or otherwise transfers, or causes to be sold or otherwise transferred, or  
(ii) lets, or causes to be let, on hire,

any weight or measure which has been manufactured in accordance with any standards other than the standards established by or under the Standards Act,

<sup>1</sup>[shall be punished with imprisonment for a term which shall not be less than three months but which may extend to one year, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than six months, but which may extend to three years and also with fine.]

#### **37. Penalty for counterfeiting of seals, etc.**

(1) Whoever-

- (i) counterfeits any seal specified by or under this Act or the Standards Act, or
- (ii) sells or otherwise dispose of any counterfeit seal, or
- (iii) possesses any counterfeit seal, or
- (iv) counterfeits any stamp, specified by or under this Act or the Standards Act or any rule made under either of those Acts, or tampers with any stamp so made, or
- (v) removes any stamp made, whether under this Act or the Standards Act or any rule made under either of those Acts, or tampers with any stamp so made ,or

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Substituted by the Standards of Weights and Measures (Enforcement) Amendment Act, 1986, w.e.f.24-12-1986.

(vi) removes any stamp made, whether under this Act or the Standards Act or any rule made under either of those Acts, and affixes the stamp so removed on, or inserts the same into, any other weight or measure, or

(vii) increases or diminishes or alters in any way any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby.

<sup>1</sup>[shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two year, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year, but which may extend to five years and also with fine.]

(2) Whoever obtains, by lawful means, possession of any seal specified by or under this Act or the Standards Act and uses, or causes to be used, any such seal for making any stamp on any weight or measure with a view to representing that the stamp made by such seal is authorised by or under this Act or the Standards Act <sup>1</sup>[shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.]

(3) Whoever, being in lawful possession of a seal specified by or under this Act or the Standards Act uses, or causes to be used such seal without any lawful authority for such use, <sup>1</sup>[shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.]

(4) Whoever sells, or offers or exposes for sale or otherwise disposes of any weight or measure which, he knows or has reason to believe, bears thereon a counterfeit stamp <sup>1</sup>[shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.]

### **38. Penalty for sale or delivery of commodities, etc., by non-standard weight or measure**

(1) Except where he is permitted under the Standards Act, so to do, whoever sells, or causes to be sold, delivers, or causes to be delivered, any commodity, article or thing by any weight, measure or number other than the standard weight or measure <sup>1</sup>[ shall be punished with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than three months but which may extend to one year and also with fine ].

(2) Whoever, renders, causes to be rendered, any service in terms of any weight, measure or number other than the standard weight or measure, shall be punished with fine which <sup>1</sup>[shall not be less than three months but which may extend to one year and also with fine.]

### **39. Penalty for keeping non-standard weights or measures for use and for other contraventions**

(1) Whoever keeps any weight or measure other than the standard weight or measure in any premises in such circumstances as to indicate that weight or measure is being or is likely to be, used for any-

(a) weighment or measurement, or

(b) transaction or for industrial production or for protection, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

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1. Substituted by the Standards of Weights and Measures(Enforcement) Amendment Act, 1986 ,w.e.f. 24-12-1986

(2) Whoever -

- (i) in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for and paid for, or
- (ii) in rendering any service by weight, measure or number, renders that service less than the service contracted for and paid for, or
- (iii) in buying any article or thing by weight, measure or number fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for and paid for, or
- (iv) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for and paid for.

shall be punishable with fine which may extend to five thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

(3) Whoever enters, after the commencement of this Act, into any contract or other agreement, (not being a contract or other agreement for export) in which any weight, measure or number is expressed in terms of any standard other than the standard weight or measure, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

#### **40. Penalty for contravention of section 10**

Whoever, in relation to any specified class of goods, services, undertakings or users of weights or measures, uses in any transaction or for industrial production or for protection any weight, measure or number specified by rules made under section 10, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

#### **41. Penalty for contravention of section 11**

Except where he is permitted under the Standards Act so to do, whoever, in relation to any goods or things which are sold, transferred, distributed or delivered, or any service rendered,-

- (a) quotes any price or charge, or makes any announcement with regard to the price or charge, or
- (b) issues or exhibits any price list, invoice, cash memo, or other document, or
- (c) mentions any weight or measure in any advertisement, poster or other document, or
- (d) indicates the weight, measure or number of the net contents of any package or on any label, carton or other things, or
- (e) expresses, in relation to any transaction, industrial production or protection, any quantity or dimension.

otherwise than in accordance with the standard weight or measure, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

#### **42. Penalty for contravention of section 19**

Whoever, being required to obtain a licence under this Act, manufactures, repairs or sells or offers, exposes or possesses for repair or sale, any weight or measure, without being in possession of a valid licence empowering him to do so, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

#### **43. Penalty for contravention of section 20**

A licensee who after the suspension or cancellation of the licence issued to him or renewed or continued, under this Act, omits or fails to stop functioning as the licensee under this Act, shall be punished with imprisonment for a term which may extend to one year.

#### **44. Penalty for contravention of section 21**

Except where he is permitted under the Standards Act so to do, whoever makes or manufactures any weight or measure which,-

- (a) though ostensibly purports to conform to the standards established by or under that Act, does not actually conform to the said standards, or
- (b) bears thereon any indication of weight or measure which is not in conformity with the standards of weight or measure established by or under that Act, whether such indication is or not in addition to the indication of weight or measure in accordance with the said standards.

shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

#### **45. Penalty for contravention of section 22**

Whoever,-

- (a) sells, offers, exposes or possesses for sale, any weight or measure which has not been verified and stamped under this Act, or
- (b) uses, or keeps for use, any weight or measure which, being, required to be verified and stamped under this Act, has not been so verified and stamped.

shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine :

PROVIDED that nothing in clause(b) shall apply, in relation to any weight or measure which is used for domestic purposes.

#### **46. Penalty for contravention of section 23**

Whoever, being required by section 23 to maintain any record or register, omits or fails to do so, or being required by an Inspector to produce any records or registers for his inspection, omits, or fails to do so, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

#### **47. Penalty for contravention of section 24**

Whoever, being required by section 24, to present any weight or measure for verification or re-verification, omits or fails, without any reasonable cause to do so, shall be punished with fine which may extend to five hundred rupees, and, for the second and subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

#### **48. Penalty for contravention of section 28**

Whoever, being required by an Inspector, or any person authorised by or under this Act to exercise the powers of an Inspector, to produce before him for inspection any weight or measure or any document or other record relating thereto, omits or fails, without any reasonable cause to do so, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

#### **49. Penalty for contravention of section 29**

Whoever obstructs the entry of an Inspector, or any person authorised by or under this Act to exercise the powers of an Inspector, into any premises for the inspection and verification of any weight or measure or any document or other record relating thereto or the net contents of any packaged commodity or for any other prescribed purpose, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years.

#### **50. Penalty for contravention of section 30 and 31**

Whoever prevents the Controller or any officer authorised by the Controller in this behalf, from searching, any premises or prevents an Inspector, from making any seizure of any weight, measure, packaged commodity, goods, document, record or label, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

#### **51. Penalty for contravention of section 33**

(1) Whoever manufactures, distributes, packs, sells or keeps for sale or offers or exposes for sale, or has in his possession for sale, any commodity in packaged form, shall, unless each such package conforms to the provisions of the Standards Act and the rules made thereunder, read with section 33, be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(2) whoever manufactures, packs, distributes or sells, or cause to be manufactured, packed, distributed or sold, any commodity in packaged form, knowing or having reason to believe that the commodity contained in such package is lesser in weight, measure or number than the weight, measure or number, as the case may be, stated on the package or label thereon, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

*Explanation* : In determining, for the purpose of this sub-section, whether the quantity contained in a package is lesser than the quantity declared on the package or label thereon, the maximum permissible error specified under the Standards Act in relation to the commodity contained in such package, shall be taken into account.

## **52. Penalty for contravention of section 35**

Whoever sells any commodity by heaps without complying with the provisions of section 35, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## **53. Penalty for tampering with licence**

Whoever alters or otherwise tamper with any licence issued or renewed under this Act or any rule made thereunder, otherwise than in accordance with any authorisation made by the Controller in this behalf, shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to one year, or with both.

## **54. Penalty for selling or delivering rejected weights and measures**

Whoever sells, delivers or dispose of, or causes to be sold, delivered or disposed of, any weight or measure which has been rejected on verification under this Act or the Standards Act, or any rule made under either of the said Acts, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

PROVIDED that nothing in this section shall apply to the sale, as scrap, of any rejected weight or measure which has been defaced in the prescribed manner.

## **55. Penalty for personation of officials**

(1) Whoever personates in any way the Controller, Additional Controller or an Inspector or any other officer authorised by the Controller, shall be punished with imprisonment for a term which may extend to three years.

## **56. Penalty for giving false information or maintaining false records or registers**

(1) Whoever gives information to a Controller, Additional Controller or an Inspector or any other officer authorised by the Controller, which he may require or ask for in the course of his duty and which such person either knows or has reason to believe to be false or does not believe to be true, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being required by or under this Act so do to, submits a return or maintains any record or register which is false in any material particular, shall be punished with fine which may extend to two thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

## **57. Wilful verification of disclosure in contravention of law**

(1) If any Inspector or any other officer exercising powers under this Act or any rule made thereunder wilfully verifies or stamps any weight or measure in contravention of the provisions of this Act or of any rule made thereunder, he shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

(2) If any Inspector or other officer who enters into any premises in the course of his duty wilfully discloses, except in the performance of such duty, to any person any information obtained by

him from such premises with regard to any trade secret or any secret in relation to any manufacturing process, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

#### **58. Vexatious search**

An Inspector or any other officer exercising powers under this Act or any rule or order made thereunder who knows that there are no reasonable grounds for so doing, and yet,-

- (a) searches, or causes to be searched, any house, conveyance or place, or
- (b) searches any person, or
- (c) seizes any weight, measure or other movable property,

shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

#### **59. Penalty for contravention not separately provided for**

Whoever contravenes any provision of this Act for the contravention of which no punishment has been separately provided for in this Act, shall be punished with fine which may extend to two thousand rupees.

#### **60. Presumption to be made in certain cases**

(1) If any person-

- (a) makes or manufactures, or causes to be made or manufactured, any false weight or measure, or
- (b) uses, or causes to be used, any false or unverified weight or measure in any transaction or for industrial production or for protection, or
- (c) sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred, any false or unverified weight or measure, as the case may.

it shall be presumed, until the contrary is proved, that he had done so with the knowledge that the weight or measure was a false or unverified weight or measure, as the case may be.

(2) If any person has in his possession, custody or control any false or unverified weight or measure in such circumstances as to indicate that such weight or measure is likely to be used in any transaction or for industrial production or for protection, it shall be presumed, until the contrary is proved, that such false or unverified weight or measure was possessed, held or controlled by such person with the intention of using the same in any transaction or for industrial production or for protection.

#### **61. When employer to be deemed to have abetted an offence**

(1) Any employer, who knows or has reason to believe that any person employed by him has, in the course of such employment, contravened any provision of this Act or any rule made thereunder, shall be deemed to have abetted an offence against this Act :

PROVIDED that no such abetment shall be deemed to have taken place if such employer has, before the expiry of seven days from the date on which-

- (a) he comes to know of the contravention, or
- (b) he has reason to believe that such contravention has been made, intimated, in writing, to the Controller the name of the person by whom such contravention was made and the date and other particulars of such contravention.

(2) Whoever is deemed under sub-section (1) to have abetted an offence against this Act shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

*Explanation:* Dismissal or termination of service of an employee after the expiry of the period specified in the proviso to sub-section (1) shall not absolve any employer of this liability under this sub-section.

## **62. Offences by companies**

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

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

(2) Notwithstanding anything contained in sub-section (1), where any offence 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 director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation :* For the purposes of this section,-

- (a) "company" means any body corporate and includes a firm or other association of individuals:  
and
- (b) "director", in relation to a firm, means a partner in the firm.

## **63. Cognizance of offences**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973,- (2 of 1974)

<sup>1</sup>[(a) no court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by-

- (i) the Controller;
- (ii) any other officer authorised in this behalf by the Controller by general or special order:

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1. Substituted by the Standards of Weights and Measure(Enforcement) Amendment Act, 1986 (72 of 1986), w.e.f.23-12-1986

(iii) any person aggrieved; or

(iv) a recognized consumer association whether the person aggrieved is a member of such association or not.

*Explanation* : For the purpose of this clause 'recognized consumer association' means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;]

(b) no court inferior to that of a Metropolitan or a judicial Magistrate of the first class shall try any offence punishable under this Act;

#### **64. Summary trial of certain offences**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 36, section 38, section 39, section 40, section 41, section 42 section 45, section 51, section 52, or sub-section (3) of section 72 may be tried summarily.

#### **65. Compounding of offences**

(1) Any offence punishable under section 39, section 40, section 41, section 42, section 44, section 45, section 46, section 47, section 48, section 51, section 52, section 54 or section 59 or any rule made under sub-section (3) of section 72, may either before or after the institution of the prosecution, be compounded, by the Controller or such other officer as may be authorised in this behalf by the Controller, on payment, for credit to the State Government, of such sum as the Controller or such other officer may specify:

PROVIDED that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Nothing contained in sub-section (1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence, committed by him, was compounded.

*Explanation* : For the purpose of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the first offence was previously compounded, shall be deemed to be a first offence.

(3) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender, in respect of the offences so compounded, and the offender, if in custody, shall be discharged forthwith.

(4) No offence punishable under this Act shall be compounded except as provided by this section.

#### **66. Provisions of Indian Penal Code not to apply to any offence under this Act**

The provisions of the Indian Penal Code, (45 of 1860) in so far as such provisions relate to offences with regard to weights or measures, shall not apply to any offence which is punishable under this Act.

## CHAPTER XII

### MISCELLANEOUS

#### 67. Transfer or transmission of business

(1) Where the business of a person licensed under this Act is transmitted by succession, intestate or testamentary, the heir or legatee, as the case may be, of such person shall not carry on the business of such licensee either in his own name or in any other name, unless the heir or legatee has, before the expiry of sixty days after the date of such transmission, made to the Controller an application for the issue of a licence in accordance with the provisions of this Act ;

PROVIDED that nothing in this section shall be deemed to prohibit the heir or legatee from carrying on business as such licensee for the aforesaid period of sixty days, and , if he has applied for such licence, until he is granted the licence or is, by a notice in writing informed by the Controller that such licence cannot be granted to him.

(2) Where the business of any person licensed under this Act is transferred by sale, gift, lease or otherwise, the transferee or lessee, as the case may be, shall not carry on such business either in his own name or in any other name, unless he has obtained a licence to carry on such business.

#### 68. Licences neither saleable nor transferable

A licence issued or renewed under this Act shall not be saleable or otherwise transferable.

#### 69. Appeals

(1) Subject to the provisions of sub-section (2), an appeal shall lie-

(a) from every decision given or order made under Chapter V, Chapter VI, Chapter VII, Chapter VIII, Chapter IX or Chapter X of this Act, by-

(i) an Inspector, or

(ii) an Additional Controller,

to the Controller ; and

(b) from every decision given or order made by the Controller under Chapter V, Chapter VI, Chapter VII, Chapter VIII, Chapter IX or Chapter X of this Act, not being a decision made in appeal under clause(a)

to the State Government or any officer specially authorised in this behalf by that government.

(2) Every such appeal shall be preferred within sixty days from the date of the decision or order appealed against.

PROVIDED that the appellate may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, permit the appellant to prefer the appeal within a further period of sixty days.

(3) On receipt of any such appeal, the appellate authority shall, after giving the parties to the appeal, a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case with such direction as it may think fit for a fresh decision or order after taking additional evidence, if necessary.

(4) Every appeal shall be preferred on payment of such fees as may be prescribed.

(5) The State Government may, on its own motion or otherwise, call for and examine the record of any proceeding (including a proceeding in appeal) in which any decision or order has been made, for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or other and may pass such order thereon as it may think fit ;

PROVIDED that no decision or order shall be varied under this sub-section so as to prejudicially affect any person unless such person has been given a reasonable opportunity of showing cause against the proposed action.

## **70. Levy of fees**

The State Government may, by rules made under section 72, levy such fees, not exceeding-

- (a) five hundred rupees, for the application for the issue or renewal of a licence for making or manufacturing of any weight or measure,
- (b) one hundred rupees, for the issue of a licence for repairing or selling of any weight or measure,
- (c) fifty rupees, for the alteration of any licence,
- (d) five thousand rupees, on a graded scale, for the verification of any weight or measure, having regard to the time and labour which may be involved in making such verification.
- (e) ten rupees, for the adjustment of any weight or measure,
- (f) ten rupees, for the issue of a duplicate licence or certificate of verification,
- (g) one rupees, for every one hundred words or less, for the grant of copies of any document, not being a document of a confidential nature,
- (h) twenty-five rupees, for any appeal preferred under this Act,
- (i) five rupees, for application for registration or renewal of registration under section 17.

## **71. Delegation of powers**

(1) The State Government may, by notification, direct that any power exercisable under this Act or any rule made thereunder, not being a power conferred by section 69 (relating to appeal) or section 70 (power to lay down scale of fee) or section 72 (power to make rules), in relation to such matters and subject to such conditions as may be specified, may be exercised also by such officer subordinate to it as may be specified in the notification.

(2) Subject to any general or special direction or condition imposed by the State Government, any person authorised by the State Government to exercise any powers may exercise those powers in the same manner and to the same extent as if they had been conferred on that person directly by this Act and not by way of delegation.

## **72. Power to make rules**

(1) The State Government may, by notification and after consultation with the Central Government, make rules to carry out provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,-

(a) the class of goods, services, undertakings or users in relation to which no transaction, dealing or contract, or industrial production or use for protection shall be made or had or undertaken except by such weight, measure or number as required by section 10 :

(b) the places at which, and the custody in which, the following standards shall be kept, namely,-

(i) reference standards,

(ii) secondary standards,

(iii) working standards,

as required by section 12 and sub-section (5) of section 14;

(c) the form and details of particulars for identification of weight or measure referred to in sub-section (2) of section 15 ;

(d) the time within which an application referred to in sub-section (1) of section 17 shall be made, the particulars which such application shall contain and the form and manner in which such application shall be made;

(e) the form and manner in which the register referred to in sub-section (2) of section 17 shall be maintained ;

(f) the form and manner in which an application shall be made under sub-section (3) of section 17 ;

(g) the form in which an application shall be made for the issue or renewal of a licence to carry on business as a maker, manufacturer, repairer or dealer of any weight or measure, as required by sub-section (4) of section 19 ;

(h) the form in which and the conditions, limitations and restrictions subject to which any licence may be issued and the period of validity of such licence, as required by sub-section (3) of section 19 ;

(i) the sum to be furnished by a repairer as security as required by sub-section (7) of section 19;

(j) the description of weight or measure which may not be sold by a user except with the written permission of the Controller as required by sub-section (8) of section 19 ;

(k) the manner of disposal of weight or measure after cancellation of licence and the distribution of proceeds thereof as required by sub-section (5) of section 20 ;

(l) the records and registers relating to weights or measures to be maintained in pursuance of the provisions of sub-section (1) of section 23 ;

(m) the period within which weights or measures shall be verified or re-verified as required by sub-section (2) of section 24 :

(n) the steps to be taken for verifying any weight or measure which cannot, or should not, be moved from its location, as required by the proviso to sub-section (3) of section 24 ;

- (o) the form in which a certificate of verification of any weight or measure shall be granted as required by sub-section (4) of section 24 and the form in which the certificate referred to in sub-section (5) of section 24 shall be issued and the details which such certificate shall contain, as required by sub-section (6) of section 24 ;
- (p) the manner of disposal of seized articles which are subject to speedy or natural decay, as required by the proviso to sub-section (1) of section 31;
- (q) the time within which an unverified weight or measure seized under this Act may be permitted under the proviso to section 32 to be verified and stamped;
- (r) the manner in which, and the conditions, restrictions and limitations subject to which,-
  - (i) any commodity intended to be sold or distributed, within the State, shall be packaged, or
  - (ii) the sale or distribution of any commodity in packaged form shall be made within the State, as required by sub-section (2) of section 33 ;
- (s) the manner of obliteration of stamps, on rejected weights or measures, as required by the proviso to section 54 ;
- (t) the form in which appeals may be preferred under section 69 and the procedure for the hearing of appeals;
- (u) the amount of fees which may be levied and collected for each of the matters specified in section 70 ;
- (v) any other matter which is required to be, or may be, prescribed.

(3) In making any rule under his section, the State Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees.

(4) The power to make rules under this section shall be subject to the condition of the rule being made after previous publication in the Official Gazette.

(5) Every rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

### **73. Power to State Government to make provisions of the Standards Act relating to approval of models applicable to models of weights or measures intended to be used exclusively within the State**

(1) Where any type of weight or measure manufactured by a licensed manufacturer is such that all the weights or measures of that type manufactured by him within the State are intended to be sold, distributed or delivered therein, the State Government may, by notification, direct that the model of every such type of weight or measure shall be submitted for approval in accordance with provisions of section 36, 37 and 38 of the Standards Act, and thereupon, the provisions of the said section 36, 37 and 38 shall become applicable to such model, and references in those sections to the Central Government and to the Standards Act shall be construed as references, respectively, to the State Government and this Act.

(2) Where the State Government makes a direction under sub-section (1) in relation to any type of weight or measure any contravention of the provisions of section 39, section 40 or section 41 of the Standards Act in relation to that type of weight or measure shall be an offence punishable under this Act and the punishment provided therefor in the Standards Act shall be deemed to be the punishment provided therefor in this Act as if the said provisions relating to punishments were enacted by this Act.

#### **74. Act not to apply in certain cases**

The provisions of this Act, in so far as they relate to the verification and stamping of weights and measures, shall not apply to any weight or measures,-

- (a) used in any factory exclusively engaged in the manufacture of any arms, ammunition, or both, for the use of the Armed Forces of the Union ;
- (b) used for scientific investigation or for research ;
- (c) manufactured exclusively for export.

#### **75. Repeal and saving**

(1) On the commencement of any provision of this Act in a State, the corresponding provision of any law in force for the time being in that State shall stand repealed, and on such repeal, the provisions of section 6 of the General Clause Act, 1897, shall apply as if the provisions so repealed were the provisions of a Central Act.

(2) Notwithstanding such repeal, any appointment, notification, rule, order, registration, licence, certificate, notice, decision, approval, authorisation or consent made, issued or given under such law shall, if in force at the commencement of this Act, continue to be in force and have effect as if it were made, issued or given under the corresponding provisions of this Act.