



## The Bengal Excise Act, 1909

Act 5 of 1909

**Keyword(s):**

Beer, Bottle, Collector, Denaturant, Denature, Excisable Article, Excise Duty and Countervailing Duty, Excise Commissioner, Excise Officer, Excise-Revenue, Export, Import, Intoxicating Drug, Liquor, Manufacture, Pachwai, Place, Sale, Spirit, Tari, Transport

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# Bengal Act V of 1909

(The Bengal Excise Act, 1909.)<sup>1</sup>

AMENDED

... ..

- Ben. Act VII of 1922.
- Act II of 1930.
- Ben. Act IX of 1934.
- Ben. Act VI of 1939.
- West Ben. Act XII of 1947.
- West Ben. Act. XXVIII of 1948.
- West Ben. Act II of 1954.
- West Ben. Act XXXIV of 1965.
- West Ben. Act IV of 1973.
- West Ben. Act L of 1974.
- West Ben. Act XII of 1979.
- West Ben. Act XL of 1979.
- West Ben. Act XXXVIII of 1983.
- West Ben. Act IV of 1993.
- West Ben. Act V of 1997.

REPEALED IN PART AND AMENDED

...

- Ben. Act VII of 1914.
- Act XXXVIII of 1920.
- Ben. Act I of 1939.

ADAPTED

... ..

- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (b) The Government of India (Adaptation of Indian Laws) Supplement Order, 1937.
- (c) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
- (d) The Adaptation of Laws Order, 1950.

(The 8th September, 1909.)

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

<sup>1</sup>LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1909, Pt. IV, page 33 ; for Report of Select Committee, see *ibid.* Pt. IV, pages 41 to 55 ; for Proceedings in Council, see *ibid.* Pt. IVA, pages 6 to 12, 17 to 22, 147, 151, 152, 158 to 182 and 184 to 220.

## (Chapter I.—Preliminary.— Sections 1, 2.)

WHEREAS it is expedient to consolidate and amend the law in Bengal relating to the import, export, transport, manufacture, possession and sale of <sup>1</sup>[intoxicants];

AND WHEREAS, the Acts mentioned in Part I of the Schedule having been passed by the Governor-General of India in Council, the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

55 and 59  
Vict., c. 14.

## CHAPTER I

## Preliminary.

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Bengal Excise Act, 1909 ;

(2) It extends to the whole of <sup>2</sup>[West Bengal] ; and

(3) It shall come into force on such date<sup>3</sup> as the <sup>4</sup>[State Government] may, by notification, direct.

De-  
finitions.

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

(1) "beer" includes ale, stout, porter and all other fermented liquor <sup>5</sup>[, whether solidified or not, made from malt and such other substances as the State Government may, by notification, specify in this behalf];

6\* \* \* \* \*

7\* \* \* \* \*

<sup>1</sup>Firstly, the words "Alcoholic liquor" were substituted for the words "intoxicating liquor" by s. 4 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). Later, the word within the square brackets was substituted for the words "alcoholic liquor and intoxicating drugs" by s. 2 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

<sup>3</sup>The 1st December, 1909—see the *Calcutta Gazette* of 1909, Pt. I, page 1710.

<sup>4</sup>The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>5</sup>The words within the square brackets were substituted for the words "made from malt" by s. 3(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>6</sup>Clause (1A) was omitted by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

<sup>7</sup>Clause (2) of section 2 was repealed by s. 5(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter I.—Preliminary.—Section 2.)

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

(4) "Calcutta district" means—

(a) the area within the local limits of the ordinary original civil jurisdiction of <sup>1</sup>[the High Court at Calcutta];

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

<sup>2</sup>\* \* \* \* \*

and

(c) any other areas, in the vicinity of those referred to in sub-clauses (a) and (b), which the <sup>3</sup>[State Government] may, by notification, declare to be included in the "Calcutta district";

<sup>4</sup>Provided that the State Government may, by notification, declare to be excluded from the "Calcutta District" any area or any part of any area included therein under sub-clause (a), sub-clause (b) or sub-clause (c);

<sup>5</sup>\* \* \* \* \*

(5) "Collector" means—

(i) in the Calcutta district, the person appointed under section 7, <sup>6</sup>[sub-section (2),] clause (b), to exercise all the powers and to perform all the duties of the Collector in that district, and

<sup>1</sup>These words were substituted for the words the "High Court of Judicature at Fort William in Bengal" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>2</sup>The words "and the Municipalities of Howrah and Bally, or such part of those areas as the State Government may, by notification, direct, or, if the State Government by notification so directs, no part of any of those areas" were omitted by s. 3(2) (a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this omission the word "State Government" was substituted as per foot-note 4 on page 226, *ante*.

<sup>3</sup>See foot-note 4 on page 226, *ante*.

<sup>4</sup>This proviso was added by s. 3(2) (b) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>Clause (4A) was omitted by s. 40 of, and Schedule II to, the Dangerous Drugs Act, 1930 (II of 1930).

<sup>6</sup>The words, figure and brackets within the square brackets were inserted by s. 3(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

Ben. Act II  
of 1866.

## (Chapter 1.—Preliminary.— Section 2.)

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

<sup>1</sup>(6) "denaturant" means any substance prescribed by rule made in this behalf under clause (3) of section 86, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever ;

<sup>1</sup>(6a) to "denature" means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 86, and "denatured spirit" means spirit so mixed ;

<sup>2</sup>(7) "excisable article" means—

- (a) any liquor for human consumption, or
- (b) any intoxicating drug, but does not include medicinal preparations or toilet preparations containing alcohol or any intoxicating drug ;

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

Act 16 of  
1955.

<sup>3</sup>(7a) "excise duty" and "countervailing duty" mean any such excise duty or countervailing duty, as the case may be, as is mentioned in <sup>4</sup>[entry 51] of List II in the Seventh Schedule to <sup>5</sup>[the Constitution] ;

(8) "Excise Commissioner" means the officer appointed under section 7, <sup>6</sup>[sub-section (2),] clause (a) ;

<sup>1</sup>These clauses (6) and (6a) were substituted for the original clause (6) by s. 6(3) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>Firstly, clause (7) was substituted for the original clause by para 3 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937. Then, it was substituted by para. 3 of, and Eleventh Sch. to, the Adaptation of Laws Order, 1950. Finally, clause (7) was substituted with the "Explanation" by s. 3(4) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>3</sup>Clause (7a) was inserted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>This word and the figures were substituted for the word and figures "item 40" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>5</sup>These words were substituted for the words "the Government of India Act, 1935.", *ibid.*

<sup>6</sup>The words, figure and brackets within the square brackets were inserted by s. 3(5) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

(Chapter I.—Preliminary.—Section 2.)

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

(10) "excise-revenue" means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to <sup>1</sup>[intoxicants] ;

<sup>2</sup>(11) "export" means to take out of <sup>3</sup>[West Bengal] otherwise than across a customs frontier as <sup>4</sup>defined by the Central Government ;

<sup>2</sup>(12) "import" <sup>5</sup>\* \* \* \* \* means to bring into <sup>3</sup>[West Bengal] otherwise than across a customs frontier as defined by the Central Government ;

<sup>6</sup>(12ia) "India" means the territory of India excluding the State of Jammu and Kashmir.

<sup>7</sup>(12a) "intoxicant" means—

(i) any liquor, or

(ii) any substance from which liquor <sup>8</sup>[may be manufactured] and which is declared by the State Government by notification <sup>9</sup>\* \* \* \* \* to be an intoxicant for the purpose of this Act, or

(iii) any intoxicating drug ;

<sup>1</sup>The word within the square brackets was substituted for the words "liquor or intoxicating drugs" by s. 3 (6) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>These clauses (11) and (12) were substituted for the original clauses (11) and (12) by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>3</sup>See foot-note 2 on page 226, *ante*.

<sup>4</sup>For definition of frontier by the Central Government, see the Government of India, Ministry of Finance (Revenue Division) notification No. S. R. O. 1683 (122-Cus) dated 6. 8. 55, published in the *Gazette of India* of 1955, Part II, section 3, page 1521.

<sup>5</sup>The words "a Province of India" were originally substituted for the words "British India" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the words "a Province of" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950. Finally, the words and brackets "(except in the phrase "import into India")" were omitted by s. 3 (7) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>6</sup>This clause was inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>7</sup>This clause was substituted for the clause, as inserted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, by s. 2 of the Bengal Excise (Amendment) Act, 1954 (Ben. Act II of 1954.)

<sup>8</sup>These words within the square brackets were substituted for the words "may be distilled" by s. 3(8) (a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>9</sup>The words "in the *Official Gazette*" were omitted by s. 3(8) (b), *ibid*.

## (Chapter I.—Preliminary.—Section 2.)

<sup>1</sup>(13) "intoxicating drug" means—

- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa L.*) including all forms known as *Bhang* or *Siddhi* but excluding *Ganja*, *Charas* and any mixture, with or without neutral material, of any of the above forms of intoxication drug, or any drink prepared therefrom within the meaning of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ;
- (ii) any other intoxicating or narcotic substance or any fermenting agent which the State Government may specify in this behalf by notification, such substance or agent not being narcotic drug or psychotropic substance as defined in section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

61 of 1985

(14) "liquor" means <sup>2</sup>[liquid consisting of or containing alcohol,] and includes spirits of wine, spirit, wine, *tari*, *pachwai*, beer, <sup>3\*</sup> \* and any substance which the <sup>4</sup>[State Government] may, by notification, declare to be liquor for the purposes of this Act ;

<sup>5</sup>*Explanation.*—In this clause "spirit of wine" means plain spirit of or above such strength as the State Government may, by notification, specify ;

(15) "manufacture" includes—

- (i) every process, whether natural or artificial, by which any <sup>6</sup>[intoxicant] is produced or prepared (including the tapping of *tari*-producing trees and the drawing of *tari* from trees),

<sup>1</sup>Firstly, clause (13) was substituted for the original clause by s. 40 of the Dangerous Drugs Act, 1930 (II of 1930). Thenafter, sub-clause (iv) was substituted for the original sub-clause by s. 2 of the Bengal Excise (Amendment) Act, 1934 (Ben. Act IX of 1934). Finally, this clause was re-substituted by s. 2(i) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>2</sup>These words were substituted for the words "intoxicating liquor" by s. 6 (5) (a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>3</sup>The words "all liquids consisting of or containing alcohol" were repealed by s. 6(5)(b). *ibid.*

<sup>4</sup>See foot-note 4 on page 226. *ante.*

<sup>5</sup>This 'Explanation' was added by s. 3 (9) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>6</sup>This word was substituted for the words "excisable article" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1909.]

(Chapter I.—Preliminary.—Section 2.)

(ii) re-distillation, and

(iii) every process for the rectification, flavouring, blending or colouring of liquor, <sup>1</sup>[or for the reduction of liquor for sale];

• <sup>2</sup>(15a) "notification" means a notification published in the *Official Gazette*.

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

(17) "place" includes building, house, shop, booth, vessel, raft, <sup>3</sup>[vehicle] and tent;

<sup>4</sup>(17a) "prescribed" means prescribed by rules made under this Act;

(18) expressions referring to "sale" include any transfer otherwise than by way of gift;

<sup>5</sup>*Explanation*.—The supply of liquor by a club, mess, institute, society, lodge or other similar organisation by whatever name called to its members or their guests whether on payment of price or of any fee or subscription or not shall be deemed to be a sale within the meaning of this clause.

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

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

(21) "transport" means to remove from one place to another within <sup>6</sup>[West Bengal].

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<sup>1</sup>These words were added by s. 6(6) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>Clause (15a) was inserted by s. 3 (10) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>3</sup>This word was inserted by s. 6(7) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>4</sup>Clause (17a) was inserted by s. 2 (1) of the West Bengal Taxation Laws (Amendment) Act, 1993 (West Ben. Act IV of 1993).

<sup>5</sup>This 'Explanation' was added by s. 2 of the Bengal Excise (West Bengal Amendment) Act, 1948 (West Ben. Act XXVIII of 1948).

<sup>6</sup>See foot-note 2 on page 226, *ante*.



(Chapter I.—Preliminary.— Sections 3—6.)

3. (Provision supplemental to the definition of "intoxicating drug".)—Rep. by s. 40 of, and Schedule II to, the Dangerous Drugs Act, 1930 (II of 1930.)

Power to declare what shall be deemed to be "country liquor" and "foreign liquor", respectively.

4. The <sup>1</sup>[State Government] \* \* \* \* \*<sup>2</sup> may, by notification, declare what, for the purposes of this Act, or any portion thereof, shall be deemed to be "country liquor" and "foreign liquor", respectively :

<sup>3</sup>\* \* \* \* \*

Definition of retail and wholesale.

5. (1) The <sup>4</sup>[State Government] may, by notification, declare with respect either to the whole of <sup>5</sup>[West Bengal] or to any specified local area, and as regards purchasers generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any <sup>6</sup>[intoxicant] shall, for the purposes of this Act, be the limit of a retail sale.

(2) The sale of any <sup>6</sup>[intoxicant] in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a sale by wholesale.

Saving of certain Acts.

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

- (a) the Calcutta Suburban Police Act, 1866, or
- (b) the Calcutta Police Act, 1866, or
- (c) [The Customs Act, 1962]<sup>7</sup>, or

Ben. Act II of 1866.  
Ben. Act IV of 1866.  
52 of 1962.

<sup>1</sup>See foot-note 4 on page 226, ante.

<sup>2</sup>The words "with the previous sanction of the Government of India" were omitted by s. 2 of, and the First Schedule to, the Devolution Act, 1920 (XXXVIII of 1920).

<sup>3</sup>The proviso to section 4 was omitted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>The words "Local Government" were originally substituted for the word "board" by s. 5 (2) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). The words "Provincial Government" were then substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>5</sup>See foot-note 2 on page 226, ante.

<sup>6</sup>See foot-note 6 on page 230, ante.

<sup>7</sup>The words and figures within the square brackets were substituted for the words and figures "the Sea Customs Act, 1878" by s. 2 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983). The Sea Customs Act, 1878 has been repealed by the present Act.

of 1909.]

(Chapter II.—Establishments, Control, Appeal and Revision.—Section 7.)

- (d) the Cantonments Act,<sup>1</sup>[1924], or
- (e) the Indian Tariff Act,<sup>2</sup>[1934].

\* \* \* \* \*

II of 1924.  
XXXII of 1934.

CHAPTER II

Establishments, Control, Appeal and Revision.

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

Establishments and delegation and withdrawal of powers.

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

- (a) appoint an officer who shall, subject to such control as the [State Government] may direct, have the control of the [administration of the provisions of this Act and the rules thereunder] and the collection of the excise-revenue ;
- \*(aa) appoint one or more persons to be an additional Excise Commissioner or Additional Excise Commissioners to exercise such powers and perform such duties conferred on the Excise Commissioner by or under this Act as the State Government may, by notification, direct and references to the Excise Commissioner in this Act shall, in respect of such powers and duties, be deemed to include references to an Additional Excise Commissioner ;

<sup>1</sup>These figures were substituted for the figures "1889" by s. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>2</sup>These figures were substituted for the figures, brackets and words "1894 (except section 6 thereof)", *ibid.*

<sup>3</sup>Sub-section (2) was omitted by s. 4 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>The words within the square brackets were substituted for the words "administration of the Excise Department" by s. 5 (1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>See foot-note 4 on page 226, *ante.*

<sup>6</sup>See foot-note 2 on page 226, *ante.*

<sup>7</sup>The words within the square brackets were substituted for the words "administration of the Excise Department" by s. 5 (2) (a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

\*This clause was inserted by s. 5 (2) (b), *ibid.*

(Chapter II.—Establishments, Control, Appeal and  
Revision.—Section 7.)

- (b) appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed on a Collector by or under this Act, either concurrently with, or in subordination to, or to the exclusion of, the Collector and subject to such control as the <sup>1</sup>[State Government] may direct ;
- (c) appoint officers <sup>2</sup>[for the administration of the provisions of this Act and the rules thereunder], of such classes, and with such designations, powers and duties, as the <sup>1</sup>[State Government] may think fit ;
- <sup>3</sup>(cc) appoint scientific experts designated as State Chemical Examiner or State Assistant Chemical Examiner ;
- (d) order that all or any of the powers and duties assigned by or under this Act to any officer appointed under clause (c) of this <sup>4</sup>[sub-section] shall be exercised and performed by any <sup>5</sup>[servant of the Government] or any other person ;
- (e) delegate to <sup>6</sup>\* \* the Commissioner of a Division or the Excise Commissioner all or any of the powers conferred upon the <sup>1</sup>[State Government] by or under this Act, except the power conferred by section 85 to make rules ;
- (f) withdraw from any officer or person all or any of the powers or duties conferred or imposed upon him by or under this Act ; and
- (g) permit the delegation by <sup>6</sup>\* \* the Commissioner of a Division, the Excise Commissioner or the Collector, to any person or classes of persons specified in such notification, of any powers conferred or duties imposed upon <sup>7</sup>\* \* him by or under this Act.

<sup>1</sup>See foot-note 4 on page 226, *ante*.

<sup>2</sup>The words within the square brackets were substituted for the words "of the Excise Department" by s. 5(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>3</sup>This clause was added by s.2 of the Bengal Excise (Second Amendment) Act, 1979 (West Ben. Act XL of 1979).

<sup>4</sup>This word was substituted for the word "section" by s. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>5</sup>The words "servant of the Crown" were originally substituted for the words "Government officer" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>6</sup>The words "the Board" in clauses (e) and (g) of section 7 (2) were repealed by s. 5 (b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>7</sup>The words "it or" were repealed by s. 5 (c) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter II.—Establishments, Control, Appeal and Revision.—  
Sections 8, 8A.—Chapter III.—Import, Export and Transport.—  
Section 9.)

- 8** (1) In doing anything or taking any action under this Act,—
- (a) the Collector shall be subject to the control of the Excise Commissioner and of the State Government and, in such matters as the State Government may direct, also of the Commissioner of the Division; and
  - (b) the Excise Commissioner shall be subject to the control of the State Government.
- (2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rules made under section 85, sub-section (2), clause (c).
- (3) The State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division or by any officer exercising the powers of an appellate authority under any rule made under section 85, sub-section (2), clause (c).

Control,  
appeal and  
revision.

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

Correction  
of errors.

\* \* \* \* \*

### CHAPTER III

#### Import, Export and Transport.

**9.** (1) No <sup>1</sup>[intoxicant] shall be imported unless—

Restrictions  
on import.

<sup>1</sup>Sections 8 and 8A were substituted for the original section 8 by s. 6 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this substitution there occurred some changes in the original section 8, namely:—

(i) in sub-section (1), the change was according to foot-note 4 on page 226, *ante*.

(ii) in sub-section (3), the change was according to foot-note 4 on page 232, *ante*.

(iii) The words, figures, letter and brackets "or by any officer exercising the powers of an appellate authority under any rule made under section 85, clause (c)" were inserted in sub-section (3) by s. 2 of, and the First Schedule to, the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

<sup>2</sup>The proviso to sub-section (3), which was inserted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>3</sup>See foot-note 6 on page 230, *ante*.

## (Chapter III.—Import, Export and Transport.—Section 10.)

- (a) the <sup>1</sup>[State Government] has given permission, either general or special, for its import ;
- (b) such conditions (if any) as the <sup>1</sup>[State Government] may impose have been satisfied ; and
- (c) the duty (if any) <sup>2</sup>[payable under Chapter V] has been paid, or a bond has been executed for the payment thereof.

<sup>3</sup>Provided that the State Government may, subject to such conditions (if any) as it thinks fit to impose, exempt any intoxicant from the provisions of this sub-section.

<sup>4</sup>\* \* \* \* \*

<sup>4</sup>\* \* \* \* \*

Restriction  
on export or  
transport.

<sup>5</sup>10. No intoxicant shall be exported or transported unless—

- (a) the duty (if any) payable under Chapter V has been paid, or a bond has been executed for the payment thereof ; and
- (b) such conditions (if any) as the State Government may impose, have been satisfied :

<sup>1</sup>See foot-note 4 on page 226, *ante*.

<sup>2</sup>These words and figures were substituted for the words and figures "imposed under section 27" by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

<sup>3</sup>The proviso was added by s. 7(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>Sub-sections (2) and (3) to section 9 were omitted by s. 7(2), *ibid*. Prior to this omission there occurred several changes in original sub-sections, namely :—

(a) The words "any Province of India" were originally substituted for words "British India" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts Order.) 1948, and thereafter the words "any Province of" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(b) The portion beginning with the word "if" and the clauses (i) and (ii) were substituted for the words and figures "and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878" by s. 7 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

(c) The figures "1934" were substituted for the figures "1814" by section 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and

(d) See foot-note 7 on page 232, *ante*.

<sup>5</sup>Section 10 was substituted for the original section by s. 8 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this substitution the following changes occurred in the original section, namely :—

(i) See foot-note 6 on page 230, *ante*.

(ii) See foot-note 2 above.

(iii) See clause (c) of foot-note 4 above.

(iv) See foot-note 7 on page 232, *ante*, and

(v) See foot-note 4 on page 226, *ante*.

of 1909.]

(Chapter III.—Import, Export and Transport.—Sections 11, 12.—  
Chapter IV.—Manufacture, Possession and Sale.—Section 13.)

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

11. The <sup>1</sup>{State Government} may by notification,—

(a) <sup>2</sup>\* \* \* \* \* <sup>6</sup>\* prohibit the import or export of any <sup>3</sup>{intoxicant} into or from <sup>4</sup>{West Bengal} or any part thereof, or

(b) prohibit the transport of any <sup>3</sup>{intoxicant} <sup>5</sup>{either absolutely or in such circumstances as it may, by notification, specify};

<sup>6</sup>\* \* \* \* \*

Power to prohibit import, export or transport.

12. (1) No <sup>3</sup>{intoxicant} exceeding such quantity as the <sup>1</sup>{State Government} may prescribe by notification either generally or for any specified local area, shall be imported, exported or transported, except under a pass :

<sup>7</sup>\* \* \* \* \*

Passes for import, export or transport.

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

(3) Such passes may be either general for definite periods and particular kinds of <sup>8</sup>{intoxicants}, or special for specified occasions and particular consignments only.

#### CHAPTER IV

#### Manufacture, Possession and Sale.

13. (a) No <sup>3</sup>{intoxicant} shall be manufactured,

<sup>9</sup>(b) no hemp plant (*Cannabis sativa L.*) from which an intoxicating drug can be manufactured or produced shall be cultivated,

License required for manufacture.

<sup>1</sup>See foot-note 4 on page 226. *ante*.

<sup>2</sup>The words "with the previous sanction of the Government of India" were omitted by s. 2 of, and the First Schedule to, the Devolution Act, 1920 (XXXVIII of 1920).

<sup>3</sup>See foot-note 6 on page 230. *ante*.

<sup>4</sup>See foot-note 2 on page 226. *ante*.

<sup>5</sup>The words within the square brackets were inserted by s. 9 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>6</sup>The proviso to section 11 was omitted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>7</sup>The proviso was omitted by s. 10 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>8</sup>This word was substituted for the words "excisable articles" by paragraph 3 of, and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>9</sup>Clause (b) was substituted for the original clause by s. 2(2)(i) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

*(Chapter IV.— Manufacture, Possession and Sale.—Section 14.)*

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

(d) no liquor shall be bottled for sale,

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

(f) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any <sup>1</sup>[intoxicant] other than *tari*, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector <sup>2</sup>[or the Excise Commissioner, as the State Government may, by notification, specify]:

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

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

<sup>3</sup>(ia) for the purpose of being used solely for the preparation of food for domestic consumption, and not—

(f) as an intoxicant, or

(H) for the preparation of any intoxicating article, or

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

(ii) up to a limit of <sup>4</sup>[four litres,] for the domestic consumption of the said person.

Drawing or possession of *tari* in notified areas.

<sup>5</sup>14. Notwithstanding anything elsewhere contained in this Act, in any area specified by the State Government by notification in this behalf,—

(a) no *tari*-producing tree shall be tapped,

(b) no *tari* shall be drawn from any tree, and

(c) no person shall have any *tari* in his possession,

except under and in accordance with the terms and conditions of a notification issued in this behalf by the State Government or of a license granted in that behalf by the Collector.

<sup>1</sup>See foot-note 6 on page 230, *ante*.

<sup>2</sup>The words within the square brackets were inserted by s. 2(2)(ii) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>3</sup>This clause (ia) in the proviso to section 13 was inserted by s. 8 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>4</sup>The words within the square brackets were substituted for the words "four seers," by s. 2(2)(iii) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>5</sup>Section 14 was substituted for the original section by s. 11 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this substitution there were following changes in the original section, namely :—

(a) See foot-note 4 on page 226, *ante*, and

(b) the words "Excise Commissioner" were substituted for the word "Board" by s. 5(3) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter IV.— Manufacture, Possession and Sale.—  
Sections 15—17.)

15. (1) The Excise Commissioner may,—

- (a) subject to any restrictions imposed by the <sup>1</sup>[State Government], establish, or authorize the establishment of, distilleries or breweries, in which liquor may be manufactured under a license granted under section 13 ;
- (b) discontinue any such distillery or brewery ;
- (c) establish, or authorise the establishment of, warehouses, wherein any <sup>2</sup>[intoxicant] <sup>3</sup>[in respect whereof duty payable under section 27 or permit or pass fee payable under section 38 has not been paid, may be deposited or kept] ; and
- (d) discontinue any such warehouse.

Establishment of distilleries, breweries or warehouses.

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

16. No person shall, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector, deposit or keep any <sup>2</sup>[intoxicant] in any warehouse or other place of storage established, authorized or continued under this Act.

License required for depositing or keeping intoxicant in warehouse or other place of storage.

17. No <sup>2</sup>[intoxicant] shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, unless the duty <sup>4</sup>[or fee] (if any) <sup>5</sup>[payable under Chapter V] <sup>6</sup>[or Chapter VI] has been paid or a bond has been executed for the payment thereof.

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

<sup>1</sup>See foot-note 4 on page 226, ante.

<sup>2</sup>See foot-note 6 on page 230, ante.

<sup>3</sup>These words within the square brackets were substituted for the words "may be deposited or kept without payment of duty" by s. 12 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>The words within the square brackets were inserted by s. 13 (1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>These words and figures were substituted for the words and figures "imposed under section 27" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>6</sup>The words and figures within the square brackets were inserted by s. 13(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).



## (Chapter IV.— Manufacture, Possession and Sale.—Section 18.)

Possession  
of  
intoxicants  
not obtained  
from a  
licensed  
vendor.

18. (1) No person shall have in his possession any <sup>1</sup>[intoxicant] which has not been obtained from a licensed vendor of the same.

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

- (a) any <sup>1</sup>[intoxicant] lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, or
- (b) any <sup>1</sup>[intoxicant] lawfully in the possession of a licensed vendor of the same, or
- (c) any <sup>1</sup>[intoxicant] in the possession of a person who has lawfully imported it, or who is authorized by the Collector to possess it, or
- (d) any foreign liquor in the possession of any common carrier or warehouseman as such, or purchased at a sale authorized by clause (a) of proviso (3) to section 20, or
- (e) *tari* intended to be used in the manufacture of *gur* or molasses, or
- (f) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or
- <sup>2</sup>(ff) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—
  - (i) <sup>3</sup>[as an intoxicating article], or
  - (ii) for the preparation of any intoxicating article, or
  - (iii) for the preparation of any article for sale, or
- (g) *tari*, up to a limit of <sup>4</sup>[four litres], when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or
- (h) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which such drugs were produced, when such possession is in accordance with the conditions of his license.

<sup>1</sup>See foot-note 6 on page 230, *ante*.

<sup>2</sup>This clause (ff) was inserted by s. 9 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>3</sup>These words were substituted for the words "as an intoxicant" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>The words within the square brackets were substituted for the words "four seers" by s. 3 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

of 1909.]

## (Chapter IV.—Manufacture, Possession and Sale.—Section 19.)

19. (1) No person not being licensed to manufacture, cultivate, collect or sell any <sup>1</sup>[intoxicant] shall have in his possession any quantity of any <sup>1</sup>[intoxicant] in excess of such quantity as the <sup>2</sup>[State Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

Possession of intoxicants generally.

(2)<sup>3</sup>[Save as the State Government may by rule made under section 85 otherwise provide, sub-section (1) shall not apply to—]

(a) any foreign liquor (other than denatured spirit) which is in the possession of any common carrier of warehouseman as such, or

(b) any foreign liquor which has been purchased by any person for his *bona fide* private consumption and not for sale, or

(c) *tari* intended to be used in the manufacture of *gur* or molasses <sup>4</sup>[or]

<sup>5</sup>(d) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—

(i) <sup>6</sup>[as an intoxicating article], or

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

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

(3)<sup>7</sup>[A person licensed to manufacture, cultivate, collect or sell any intoxicant] shall not have in his possession at any place other than that authorised by his license any quantity of any <sup>1</sup>[intoxicant] in excess of such quantity as the <sup>2</sup>[State Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

<sup>1</sup>See foot-note 6 on page 230, *ante*.

<sup>2</sup>See foot-note 4 on page 232, *ante*.

<sup>3</sup>The words, brackets and figures within the square brackets were substituted for the words, brackets and figure "Sub-section (1) shall not apply to—" by s. 14(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>The word "or" was inserted by s. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>5</sup>Clause (d) was inserted by s. 10 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>6</sup>These words were substituted for the words "as an intoxicant" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>7</sup>The words within the square brackets were substituted for the words "A licensed vendor" by s. 14(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

*(Chapter IV.— Manufacture, Possession and Sale.—Section 20.)*

<sup>1</sup>(4) Notwithstanding anything contained in the foregoing sub-sections, if the State Government thinks fit so to do on the ground of health, morality or public order, it may, by notification, prohibit, either absolutely or subject to such conditions as it may prescribe, the possession in the whole of West Bengal or in any specified local area of any intoxicant by all persons generally or by any specified class or classes of persons.

License  
required for  
sale.

20. No <sup>2</sup>[intoxicant], and no portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and <sup>3</sup>[in accordance with the terms and conditions of a license granted in that behalf by the Collector subject to the provisions of section 37A] :

Provided as follows :—

- (1) a license for sale in more than one district shall be granted only by the Excise Commissioner <sup>4</sup>[or by a Collector specially authorized in that behalf by the Excise Commissioner ] ;
- <sup>5</sup>(1a) a license for sale granted under the Excise law in force in any other <sup>6</sup>[State] may, on such conditions as may be determined by the Excise Commissioner, be deemed to be a license granted under this Act ;
- (2) a cultivator or owner of any hemp plant (*Cannabis sativa*) may sell, without a license, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorize to purchase or receive the same ;

<sup>1</sup>Sub-section (4) was substituted for the original sub-section by s. 14(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this substitution the following changes occurred in original sub-section (4), namely :—

(i) See foot-note 4 on page 226, *ante*, and

(ii) See foot-note 2 on page 226, *ante*.

<sup>2</sup>See foot-note 6 on page 230, *ante*.

<sup>3</sup>The words, figures and letter within the square brackets were substituted for the words "subject to the terms and conditions of a license granted in that behalf by the Collector" by s. 2 of the Bengal Excise (Amendment) Act, 1973 (West Ben. Act IV of 1973).

<sup>4</sup>These words were added to proviso (1) of section 20 by s. 11(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>5</sup>Clause 1(a) was inserted by s. 11(b), *ibid*

<sup>6</sup>This word was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1909.]

(Chapter IV.— *Manufacture, Possession and Sale.*—  
Sections 21, 22.)

- (3) no license shall be required for any of the following sales ;  
namely :—
- (a) the sale of foreign liquor lawfully procured by any person for his private use—when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease ;
  - (b) the sale of *tari*, <sup>1</sup>[lawfully possessed] by a person in possession of the tree from which it was drawn, to a person licensed under this Act to manufacture or sell *tari* ;
  - (c) the sale of *tari*, <sup>2</sup>[lawfully possessed and] intended to be used in the manufacture of *gur* or molasses, or
  - (d) the sale of *tari* <sup>3</sup>[lawfully possessed and] intended to be used in the manufacture of bread to a person holding a permit to use *tari* for the purpose of making bread ; <sup>3</sup>[or
  - (e) the sale of *tari* lawfully possessed and intended to be used solely for the preparation of food for domestic consumption and not—
    - (i) <sup>4</sup>[as an intoxicating article], or
    - (ii) for the preparation of any intoxicating article, or
    - (iii) for the preparation of any article for sale].

21. Within the limits of any military cantonment, and within such distance from those limits as the <sup>5</sup>[Central Government] may in any case prescribe, no license for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

22. (1) The <sup>6</sup>[State Government] may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege—

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

Manufacture and sale of liquor in or near cantonments.

Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs.

<sup>1</sup>The words "lawfully possessed" were inserted in proviso (3) (b) of section 20 by s. 11 (c) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>The words "lawfully possessed and" were inserted in proviso 3(c) and (d) of section 20 by s. 11 (d), *ibid.*

<sup>3</sup>The portions enclosed within square brackets beginning with the word "or" and containing clause (e) were added by s. 11(e), *ibid.*

<sup>4</sup>See foot-note 6 on page 241. *ante.*

<sup>5</sup>These words were substituted for the words "Local Government" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>6</sup>See foot-note 4 on page 226. *ante.*

(Chapter IV.— *Manufacture, Possession and Sale.*—  
Sections 23, 24.)

- (b) of manufacturing, and supplying by wholesale, or
- (c) of selling, by wholesale or retail, or
- (d) of manufacturing or supplying by wholesale and selling retail, or
- (e) of manufacturing and supplying by wholesale and selling retail,

any country liquor or intoxicating drug within any specified local area :

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

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

Transfer of  
exclusive  
privilege.

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

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

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

Mainte-  
nance and  
use of  
measures,  
weights and  
instruments  
by licensed  
manufactur-  
ers and  
vendors.

24. Every person who manufactures or sells any <sup>2</sup>[intoxicant] under a license granted under this Act—

- (a) shall supply himself with <sup>3</sup>[such standard measures, standard weights, measuring instruments and weighing instruments, duly stamped and verified in accordance with the provisions of the West Bengal Standards of Weights and Measures (Enforcement) Act, 1958, and such other instruments as the Excise Commissioner may prescribe,] and shall keep the same in good condition ; and

West Ben.  
Act XXIII  
of 1958.

<sup>1</sup>These words were added by s. 12 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>See foot-note 6 on page 230. *ante*.

<sup>3</sup>The words within the square brackets with the marginal reference were substituted for the words "such measures, weights and instruments as the Excise Commissioner may prescribe," by s. 15(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter IV.— Manufacture, Possession and Sale.—Section 25.)

(b) when such measures, weights and instruments have been so prescribed, shall, on the requisition of any <sup>1</sup>[officer referred to in clause (a), clause (b) or clause (c) of section 66], measure, weigh or test any <sup>2</sup>[intoxicant] in his possession, at such time and in such manner as such officer may require.

25. (1) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall,

during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any <sup>3</sup>[person under age of twenty-one years], in any part of such premises in which such liquor or spirit is consumed by the public.

(2) No person who is licensed to sell foreign liquor <sup>4</sup>[or country spirit] for consumption on his premises shall, <sup>5</sup>\* \* \* \*

during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman, in any part of such premises in which such liquor <sup>6</sup>[or spirit] is consumed by the public.

<sup>7</sup>\* \* \* \* \*  
<sup>7</sup>\* \* \* \* \*

Employment of children or women by licensed vendors.

<sup>1</sup>The words, letters, figures and brackets within the square brackets were substituted for the words "Excise Officer duly empowered by the Collector in this behalf" by s. 15(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>See foot-note 6 on page 230, *ante*.

<sup>3</sup>The words within the square brackets were substituted for the words "child under the age of fourteen years" by s. 16(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>The words within the square brackets were inserted by s. 16 (2) (a), *ibid*.

<sup>5</sup>The words "without the previous written permission of the Excise Commissioner" were omitted by s. 16(2)(b), *ibid*. Prior to this omission there was a change in the omitted portion, namely :—

(i) The words "Excise Commissioner" were substituted for the word "Board" by s. 5(3) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>6</sup>The words "or spirit" were inserted by s. 16 (2) (c) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>7</sup>Sub-sections (3) and (4) were omitted by s. 16(3) and 16(4), respectively, *ibid*. Prior to this omission there was a change in original sub-section (3), namely :—

(a) See foot-note 4 on page 226, *ante*.

(Chapter IV.—*Manufacture, Possession and Sale.*—Section 26.—Chapter V.—*Duty.*—Section 27.)

Power to close shops temporarily.

26. (1) The District Magistrate or a Subdivisional Magistrate, or (in Calcutta) <sup>1</sup>[the Chief Metropolitan Magistrate] or the Commissioner of Police, may, by notice in writing to the licensee require that any shop in which any <sup>2</sup>[intoxicant] is sold shall be closed at such times or for such period as such Magistrate or Commissioner of Police may think necessary for the preservation of the public peace.

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

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

## CHAPTER V

### Duty.

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

27. (1) <sup>3</sup>[An excise duty or a countervailing duty, as the case may be,] at such rate or rates as the <sup>4</sup>[State Government] may direct, may be imposed, either generally, or for any specified local area, on—

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

<sup>1</sup>The words within the square brackets were substituted for the words "the Chief Presidency Magistrate" by s. 4 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>2</sup>See foot-note 6 on page 230, *ante*.

<sup>3</sup>These words were substituted for the words "A duty" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>See foot-note 4 on page 226, *ante*.

of 1909.]

(Chapter V.—Duty.—Section 28.)

*Explanation.*—Duty may be imposed on any article under this sub-section at different rates <sup>1</sup>[according to the purposes for which such article is intended to be used] according to the place to which such article is to be removed for consumption, or according to the varying strengths and quality of such article.

(2) <sup>2</sup>[An excise duty \* \* \* \* \*] at such rate or rates as the <sup>3</sup>[State Government] may direct, may be imposed, either generally or for any specified local area, on any *tari* drawn under any license granted under section 14 <sup>4</sup>\* \* \* \* \*

5\* \* \* \* \*

6\* \* \* \* \*

28. Subject to any rules made under section 86, clause (12) any duty imposed under section 27 may be levied in any of the following ways :—

Ways of levying such duty.

<sup>1</sup>These words within the square brackets were inserted by s. 17(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>The words "An excise duty or a countervailing duty, as the case may be," were substituted for the words "A duty" by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the words "or a countervailing duty, as the case may be," were omitted by s. 17 (2) (a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>3</sup>See foot-note 4 on page 226, *ante*.

<sup>4</sup>The word, figure and brackets, "sub-section (1)" were omitted by s. 17 (2) (b) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>Original sub-section (3) was omitted by s. 17 (3), *ibid*. Later, an another sub-section (3) was added by s. 2 of the Bengal Excise (Amendment) Act, 1974 (West Ben. Act L of 1974). Finally, the latter sub-section (3) was also omitted by s. 2 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Prior to these omissions and additions, there were following changes in the original sub-section (3), namely :—

(a) The word "British" was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(b) The portion beginning with the word "if" and containing sub-clauses (i) and (ii) were substituted for the words and figures "and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878," by s. 7 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914),

(c) See clause (c) of foot-note 4 on page 236, *ante*,

(d) See foot-note 4 on page 232, *ante*, and

(e) The word "and" was repealed by s. 3 of, and the Second Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>6</sup>Clause (ii) was omitted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.



## (Chapter V.—Duty.—Section 28.)

- (a) on an excisable article imported,
- (i) by payment (upon or before importation) in <sup>1</sup>[West Bengal] or in the <sup>2</sup>[State] or territory from which the article is brought, or
  - (ii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act ;
- (b) on an excisable article exported,—
- by payment in <sup>1</sup>[West Bengal] or in the <sup>2</sup>[State] or territory to which the article is sent ;
- (c) on an excisable article transported,—
- (i) by payment in the district from which the article is sent, or
  - (ii) by payment upon issue for sale from a warehouse established, authorized, or continued under this Act ;
- (d) on intoxicating drugs manufactured, cultivated or collected,—
- (i) by a rate charged upon the quantity manufactured under a license granted in respect of the provisions of section 13, clause (a), or issued for sale from a warehouse established, authorized or continued under this Act, or
  - (ii) by <sup>3</sup>[a rate assessed on the area covered by, or on the quantity or outturn of, the crop cultivated or collected, under,] a license granted in respect of the provisions of section 13, clause (b) or clause (c) ;
- (e) on spirit or beer manufactured in any distillery or brewery licensed, established, authorized or continued under this Act,—
- (i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorized or continued under this Act, or
  - (ii) in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the <sup>4</sup>[State Government] may prescribe ; and

<sup>1</sup>See foot-note 2 on page 226. *ante*.

<sup>2</sup>This word was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>3</sup>These words were substituted for the words and brackets "an acreage rate levied on the cultivation or collection of the hemp plant (*Cannabis Sativa*) under" by s. 13 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>4</sup>See foot-note 4 on page 226. *ante*.

of 1909.]

(Chapter V.—Duty.—Sections 29, 29A.)

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

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

Provided also that no tax shall be levied in respect of any tree from which *tari* is drawn only for the manufacture of *gur* or molasses and under such special conditions as the <sup>1</sup>[Excise Commissioner] may prescribe.

29. Instead of, or in addition to, any duty leviable under this Act, the <sup>2</sup>[State Government] may accept payment of a sum in consideration of the grant of any exclusive privilege under section 22.

Payment for grant of exclusive privilege.

<sup>3</sup>29A. (1) Until provision to the contrary is made by <sup>4</sup>[Parliament] the State<sup>5</sup> Government may continue to levy any duty to which this section applies which it was lawfully levying immediately before the commencement of <sup>6</sup>[the Constitution], under this Chapter as then in force.

Saving for duties being levied at commencement of the Constitution.

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

- (a) any duty on intoxicants which are not excisable articles within the meaning of this Act ;
- (b) any duty on an excisable article produced outside India and imported into the <sup>7</sup>[State] whether across a customs frontier as <sup>8</sup>defined by the Central Government or not ;

<sup>1</sup>The words "Excise Commissioner" in section 28 (second proviso) and in section 30 were substituted for the word "Board" by s. 5(3) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>See foot-note 4 on page 226, *ante*.

<sup>3</sup>Section 29A was inserted by paragraph 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>This word was substituted for the words "the Central Legislature" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>5</sup>The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>6</sup>These words were substituted for the words "Part III of the Government of India Act, 1935" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>7</sup>See foot-note 6 on page 242, *ante*.

<sup>8</sup>See foot-note 4 on page 229, *ante*.

(Chapter V.—Duty.—Sections 29A.—Chapter VI.—Licenses,  
Permits and Passes.—Sections 30, 31.)

<sup>1</sup>(c) any duty on medicinal or toilet preparations containing alcohol.

(3) Nothing in this section shall authorise the levy by the <sup>2</sup>[State Government] of any duty which, as between goods manufactured or produced in the <sup>2</sup>[State] and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the <sup>2</sup>[State], discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

## CHAPTER VI

### Licenses, Permits and Passes.

Selection of  
new sites  
for grant of  
licenses.

<sup>3</sup>30. (1) The State Government may, subject to such conditions and restrictions as may be prescribed, select, from time to time, new sites in any local area for grant of a license for the retail sale of spirit at such new site or in the vicinity thereof having regard to public demand.

(2) Upon selection of the new sites under sub-section (1), the Collector may, subject to the provisions of section 37A, grant a license to a person for the retail sale of spirit at the new site or in the vicinity thereof for a period of settlement.

Grant of  
licenses at  
existing  
sites.

<sup>4</sup>31. Unless the State Government or the Excise Commissioner otherwise directs, the Collector may, on the expiry of the period of validity of licenses for the retail sale of spirit at the existing sites, grant

<sup>1</sup>Clause (c) was inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>2</sup>See foot-note 6 on page 242, *ante*.

<sup>3</sup>Section 30 was substituted for the original section by s. 2(2) of the West Bengal Taxation Laws (Amendment) Act, 1993 (West Ben. Act IV of 1993). Prior to this substitution there was a change in original section as per foot-note 1 on previous page.

<sup>4</sup>Section 31 was substituted for the original section by s.2(3), *ibid*. Prior to this substitution there were following changes in the original section, namely :—

(i) the words "thereat, or in the vicinity, during the next period of settlement, of spirit for consumption on the vendor's premises;" were substituted, in clause (a) of sub-section (1), for the words "of spirit thereat, or in the vicinity, for the next period of settlement;" by s. 18(1) (a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965),

(Foot-note 4 concluded next page.)

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Sections 32—34.)

licenses for the retail sale of spirit at the existing sites or, if necessary, in the vicinity thereof for the next period of settlement in such manner and subject to such condition as may be prescribed.

32. [Time for preparation and publication of such list.]—Omitted by s. 2(4) of the West Bengal Taxation Laws (Amendment) Act, 1993 (West Ben. Act IV of 1993.)

33. [Submission of objections and opinions to Collector.]—Omitted by s. 2(5), *ibid.*

34. [Grant of licenses by Collector, and submission of list, objections and opinions to Excise Commissioner.]—Omitted by s. 2(6), *ibid.*

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(Foot-note 4 continued from previous page concluded.)

(ii) in clause (b) of sub-section (1),—

(a) the words "used for retail sale of spirit for consumption in the vendor's premises" were substituted for the words "used for the retail sale of spirit" by s. 18(1) (b) (i), *ibid.*

(b) the same words as in para (i) above, were substituted by s. 18(1) (b) (ii), *ibid.* and

(c) the words "or in such other manner as the Collector may think fit" were inserted by s. 18(1) (b) (iii), *ibid.*

(iii) in clause (c) of sub-section (1),—

(a) firstly, the words "or, in Calcutta, to the Chief Executive Officer of the Corporation" were inserted by s. 2 of, and para. 6(1)(a) of the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). Later, the words "Commissioner of the Corporation of Calcutta" were substituted for the words "Chief Executive Officer of the Corporation" by s. 18(1) (c) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

(b) the words "or in Calcutta, as the case may be" were inserted by s. 2 of, and para. 6(1)(b) of the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and

(c) the word, figure and brackets "sub-section (2)," were inserted by s. 18(1) (d) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965), and

(iv) in sub-section (2),—

(a) firstly, the words "or to the Chief Executive Officer of the Corporation of Calcutta" were inserted by s. 2 of, and para. 6(2)(a) of the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). Later, the word "Commissioner" was substituted for the words "Chief Executive Officer" by s. 18(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965), and

(b) the words "concerned or the Corporation of Calcutta, as the case may be" were inserted by s. 2 of, and para. 6(2)(b) of the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Chapter VI.—Licenses, Permits and Passes.—Sections 35, 35A, 36, 36A, 37.)

35. [Finality of decision of Excise Commissioner or State Government.]—Omitted by s. 2(7) of the West Bengal Taxation Laws (Amendment) Act, 1993 (West Ben. Act IV of 1993).

35A. [Definition.]—Omitted by s. 2(8), *ibid.*

Application of section 30 and section 31 to licenses for retail sale of intoxicants other than spirit.

<sup>1</sup>36. The provisions of sections 30 and 31 as to licenses for the retail sale of spirit shall also be applicable to the licenses for the retail sale of such other intoxicants as the State Government may, by order, specify, in West Bengal generally or in such local area as may be specified in such order.

<sup>2</sup>36A. [Power to exempt the application of sections 30 to 36.]—Omitted by s. 3 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

Exemption of certain licenses from section 30 or section 36.

<sup>3</sup>37. Notwithstanding anything contained in section 30 or section 36, the Collector may, in such manner and subject to such conditions and restrictions as may be prescribed, grant license to—

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

<sup>1</sup>Section 36 was substituted for the original section by s. 2(9) of the West Bengal Taxation Laws (Amendment) Act, 1993 (West Ben. Act IV of 1993). Prior to this substitution there were following changes in the original section, namely :—

(i) the words "in West Bengal generally or in any local area as may be specified" were substituted for the words "in local area specified" by s. 23 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965),

(ii) See foot-note 4 on page 232, *ante*, and

(iii) See foot-note 6 on page 230, *ante*.

<sup>2</sup>This section was inserted by s. 3 of the Bengal Excise (Amendment) Act, 1974 (West Ben. Act L of 1974).

<sup>3</sup>Section 37 was substituted for the original section by s. 2(10) of the West Bengal Taxation Laws (Amendment) Act, 1993 (West Ben. Act IV of 1993). Prior to this substitution there were following changes in the original section, namely :—

(i) in clause (b), the word "retail" was omitted by s. 24(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965),

(ii) the word "intoxicant" was substituted in clauses (a), (b) and (d) as per foot-note 6 on page 230, *ante*,

(iii) in clause (c),—

(a) the words "and for the remainder of the period of," were inserted by s. 24 (2) (a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965),

(b) the word "withdrawn" was inserted by s. 24 (2) (b), *ibid*, and

(c) the words "or which was lapsed on the death of the person to whom it was granted" were added by s. 24(2)(c), *ibid*.

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Sections 37A, 38.)

- (b) any person, for the sale of any denatured spirit ; or
- (c) any person, for the retail sale of any intoxicant in substitution for and for the remainder of a license which has been cancelled, withdrawn or surrendered before the expiration of the period for which it was granted or which has lapsed on the death of the person to whom it was granted ; or
- (d) any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary, for the retail sale of any intoxicant for medical purposes ; or
- (e) any person in charge of a military canteen or a canteen established by or for the Border Security Force for sale of foreign liquor to the military personnel or the personnel of the Border Security Force.

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

Selection of persons to whom licenses may be granted.

2\* \* \* \* \*

38. (1) Every license, permit or pass granted under this Act—

- (a) shall be granted—
  - (i) on payment of such fees (if any), <sup>1</sup>[as the State Government may fix] ; and
  - (ii) subject to such restrictions and on such conditions, <sup>4</sup>[as the State Government may impose] ; and
- (b) shall be in such form and contain such particular as the <sup>5</sup>[State Government] may direct.

Fees for terms, conditions and form of, and duration of, licenses, permits and passes.

(2) Every license, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the <sup>3</sup>[State Government] under section 85, <sup>6</sup>[sub-section (2),] clause (e).

<sup>1</sup>Section 37A was inserted by s. 4 of the Bengal Excise (Amendment) Act, 1973 (West Ben. Act IV of 1973).

<sup>2</sup>Sub-section (2), as was inserted by s. 4 of the Bengal Excise (Amendment) Act, 1974 (West Ben. Act L of 1974), was omitted by s. 4 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>3</sup>The words within the square brackets were inserted by s. 25(1)(a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>The words within the square brackets were inserted by s. 25(1)(b), *ibid*.

<sup>5</sup>See foot-note 4 on page 232, *ante*.

<sup>6</sup>The word, figure and brackets within the square brackets were inserted by s. 25(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

## (Chapter VI.—Licenses, Permits and Passes.—Sections 39—42.)

39. [Continuance of licenses granted under former law.]—Rep. by s. 14 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

Counterpart agreement by licensee, and security or deposit.

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

Technical defects, irregularities and omissions.

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

(2) The decision of<sup>1</sup> \* \* \* \* \* the<sup>2</sup>[State Government] as to what is a technical defect, irregularity or omission, shall be final.

Power to cancel or suspend license, permit or pass.

42. (1) Subject to such restrictions as the<sup>2</sup>[State Government] may prescribe,<sup>3</sup>[by rule made under section 85, sub-section (2), clause (i)] the authority who granted any license, permit or pass under this Act may cancel or suspend it—

- (a) if it is transferred or sublet by the holder thereof without the permission of the said authority ; or
- (b) if any duty <sup>4</sup>[,tax] or fee payable by the holder thereof be not duly paid ; or
- (c) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions thereof ; or

<sup>1</sup>The words, figures and brackets "the Excise Commissioner or (where a reference is made to the State Government under section 35)" were omitted by s. 2(11) of the West Bengal Taxation Laws (Amendment) Act, 1993 (West Ben. Act IV of 1993). Prior to this omission, the word "State Government" was substituted as per foot-note 4 on page 232, *ante*.

<sup>2</sup>See foot-note 4 on page 232, *ante*.

<sup>3</sup>The words, figures, letter and brackets within the square brackets were inserted by s. 26(a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>This word was inserted by s. 26(b), of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Section 42.)

- (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable <sup>1</sup>[under the Dangerous Drugs Act, 1930, {or under the Trade and Merchandise Marks Act, 1958 or under any of sections 479 to 489 of the Indian Penal Code, or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.}] ; or
- <sup>2</sup>(e) if the holder thereof is subjected to any penalty under Chapter XIV of the Customs Act, 1962, or ;
- (f) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22, on the requisition in writing of such holder ; or
- (g) if the conditions of the license, permit or pass provide such cancellation or suspension at will.

(2) When a license, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), clause (d) or clause (e) of sub-section (1) the authority aforesaid may cancel any other license, permit or pass granted to such person <sup>3</sup>[by, or by the authority of, the State<sup>4</sup> Government] under this Act, or under any other law for the time being in force relating to excise, or under the Opium Act, 1878.

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

<sup>1</sup>The words, figures and brackets with the second brackets were substituted for the words and figures "or under the Merchandise Marks Act, 1889, or under any section which has been introduced into the Penal Code by section 3 of that Act" by s. 26(e) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this substitutions there were two charges in clause (d), namely :—

(i) the words and figures beginning with "under the Dangerous Drugs Act, 1930" and ending with "by section 3 of that Act" were inserted by s. 40 of, and Schedule II to, the Dangerous Drugs Act, 1930 (II of 1930), and

(ii) The Merchandise Marks Act, 1889 (IV of 1889) was repealed by the Trade and Merchandise Marks Act, 1958 (43 of 1958).

<sup>2</sup>Clause (e) was substituted for the original clause by s. 5 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983). For the previous change in original clause (e) see foot-note 7 on page 232, ante.

<sup>3</sup>These words were inserted by para 3 of, and Schedule IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>See foot-note 5 on page 249, ante.

2 of 1930.

43 of 1958.

XLV of

1860.

16 of 1955.

52 of 1962.

I of 1878.



*(Chapter VI.—Licenses, Permits and Passes.—Section 43.)*

Power to  
withdraw  
license, etc.

<sup>1</sup>43. (1) Whenever the authority which granted any license, permit or pass under this Act considers that the license, permit or pass should be withdrawn for any cause other than those specified in section 42, it may, subject to such restrictions (if any) as the State Government may prescribe by rule under section 85, withdraw the license, permit or pass either—

- (a) on the expiration of fifteen days' notice in writing of its intention to do so, or ;
  - (b) forthwith, without notice, after recording its reasons in writing for doing so.
- (2) When a license, permit or pass is withdrawn under sub-section (1), there shall be paid to the holder of the license, permit or pass, as the case may be, the amount (if any) deposited as security or in advance as fees in respect of the unexpired period of the license, permit or pass together with compensation amounting to fifteen days' average fees payable in respect of the license, permit or pass calculated in the manner specified in sub-section (3) :

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

- (3) The amount of fifteen days' average fees referred to in sub-section (2) shall be calculated in the following manner, that is to say,—
- (i) Where the fees in respect of the license, permit or pass have been fixed by auction, the amount of fifteen days' average fees shall bear to the total amount of fees so fixed the same proportion as the period of fifteen days bears to the total period of the license, permit or pass ; and
  - (ii) in other cases the amount of fifteen days' average fees shall be the average for fifteen days of the fees actually paid in respect of the license, permit or pass during a period of three months or during the actual period whichever is less, immediately preceding the withdrawal of the license, permit or pass.

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<sup>1</sup>Section 43 was substituted for the original section by s. 27 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Sections 44, 44A.)

44. <sup>1</sup>(1) Any holder of a license granted under this Act to sell an <sup>2</sup>intoxicant may, unless his license is liable to cancellation or suspension under section 42, surrender the same on—

Surrender  
of license.

- <sup>3</sup>(i) the expiration of a period of three months, or such shorter period as the Collector may allow, after giving to the Collector a notice in writing of his intention so to do, and
- (ii) payment of the fees payable for the license for the whole period for which it would have been current but for such surrender :

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a license, he may remit to the holder thereof the sum so payable on surrender, and any fees paid in advance, or any portion of such sum or fees.

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

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

<sup>4</sup>44A. No person to whom a license <sup>5</sup>[or permit] has been granted under this Act shall have any claim to the <sup>6</sup>[renewal thereof], or, save as provided in section 43, any claim to compensation on the determination thereof.

Bar to right  
of renewal  
and to  
compensa-  
tion.

<sup>1</sup>This sub-section (1) of section 44 was substituted for the original sub-section (1) by s. 15 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). The original sub-section ran thus :—

“(1) Any holder of a license granted under this Act to sell an excisable article may surrender his license on the expiration of one month’s notice in writing given by him to the Collector of his intention to surrender the same, unless the license is liable to cancellation or suspension under section 42”.

<sup>2</sup>See foot-note 6 on page 230, *ante*.

<sup>3</sup>Clause (i) was substituted for the original clause by s. 28 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>Section 44A was inserted by s. 16 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>5</sup>These words were inserted by s. 29(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>6</sup>These words were inserted by s. 29(2), *ibid*.

(Chapter VII.—Departmental Management or Transfer.—Section 45.—Chapter VIII.—Offences and Penalties.—Section 46.)

## CHAPTER VII

### Departmental Management or Transfer.

Power of Collector to take grants under management, or to transfer them.

45. If any holder of a license granted under this Act, or any person to whom an exclusive privilege has been granted under section 22, contravenes any provision of this Act or any rule made hereunder, or makes default in complying with any condition imposed upon him by such license or privilege, or

if any holder of a license granted under this Act surrenders the same under section 44,

the Collector may (in the case of a license, after the cancellation or surrender thereof, and, in the case of an exclusive privilege at any time)—

- (a) take the grant under management, at the risk and loss of the person to whom it was made, or
- (b) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any other person :

\* \* \* \* \*

## CHAPTER VIII

### Offences and Penalties.

Penalty for unlawful import, export, transport, manufacture etc. of intoxicant other than spirit or intoxicating drug and collecting or selling hemp, bottling liquor and removing intoxicant etc.

46. Whoever in contravention of this Act, or any rule, notification or order made, issued or given, or license, permit or pass granted under this Act,—

<sup>1</sup>The proviso to section 45 was repealed by s. 17 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). It ran thus :—

"Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a license, he may remit such loss as may accrue in consequence of the surrender, or any portion thereof."

<sup>2</sup>Sections 46 and 46A were substituted for the original section 46 by s. 5 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Prior to this substitution there were following changes in original section 46, namely :—

(Foot-note 2 concluded next page.)

of 1909.]

(Chapter VIII.—Offences and Penalties.—Section 46.)

- <sup>1</sup>(a) manufactures intoxicant (including *bakhar* but excluding spirit or other intoxicating drugs), or
- <sup>2</sup>(b) imports, exports, transports, possesses or sells any intoxicant (including *bakhar* but excluding spirit or other intoxicating drugs), or
- \* \* \* \* \*
- (d) bottles any liquor <sup>4</sup>[,other than spirit,] for the purpose of sale, or
- (e) removes any intoxicant from any distillery, brewery, warehouse or other place of storage, licensed, established, authorised or continued under this Act, <sup>5</sup>[shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.]

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(Foot-note 2 continued from previous page concluded.)

(i) the words "imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five thousand rupees" were substituted for the words "imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both" by s. 30 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

(ii) the word "intoxicant" was substituted as per foot-note 6 on page 230, *ante*.

(iii) the original proviso to section 46, which was added by s. 19 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), was omitted by s. 40 of, and Schedule II to, the Dangerous Drugs Act, 1930 (II of 1930). Later, another proviso was added by s. 5 of the Bengal Excise (Amendment) Act, 1974 (West Ben. Act L of 1974), and

(iv) the word "six" was substituted for the word "three" by s. 18 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>1</sup>Clause (a) was substituted for the previous clause by s. 6(a) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>2</sup>Clause (b) was substituted for the previous clause by s. 6(b), *ibid*.

<sup>3</sup>Clause (c) was omitted by s. 6(c), *ibid*.

<sup>4</sup>These words were inserted by s. 6(d), *ibid*.

<sup>5</sup>These words within the square brackets were substituted for the words "shall be liable to imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to five thousand rupees, but in no case the Court shall award a sentence of imprisonment of less than three months and a fine of rupees one thousand." by s. 6(e), *ibid*.

## (Chapter VIII.—Offences and Penalties.—Section 46A.)

Penalty for unlawful manufacture of spirit or transport etc. of intoxicating drug, cultivation of hemp, use and possession of materials for manufacture of spirit and intoxicating drug.

<sup>1</sup>46A. Whoever in contravention of this Act or of any rule, notification or order made, issued or given, or a license, permit or pass granted under this Act,—

<sup>2</sup>(a) manufactures any spirit or intoxicating drug other than *bakhar* or cultivates hemp plant (*Cannabis sativa L.*)<sup>3</sup>[from which an intoxicating drug can be manufactured or produced], or

(b) uses, keeps or has in his possession any material<sup>4</sup>[including fermented wash], still, utensils, implements or apparatus whatsoever for the purpose mentioned in clause (a), or

<sup>5</sup>(c) imports, exports, transports, possesses or sells spirit or intoxicating drug other than *bakhar*, or

<sup>6</sup>(cc) bottles spirit for the purpose of sale, or

(d) works any distillery or brewery, or

(e) establishes any distillery, brewery or warehouse,<sup>7</sup>[or]

<sup>8</sup>(f) collects or sells any portion of hemp plant (*Cannabis sativa L.*) from which an intoxicating drug may be manufactured or produced,

<sup>9</sup>[shall be punishable,—

(i) in the case of an offence under clause (c) or clause (f), when the value of the spirit, intoxicating drug or hemp plant<sup>10</sup>[(*Cannabis sativa L.*) from which an intoxicating drug can be manufactured or produced is less than] two thousand rupees, with imprisonment for a term which may extend to two years and with fine :

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

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

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

<sup>1</sup>See foot-note 2 on page 258, *ante*.

<sup>2</sup>Clause (a) was substituted for the previous clause by s. 7(a) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>3</sup>The words within the square brackets were inserted by s. 2(3)(i) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>4</sup>The words within the square brackets were inserted by s. 2(3)(ii), *ibid*.

<sup>5</sup>Clause (c) was substituted by s. 7(b), of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>6</sup>Clause (cc) was inserted by s. 7(c), *ibid*.

<sup>7</sup>This word was inserted by s. 7(d), *ibid*.

<sup>8</sup>This clause was inserted by s. 7(e), *ibid*.

<sup>9</sup>This portion within the square brackets was substituted for the words beginning with "shall be punishable" and ending with the words "for awarding lesser sentence." by s. 7(f), *ibid*.

<sup>10</sup>The words, letter and brackets within the second brackets were substituted for the words, letter and brackets "(*Cannabis sativa L.*) is less than" by s. 2(3)(iii) of the West Bengal Finance Act, 1997, (West Ben. Act V of 1997).

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sections 46B, 47.)

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

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

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

Offences by companies.

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

*Explanation.*—For the purposes of this section—

- (a) "Company" means a body corporate and includes a firm or other association of individuals; and  
(b) "Director, in relation to a firm", means a partner of the firm.

**47.** In prosecution under <sup>2</sup>[section 46 or section 46A] it may be presumed, unless and until the contrary is proved, that the accused person has committed an offence punishable <sup>3</sup>[under section 46 or section 46A] in respect of—

Presumption as to offence where possession is not satisfactorily accounted for.

<sup>1</sup>Originally, section 46A was inserted by s. 31 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Later, the present section was substituted for section 46A by s. 6 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>2</sup>Firstly, the words, figures and letter "and section 46A" were inserted by s. 7 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Later, the words, figures and letter within the square brackets were substituted for the words, figures and letter "section 46 and section 46A" by s. 3(1) of the Bengal Excise (Second Amendment) Act, 1979 (West Ben. Act XL of 1979).

<sup>3</sup>The words, figures and letter within the square brackets were substituted for the words "under that section" by s. 3(2). *ibid.*

*(Chapter VIII.—Offences and Penalties.—Section 48.)*

- (a) any <sup>1</sup>[intoxicant], or
- (b) any still, utensil, implement or apparatus whatsoever for the manufacture of any <sup>1</sup>[intoxicant] other than *tari*, or
- (c) any materials which have undergone any process towards the manufacture of an <sup>1</sup>[intoxicant] or from which an <sup>1</sup>[intoxicant] has been manufactured,
- for the possession of which he fails to account satisfactorily.

Penalty for altering or attempting to alter denatured spirit.

<sup>2</sup>48. Whoever—

- (a) alters or attempts to alter, by any means whatsoever, any denatured spirit, or
- (b) has in his possession any spirit which has been and which he knows or has reason to believe to have been, derived from denatured spirit,

so that such spirit may be used for human consumption internally, whether as a beverage or medicine or in any other way whatsoever,

shall be liable in case of clause (a) to imprisonment for a term which may extend to <sup>3</sup>[five years and to fine], and in case of clause (b) to imprisonment for a term which may extend to <sup>4</sup>[two years and to fine :]

<sup>5</sup>Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgement of the court, such imprisonment shall be,—

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

<sup>1</sup>See foot-note 6 on page 230, *ante*.

<sup>2</sup>Firstly, section 48 was substituted for the original section by s. 32 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Later, it was re-substituted by s. 8 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Prior to these substitutions, the word "India" was substituted, in the original section, for the words "British India" by para. (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

<sup>3</sup>These words within the square brackets were substituted for the words "ten years and also to fine" by s. 8(a) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>4</sup>These words within the square brackets were substituted for the words "three years and also to fine which may extend to rupees five thousand" by s. 8(b), *ibid*.

<sup>5</sup>The proviso, which was added by s. 8 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979), was substituted by the present proviso as per s. 8 (c) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sections 48A, 48B and 49.)

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

<sup>1</sup>48A. In prosecutions under section 48, when the accused person is proved to have been in possession of any spirit which is, or contains, or has been derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in section 48 has been made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person—

Presumption as to offence under section 48 in certain cases.

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

<sup>2</sup>48B. In any prosecution under this Act it may be presumed unless and until the contrary is proved, that any spirit which contains <sup>3</sup>[any denaturant different in kind, quality or quantity from such as may be prescribed by rule made under clause (3) of section 86 for denaturing spirit, has been derived from denatured spirit by alteration.]

Presumption as to any spirit which contains any denaturant.

49. If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,

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

mixes, or permits to be mixed, with any <sup>4</sup>[intoxicant] manufactured, sold or kept or exposed for sale by him, any noxious drug or any article prohibited by rule made under section 86, clause (9), sub-clause (i), and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code, <sup>5</sup>[or

has in his possession any <sup>4</sup>intoxicant in respect of which such admixture has been made,]

XLV of 1860.

<sup>1</sup>Section 48A was inserted by s. 21 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>Section 48B was inserted by s. 21 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>3</sup>The words, figures and brackets within the square brackets were substituted for the words "any quantity of any denaturant is, or has been derived from, denatured spirit." by s. 33 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>See foot-note 6 on page 230, *ante*.

<sup>5</sup>These words enclosed within square brackets in section 49 were inserted by s. 22 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).



*(Chapter VIII.—Offences and Penalties.—Sections 50,51.)*

he shall be liable to imprisonment for a term which may extend to <sup>1</sup>[eighteen months], or to fine which may extend to <sup>2</sup>[five thousand rupees], or to both.

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

**50.** If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,—

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

(b) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or deals with any bottle, case, package, or other receptacle containing country liquor,

with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor,

and such marking or dealing does not amount to an offence punishable under section 482 of the said Indian Penal Code,

he shall be liable to imprisonment for a term which may extend to <sup>3</sup>[one year], or to fine which may extend to <sup>4</sup>[two thousand] rupees, or to both.

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

**51.** (1) If any licensed vendor, or any person in his employ and acting on his behalf,—

<sup>5</sup>(a) employs, or permits to be employed, in any part of his licensed premises referred to in section 25, any woman or other person in contravention of that section ; or

<sup>1</sup>These words within the square brackets were substituted for the words "three months" by s. 34(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>These words within the square brackets were substituted for the words "one thousand rupees" by s. 34 (2), *ibid.*

<sup>3</sup>The words within the square brackets were substituted for the words "three months" by s. 35(1), *ibid.*

<sup>4</sup>The words within the square brackets were substituted for the words "five hundred" by s. 35(2), *ibid.*

<sup>5</sup>Clause (a) was substituted for the original clause by s. 36 (1), *ibid.*

of 1909.]

(Chapter VIII.—Offences and Penalties.—Section 51.)

- (b) sells any <sup>1</sup>[intoxicant] to a person who is drunk or intoxicated ; or
- (c) sells or delivers any spirit or intoxicating drug to any <sup>2</sup>[person] apparently under the age of <sup>3</sup>[twenty-one years,] whether for consumption by such <sup>2</sup>[person] or by any other person, and whether for consumption on or off the premises of such vendor ; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vendor ; or
- (e) permits any persons whom he knows, or has reason to believe, to have been convicted of any non-bailable offence, or who are reputed prostitutes, to meet, or any such person to remain, on the premises of such vendor, whether for the purposes of crime or prostitution or not,

he shall be liable to <sup>4</sup>[imprisonment for a term which may extend to six months or to fine which may extend to two thousand rupees or to both.]

(2) When any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness or intoxication on the premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the person charged to prove that the vendor and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises.

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<sup>1</sup>See foot-note 6 on page 230, *ante*.

<sup>2</sup>The word within the square brackets were substituted for the word "Child" by s. 36(2)(a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>3</sup>Firstly, the words "sixteen years" were substituted for the words "fourteen years" by s. 2 of the Bengal Excise (Amendment) Act, 1922 (Ben. Act VII of 1922). Later, the words within the square brackets were substituted for the words "sixteen years" by s. 36(2)(b) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>The words within the square brackets were substituted for the words "fine which may extend to five hundred rupees." by s. 36(3), *ibid*.

## (Chapter VIII.—Offences and Penalties.—Sections 52—54.)

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

52. If any person, without lawful authority, has in his possession any quantity of any <sup>1</sup>[intoxicant], knowing the same to have been unlawfully imported, transported or manufactured, or knowing that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a term which may extend to <sup>2</sup>[two years and to fine.]

Penalty for consumption in chemist's shop, etc.

53. (1) If any chemist, druggist, apothecary or keeper of a dispensary allows any <sup>1</sup>[intoxicant] which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be liable to imprisonment for a term which may extend to <sup>3</sup>[one year], or to fine which may extend to <sup>4</sup>[three thousand] rupees, or to both.

(2) If any person not employed as aforesaid consumes any such <sup>1</sup>[intoxicant] on such premises, he shall be liable to <sup>5</sup>[imprisonment for a term which may extend to three months or to fine which may extend to one thousand rupees or to both.]

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

<sup>6</sup>54. If any holder of a license, permit or pass granted under this Act, or any person in his employ and acting on his behalf, fails to produce such license, permit or pass on the demand of any officer duly empowered by the State Government, in this behalf to make such demand shall be liable to fine which may

<sup>1</sup>See foot-note 6 on page 230. *ante*.

<sup>2</sup>For the first change, in this section, see para. (iv) of foot-note 2 which concluded on page 259, *ante*. Later, the words "one year and also be liable to fine which may extend to two thousand rupees." were substituted for the words "six months, or to fine which may extend to one thousand rupees, or to both." by s. 37 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Finally, the words within the square brackets were substituted for the words "one year and also be liable to fine which may extend to two thousand rupees." by s. 9 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>3</sup>The words within the square brackets were substituted for the words "three months" by s. 38(1)(a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>The words within the square brackets were substituted for the words "one thousand" by s. 38(1)(b), *ibid*.

<sup>5</sup>These words within the square brackets were substituted for the words "fine which may extend to two hundred rupees." by s. 38(2), *ibid*.

<sup>6</sup>Sections 54 and 54A were substituted for original section 54 by s. 9 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Prior to this substitution there were following changes in original section 54, namely:—

(Foot-note 6 concluded next page.)

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sections 54A, 55, 56.)

extend to <sup>1</sup>[five thousand rupees.]

<sup>2</sup>54A. If any holder of a license, permit or pass granted under this Act, or any person in his employ and acting on his behalf,—

- (a) in any case not provided for in sections 46 and 46A wilfully contravenes any rule made under section 85 or section 86, or
- (b) wilfully does any act, in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

shall be liable to fine which may extend to <sup>3</sup>[five thousand rupees.]

55. (1) When any <sup>4</sup>[intoxicant] has been <sup>5</sup>[imported, exported, transported,] manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such <sup>5</sup>[import, export, transport,] manufacture or sale was, or that such possession is, on his account, the article shall, for the purposes of this Act, be deemed to have been <sup>5</sup>[imported, exported, transported,] manufactured or sold by, or to be in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person who <sup>5</sup>[imports, exports, transports,] manufactures, sells or has possession of an <sup>4</sup>[intoxicant] on account of another person from liability to any punishment under this Act for the unlawful <sup>5</sup>[import, export, transport,] manufacture, sale or possession of such article.

56. When any offence punishable under <sup>6</sup>[section 46, section 46A, section 49, section 50, section 51, section 52, section 54 or section

Penalty for contravention of sections 85 and 86 and conditions of license, etc.

Import, export, transport, manufacture, sale or possession by one person on account of another.

Criminal liability of licensee for acts of servant.

(Foot-note 6 continued from previous page concluded.)

(i) See foot-note 4 on page 226, *ante*.

(ii) the words "two hundred" were substituted for the words "one hundred" by s. 39(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965),

(iii) the words "two thousand" were substituted for the words "five hundred" by s. 39(2), *ibid*.

<sup>1</sup>The words within the square brackets were substituted for the words "one thousand rupees." by s. 2(4) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>2</sup>See foot-note 6 on page 266, *ante*.

<sup>3</sup>These words within the square brackets were substituted for the words "ten thousand rupees." by s. 10 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>4</sup>See foot-note 6 on page 230, *ante*.

<sup>5</sup>These words were inserted by s. 22 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>6</sup>The words and figures within the square brackets were substituted for the words and figures "section 46, section 46A, section 49, section 50, section 51, section 52 or section 54" by s. 10 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

*(Chapter VIII.—Offences and Penalties.—Sections 57, 58.)*

54A] is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be <sup>1</sup>[deemed to have] himself committed the offence, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence <sup>2</sup>[and shall, subject to the provisions of section 57, be punishable accordingly].

Imprisonment under section 55 or section 56.

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

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

58. If any Excise Officer,—

- (a) without reasonable grounds of suspicion, searches or causes to be searched, any place, under colour of exercising any power conferred by this Act, or ;
- (b) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or
- (c) vexatiously and unnecessarily detains, searches or arrests any person, or
- (d) without lawful excuse, ceases or refuses to perform, or withdraws himself from, the duties of his office, unless expressly allowed to do so in writing by the Collector or unless he has given to his immediate superior two months' notice in writing of his intention to do so, or
- (e) is guilty of cowardice,

he shall be liable to imprisonment for a term which may extend to <sup>3</sup>[one year], or to fine which may extend to <sup>4</sup>[two thousand] rupees, or to both.

<sup>1</sup>The words within the square brackets were substituted for the words "punishable as if he had" by s. 40(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>The words within the square brackets were inserted by s. 40(2), *ibid.*

<sup>3</sup>The words within the square brackets were substituted for the words "three months" by s. 41(1), *ibid.*

<sup>4</sup>These words were substituted for the words "five hundred" by s. 41(2), *ibid.*

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sections 59—62.)

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

Penalty for offences not otherwise punishable.

60. Every proceeding under this Act before a Collector, or before any officer, of such rank as the<sup>2</sup>[State Government] may by notification, prescribe, who is exercising powers of a Collector, shall be deemed to be a "judicial proceeding" within the meaning of section 228 of the Indian Penal Code<sup>3</sup>[and every Collector or Officer holding such proceeding shall, for the purposes of (sections 345, 346 and 348 of the Code of Criminal Procedure, 1973,) be deemed to be a revenue Court.]

Penalty for contempt of Court.

61. Whoever attempts to commit any offence<sup>4</sup>[or aids or abets commission of any offence] punishable under this Act shall be liable to the punishment provided for such offence.

Penalty for attempt to commit offence.

<sup>5</sup>62. (1) If any person convicted of an offence under section 46 or clause (i) of section 46A or clause (b) of section 48 or section 52 or

Enhanced punishment after previous conviction.

<sup>1</sup>These words were substituted for the words "one thousand" by s. 2(5) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997). Prior to this substitution the words "one thousand" were substituted for the words "two hundred" by s. 42 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>See foot-note 4 on page 226. *ante*.

<sup>3</sup>Firstly, the words "and every Collector or Officer holding such proceeding shall, for the purposes of sections 480, 481, 482 and 484 of the Code of Criminal Procedure, 1898, be deemed to be a revenue Court." were inserted by s. 43 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Later the words within the first brackets were substituted for the words stated above by s. 11 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>4</sup>These words were inserted by s. 11 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>5</sup>Section 62 was firstly substituted with a proviso for the original section by s. 12 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Thereafter, the same was resubstituted excluding the proviso by s. 12 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983). Prior to these substitutions there were following changes in the original section 62, namely:—

(a) the word and figures "section 48" were inserted by s. 24(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914),

(b) the words and figures "or in the Eastern Bengal and Assam Excise Act, 1910." were inserted by s. 24(b), *ibid*.

(c) the words and figures "subject to the provisions contained in the proviso to section 46," were inserted by s. 6 of the Bengal Excise (Amendment) Act, 1974 (West Ben. Act L of 1974), and

(d) the proviso, which was inserted by s. 24(2) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), was omitted by s. 44 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

Act XLV of 1860.  
2 of 1974.

## (Chapter VIII.—Offences and Penalties.—Section 63.)

section 53 subsequently commits, and is convicted of, the same offence as aforesaid, then, he shall, subject to the proviso to clause (i) of section 46A and clause (2) of the proviso to section 48, be liable for the second and for every subsequent offence to twice the punishment which might be imposed on him on first conviction for any such offence.

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

What things  
are liable to  
confisca-  
tion.

63. (1) Whenever an offence has been committed which is punishable under this Act, the <sup>1</sup>[intoxicant], materials, still, utensil, implement and apparatus in respect of or by means of which such offence has been committed shall be liable to confiscation.

(2) Any <sup>1</sup>[intoxicant] lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any <sup>1</sup>[intoxicant] which is liable to confiscation under sub-section (1),

and the receptacles, packages and coverings in which any such <sup>1</sup>[intoxicant] as first aforesaid, or any such materials, still, utensil, implement or apparatus as aforesaid, is found,

and the other contents, if any, of such receptacles or packages,

and the animals, carts, vessels, rafts or other conveyances used in carrying the same,

shall likewise be liable to confiscation :

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

<sup>2</sup>Explanation.—For the purposes of this section, “owner” includes, in relation to any animal, cart, vessel, raft or other conveyance,—

(a) which is in the possession of a minor, the guardian of such minor, or

<sup>1</sup>See foot-note 6 on page 230, *ante*.

<sup>2</sup>This Explanation was added to proviso to sub-section(2) by s. 45 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sections 64, 65.)

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

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

Confiscation by Magistrate or Collector.

<sup>1</sup>Provided that the Magistrate shall in all cases order confiscation of the intoxicants decided by him to be liable to confiscation under section 63.

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

Provided that no such order shall be made until the expiration of <sup>2</sup>[two months] from the date of seizing the thing intended to be confiscated, or without <sup>3</sup>[giving such person as may, before such expiration, claim any right thereto, an opportunity of being heard and of producing such evidence as he may like to produce] in support of his claim :

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

65. (1) <sup>4</sup>[The Excise Commissioner, the Collector], or any Excise Officer <sup>5</sup>[not below the rank of Inspector of Excise, authorised by the Collector by general or special order in this behalf].—

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

<sup>1</sup>This proviso was added by s. 46(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>These words were substituted for the words "one month" by s. 25 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>3</sup>These words within the square brackets were substituted for the words and brackets "hearing any person who may claim any right thereto and the evidence (if any) which he produces" by s. 46(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>These words within the square brackets were substituted for the words "The Collector" by s. 4(a) of the Bengal Excise (Second Amendment) Act, 1979 (West Ben. Act XL of 1979).

<sup>5</sup>These words were substituted for the words "specially empowered by the State Government in this behalf, not below the rank of Deputy Collector, or Inspector of Excise" by s. 47 (1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this substitution there were following changes in the portion stated above, namely :—

(Foot-note 5 concluded next page.)



## (Chapter VIII.—Offences and Penalties.—Section 65.)

- (a) may accept from any person whose license, permit or pass is liable to be cancelled or suspended under clause (a), clause (b) or clause (c) of <sup>1</sup>[sub-section (1) of section 42], or who is reasonably suspected of having committed an offence punishable under <sup>2</sup>[any section of this Act other than <sup>3</sup>{section 46A, section 48 and } section 58], payment of a sum of money, not exceeding <sup>4</sup>[fifty thousand] rupees, in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be ; and
- (b) in any case in which any property has been seized as being liable to confiscation under section 63, may, at any time <sup>5</sup>[before the case is lodged before the Magistrate], release the property on payment of any sum not exceeding the value thereof as estimated by the Collector or such Excise Officer.

(Foot-note 5 continued from previous page concluded.)

(a) See foot-note 4 on page 226, ante.

(b) The words which were first inserted here by s. 26(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), were "or Superintendent of Excise" of which the words "Supintendent of Excise" were substituted by the words "Inspector of Excise" by s. 2 of the Bengal Act VI of 1939 (*vide para (c) below*).

(c) The words "Inspector of Excise" were substituted for the words "Superintendent of Excise" by s. 2 of the Bengal Excise (Amendment) Act, 1939 (Ben. Act VI of 1939).

<sup>1</sup>The words, figures and brackets within the square brackets were substituted for the word and figures "section 42" by s. 47 (2)(a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>The words and figures "any section of this Act other than section 58." in clause (a) of sub-section (1) of section 65 were substituted for the words and figures "section 49, section 51, section 54 or section 59" by s. 26(b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>3</sup>Firstly, the words, figures and letters "section 46A, 48A and" were inserted by s. 13 (a) of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Thereafter, the words, figures, brackets and letters "section 46 A, clause (a) of section 48" were substituted for the word, figures, brackets and letters "sections 46A, 48A" by s. 4(b) of the Bengal Excise (Second Amendment) Act, 1979 (West Ben. Act XL of 1979). Thereafter, the words, figures and letter "clause (ii) of section 46A," were substituted for the word, figures and letter "section 46A," by s. 13 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983). Finally, the words, figures and letter "section 46A, section 48" were substituted for the words, figures, letters and brackets "clause (ii) of section 46A, clause (a) of section 48" by s. 2(6)(i) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>4</sup>Firstly, the words "one thousand" were substituted for the words "two hundred" by s. 47 (2)(b) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Later, the words within the square brackets were substituted for the words "one thousand" by s. 13(b) of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Finally, the words "fifty thousand" were substituted for the words "five thousand" by s. 2(6)(ii) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>5</sup>These words were substituted for the words, figures and brackets "before the Magistrate has passed an order under section 64, sub-section (1)" by s. 47(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Section 66.)

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

CHAPTER IX

Detection, Investigation and Trial of Offences and Procedure.

66. Any of the following officers, namely,—

- (a) the Excise Commissioner, or
- (b) a Collector,
- (c) any Excise Officer not below such rank as the <sup>1</sup>[State Government] may, by notification, prescribe,
  - may, subject to any restrictions prescribed by the <sup>1</sup>[State Government] by rule made under section 85,—
  - (i) enter and inspect, at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of, or stores, any <sup>2</sup>[intoxicants]; and
  - (ii) enter and inspect, any time during which the same may be open, any place in which any <sup>3</sup>[intoxicant] <sup>4</sup>[is sold or kept] for sale by any licensed person ; and
  - <sup>5</sup>(iii) examine the <sup>6</sup>[accounts, registers, passes and such other documents as may be prescribed by the State Government by rule made under section 85 in this behalf] maintained in any such place as aforesaid ; and
  - (iii) examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or <sup>3</sup>[intoxicant] found in any such place as aforesaid ; and

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

<sup>1</sup>See foot-note 4 on page 226. *ante*.

<sup>2</sup>See foot-note 8 on page 237. *ante*.

<sup>3</sup>See foot-note 6 on page 230. *ante*.

<sup>4</sup>These words were substituted for the words "is kept" by s. 48(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>Clause (iii) of section 66 was inserted by s. 27 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>6</sup>These words were substituted for the words "accounts and registers" by s. 48(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 67, 68.)

- <sup>1</sup>(*iii*a) seize any intoxicant (including any sample of any intoxicant), materials, stills, utensils, implements, or apparatus referred to in clause (*i*), clause (*ii*) or clause (*iii*) together with any accounts, registers, passes and other documents referred to, or connected with those referred to, in clause (*ii*a) found in any such place as aforesaid ;
- (*iv*) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false.

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

67. Any of the following persons, namely,—

- (*a*) any officer of the <sup>2</sup>[Excise and Salt, Police, Customs] or Land-revenue Department, or
- (*b*) any person empowered by the <sup>3</sup>[State Government] in this behalf, by notification,

may, subject to any restrictions prescribed by the <sup>3</sup>[State Government] by rule made under section 85,—

- (*i*) arrest without warrant any person found committing an offence punishable under section 46, <sup>4</sup>[section 46A,] section 48, section 52 or section 53 ; and
- (*ii*) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the excise-revenue ; and
- (*iii*) detain an 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.

Power to issue warrant of arrest.

68. The Collector, <sup>5</sup>[or any Magistrate empowered to try offences punishable under this Act,] may issue a warrant for the

<sup>1</sup>This clause was inserted by s. 48(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>These words were substituted for the words "Excise, Police, Salt, Customs, Opium" by s. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>3</sup>See foot-note 4 on page 226, *ante*.

<sup>4</sup>These word, figures and letter were inserted by s. 14 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>5</sup>These words were inserted by s. 28(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 69, 69A.)

arrest of any person whom he has reason to believe to have committed<sup>1</sup> [or abetted the commission of] any offence punishable under section 46, <sup>2</sup>[section 46A,] section 48, section 52 or section 53.

69. If any Collector, or <sup>3</sup>[any Magistrate empowered to try offences punishable under this Act, ] upon information received, and after such inquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under section 46, <sup>4</sup>[section 46A,] section 48, section 52 or section 53 has been, or is likely to be committed <sup>5</sup>[or abetted,]

Power to issue search warrant.

he may issue a warrant to search for <sup>6</sup>[and to seize]—

any <sup>7</sup>[intoxicant], material, still, utensil, implement or apparatus in respect of which the alleged offence has been, or is likely to be, committed <sup>8</sup>[or abetted] <sup>9</sup>[or

(any document or other article which may furnish evidence of the commission of the alleged offence.)]

<sup>9</sup>69A. The Collector, or any Magistrate empowered to try offences punishable under this Act, may at any time—

Power of Collector or Magistrate to arrest or search without issuing a warrant.

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

<sup>1</sup>These words were inserted by s. 28(b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>These word, figures and letter were inserted by s. 15 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>3</sup>These words were substituted for the word "Magistrate" by s.29(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>4</sup>These word, figures and letter were inserted by s.16 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>5</sup>These words were inserted by s.29(b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>6</sup>These words were inserted by s.49(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>7</sup>See foot-note 6 on page 230. *ante*.

<sup>8</sup>Firstly, the words "or any document, which throws or is likely to throw any light on the alleged offence" were added by s. 29(c) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). Later, the words within the first brackets were substituted for the words "any document, which throws or is likely to throw any light on the alleged offence" by s.49(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>9</sup>Section 69A was inserted by s.30 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 70, 71.)

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

Power of Excise Officer to search without a warrant.

70. Whenever <sup>1</sup> \* \* \* any Excise Officer not below such rank as the <sup>2</sup>[State Government] may, by notification, prescribe, has reason to believe that an offence punishable under section 46, <sup>3</sup>[section 46A,] section 48, section 52 or section 53 has been, is being, or is likely to be, committed <sup>4</sup>[or abetted,] and that a search-warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence,

he may, after recording the grounds of his belief, at any time by day or night enter and search any place, and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act <sup>5</sup>[together with any document which may furnish evidence of the commission of the alleged offence]; and

may detain and search, and if he thinks proper, arrest, any person found in such place whom he has reason to believe to have committed <sup>4</sup>[or abetted] any such offence as aforesaid.

Information and aid to Excise Officers.

71. (1) Every Officer of the <sup>6</sup>[State Government] shall be bound, subject to any rules made under section 85, <sup>7</sup>[sub-section (2),] clause (1), to give immediate information to an Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge.

<sup>1</sup>The words "a Collector or" were repealed by s.31(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>See foot-note 4 on page 226, *ante*.

<sup>3</sup>These word, figures and letter were inserted by s.17 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>4</sup>These words were inserted by s. 31(b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>5</sup>The words within the square brackets were inserted by s.50 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>6</sup>These words were substituted for the words "Police, Excise and Salt, Customs and Land-revenue Departments, and every officer employed by a body of Port Commissioners" by s.51 (2), *ibid*. Prior to this substitution there were following changes in the portion stated above, namely :—

(a) The words "Excise and Salt, Customs" were substituted for the words "Salt, Customs, Opium" by s.2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), and

(b) The words "a body of Port Commissioners" were substituted for the words "the Commissioners for the Port of Calcutta" by s.32 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>7</sup>These word, figure and brackets were inserted by s.51(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 72, 73.)

(2) Every Officer referred to in sub-section (1), and every village *chaukidar* and *dafadar*, shall be bound, subject to any rules made under section 85, <sup>1</sup>[sub-section (2),] clause (1), to give reasonable aid to any Excise Officer in carrying out the provisions of this Act, or of any rule, notification or order made, issued or given under this Act, upon request made by such Officer.

72. Whenever any <sup>2</sup>[intoxicant] is manufactured, or any hemp plant (*Cannabis sativa*) <sup>3</sup>[from which an intoxicating drug can be manufactured or produced] is cultivated, or any portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced is collected, on any land <sup>4</sup>[or in any hut or building] in contravention of this Act,

all owners and occupiers of such land <sup>5</sup>[or of such hut or building, as the case may be], and their agents, and all *panchayets*, village-headmen, *patwaris*, *sarbarakars*, *chaukidars* and *dafadars* of the village <sup>6</sup>[in which such land, hut or building may be situated],

shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or an Officer of the Excise, Police or Land-revenue Department, as soon as the fact comes to their knowledge.

73. (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to inquire into or try under the provisions of <sup>7</sup>[Chapter XIII of the Code of Criminal Procedure, 1973.] relating to the place of inquiry or trial.

(2) Any other Excise Officer specially empowered in this behalf by the <sup>8</sup>[State Government] in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such Officer is appointed would have power to inquire into or try under the aforesaid provisions.

Duty of owners and occupiers of land and other persons to give notice of unlicensed manufacture.

Power to Collector and certain Excise Officers to investigate offences.

<sup>7</sup>[2 of 1974.]

<sup>1</sup>See foot-note 7 on page 276. *ante*.

<sup>2</sup>See foot-note 6 on page 230. *ante*.

<sup>3</sup>These words within the square brackets were inserted by s. 2(7) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>4</sup>These words within the square brackets were inserted by s.52(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>These words were inserted by s.52 (2), *ibid*.

<sup>6</sup>These words were inserted by s.52(3), *ibid*.

<sup>7</sup>The words, figures, letters and the marginal reference were substituted for the words, figures and letters and the marginal reference "Chapter XV of the Code of Criminal Procedure, 1898.—Act V of 1898." by s. 14 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983). w.e.f. 1.4.74.

<sup>8</sup>See foot-note 4 on page 226. *ante*.

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Section 74.)

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

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

- (a) any of the powers conferred upon a Police Officer making an investigation, or upon an officer in charge of a police-station, by <sup>1</sup>[sections 160 to 171 of the Code of Criminal Procedure, 1973,] and,
- (b) as regards offences punishable under section 46, <sup>2</sup>[section 46A,] section 48, section 52 or section 53 of this Act—any of the powers conferred upon Police Officers in respect of cognizable offences <sup>3</sup>[by clause (a) of sub-section (1) of section 41 and by section 55 of the said Code ;]

[2 of 1974.]

and the said portion of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the <sup>4</sup>[State Government] by rule made under section 85, clause (o).

(2) Subject to any restrictions prescribed by the <sup>4</sup>[State Government], a Collector, or an Excise Officer empowered under section 73, sub-section (2), may, without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

(3) For the purposes of <sup>5</sup>[section 156 of the Code of Criminal Procedure, 1973,] the area to which an Excise Officer empowered under section 73, sub-section (2), is appointed shall be deemed to be a police-station, and, such Officer shall be deemed to be the officer in charge of such station.

<sup>1</sup>These words, figures and the marginal reference were substituted for the words "sections 166 to 171 of the Code of Criminal Procedure, 1973" by s. 2(8) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997). Prior to this substitution the words and figures mentioned above were substituted for the words and figures "sections 166 to 171 of the Code of Criminal Procedure, 1898," by s.15 (a) (i) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74.

<sup>2</sup>These word, figures and letter were inserted by s.18 of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>3</sup>These words, figures, letter and brackets were substituted for the words, figures and brackets "by clause first of sub-section(1) of section 54 and by section 56 of the said Code" by s.15 (a) (ii) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74.

<sup>4</sup>See foot-note 4 on page 226, ante.

<sup>5</sup>These words and figures were substituted for the words, figures and the marginal reference "section 156 of the Code of Criminal Procedure, 1898.—Act V of 1898." by s.15(b) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74.

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Section 75.)

[2 of 1974.] (4) As soon as an investigation by a Collector or by an Excise Officer empowered under section 73, sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the investigating officer, unless he proceeds under sub-section (2) of this section or under section 65 of this Act, shall submit a report (which shall, for the purposes of <sup>1</sup>[section 190 of the Code of Criminal Procedure, 1973,] be deemed to be a police-report) to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police-reports.

75. (1) <sup>2</sup>[A Collector or a Magistrate having jurisdiction under section 82 to try the case may issue a warrant under this Act for the arrest of any person, and may, at his discretion direct,]

Security and Bail.

by endorsement on the warrant <sup>3</sup>[except when such an offence (under section 46A or section 48,)] that, if such person executes a bond with sufficient sureties for his attendance, before the Collector or before an Excise Officer empowered under section 73, sub-section (2), to investigate the case, at a specified time and thereafter until otherwise directed by the Collector or an Excise Officer empowered as aforesaid, the officer to whom the warrant is directed shall <sup>4</sup>[release such person from custody if such bond is executed by him.]

(2) The endorsement shall state—

- (a) the number of sureties,
- (b) the amount in which they, and the person for whose arrest the warrant is issued, are respectively to be bound, and
- (c) the time at which such person is to attend as aforesaid.

<sup>1</sup>These words, figures and the marginal reference were substituted for the words and figures "section 190 of the Code of Criminal Procedure, 1898," by s. 15(c) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74.

<sup>2</sup>These words and figures were substituted for the words "Whenever a Collector issues a warrant under this Act for the arrest of any person, he shall direct," by s. 51 (1)(a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>3</sup>Firstly, the words and figures "except when such person is arrested for committing an offence under section 46A or clause (a) of section 48" were inserted by s. 19(a) of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Later, the words, figures, brackets and letter "clause (ii) of section 46A" were substituted for the word, figures and letter "section 46A" by s. 16(a) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983). Finally, the words, figures and letter within second brackets were substituted for the words, figures, letters and brackets "under clause (ii) of section 46A or clause (a) of section 48" by s. 2(9)(i) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>4</sup>These words were substituted for the words "take such security, and shall release such person from custody," by s. 53 (1) (b) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).



(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Section 75.)

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

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(5) Any Excise Officer not below such rank as the <sup>2</sup>[State Government] may, by notification, prescribe, may release persons on bail or on their own bond <sup>3</sup>[except when such person is arrested for committing an offence punishable {under section 46A or section 48}.]

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

<sup>4</sup>(6a) A bond taken under this section shall, for the purposes of subsection (7), be deemed to be a bond under <sup>5</sup>[the Code of Criminal Procedure, 1973].

<sup>5</sup>[2 of 1974.]

(7) The provisions of <sup>6</sup>[sections 439 to 449 of the Code of Criminal Procedure, 1973], shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

<sup>1</sup>Sub-section (4) was omitted by s. 53(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>See foot-note 4 on page 226, *ante*.

<sup>3</sup>The words, figures, letters and brackets "except when such person is arrested for committing an offence under section 46A or clause (a) of section 48." were, firstly, inserted by s. 19(b) of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979). Later, the words, figures, letter and brackets "punishable under clause (ii) of section 46A" were substituted for the words, figures and letter "under section 46A" by s. 16(b) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74. Finally, the words, figures and letter within second brackets were substituted for the words, figures, letters and brackets "under clause (ii) of section 46A or clause (a) of section 48," by s. 2(9)(ii) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

<sup>4</sup>Sub-section (6a) was inserted by s. 53(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>These words, figures and the marginal reference were substituted for the words, figures and marginal reference "Code of Criminal Procedure, 1898.—Act V of 1898." by s. 16(c) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74.

<sup>6</sup>These words and figures within the square brackets were substituted for the words, brackets and figures "sections 498 to 502, 513, 514, (514A, 514B.) and 515 of the Code of Criminal Procedure, 1898." by s. 16(d) of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74. Prior to this substitution, the figures and letters enclosed within first brackets above in this foot-note were inserted by s. 53(4) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Section 76.)

76. (1) Articles seized under <sup>1</sup>[a warrant issued under this Act,] and, unless security for their appearance before the Collector <sup>2</sup>[or an Excise Officer empowered under section 73, sub-section (2), to investigate the case] be taken, persons arrested under such a warrant, shall be produced before the Collector <sup>3</sup>[or such Excise Officer].

Production of articles seized and persons arrested.

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

- (a) the Collector or an Excise Officer empowered under section 73, sub-section (2), to investigate the case, or
- (b) the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond, or
- (c) the officer in charge of the nearest police-station, whoever is nearer.

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

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

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

<sup>1</sup>These words were substituted for words "the warrant of the Collector," by s. 54(1)(a) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>These words, figures and brackets were inserted by s. 54(1)(b), *ibid.*

<sup>3</sup>These words were inserted by s. 54(1)(c), *ibid.*

<sup>4</sup>These words were substituted for the words "dispose of them" by s. 54(2), *ibid.*

<sup>5</sup>This sub-section was inserted by s. 54(3), *ibid.*

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 77—79.)

Custody by  
Police of  
articles  
seized.

77. (1) All officers in charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector, or of an Excise Officer empowered under section 73, sub-section (2), to investigate the case, <sup>1</sup>[all persons arrested and all articles seized] under this Act <sup>2</sup>[and brought or delivered] to them ; and shall allow any Excise Officer who may <sup>3</sup>[accompany any such articles] to the police-station, or who may be deputed for the purpose by an official superior, to affix his seal to such articles and to take samples of and from them.

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

Reports of  
arrests,  
seizures,  
and  
searches.

<sup>4</sup>78. (1) When any Excise Officer below the rank of Collector, or any officer in charge of a police-station, makes, or receives information of, any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search, or of the information received, to the Collector, and to the Excise Officer (if any) empowered under section 73, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure or search was made.

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

Execution  
of warrant.

<sup>5</sup>79. Any warrant issued by a Collector or a Magistrate under this Act may be executed by the Officer to whom the warrant is directed or by any other Officer selected by the Collector or the Magistrate for the purpose.

<sup>1</sup>These words were substituted for the words "all articles seized" by s. 55(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>The words within the square brackets were substituted for the words "which may be delivered" by s. 55(2), *ibid.*

<sup>3</sup>The words within the square brackets were substituted for the words "accompany such articles" by s. 55(3), *ibid.*

<sup>4</sup>Section 78 was renumbered as sub-section (1) of that section and after sub-section(1) as so renumbered, sub-section(2) was inserted by s. 17 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>5</sup>This section was inserted by s. 56 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 80, 81.)

80. (1) No person arrested under this Act shall be detained in custody for a longer period than under all the circumstances of the case is reasonable ; and such period <sup>1</sup>[shall not, without the authority of a Magistrate, exceed twenty-four hours,] exclusive of the time necessary for the journey from the place of arrest <sup>2</sup>[to the Court of the nearest Magistrate.]

Maximum period of detention.

<sup>3</sup>[2 of 1974.] (2) A Magistrate to whom an accused person is forwarded under <sup>3</sup>[section 167 of the Code of Criminal Procedure, 1973,] by a Collector or an Excise Officer empowered under section 73, sub-section (2), may exercise the powers conferred upon a Magistrate by the said section 167.

81. (1) Save as is in this Act otherwise expressly provided, the provisions of <sup>4</sup>[the Code of Criminal Procedure, 1973,] relating to arrests, detentions in custody, searches, summonses, warrants of arrest, search-warrants and the production of persons arrested, shall apply, so far as may be, to arrests, detentions and searches made, summonses and warrants issued, and the production of persons arrested under this Act.

Application of certain provisions of the Code of Criminal Procedure, 1898.

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

(3) Officers <sup>5</sup>[executing any warrant issued under this Act,] and officers (other than Collectors) making arrests, searches or seizures under this Act, shall, for the purposes of the said provisions of the said Code, be deemed to be Police Officers.

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<sup>1</sup>These words were substituted for the words "shall not exceed twenty-four hours," by s. 57(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>2</sup>These words were substituted for the words "to the place where a Collector or an Excise Officer empowered under section 73, sub-section (2), to investigate the case may be, and thence to the Court of a Magistrate having jurisdiction to inquire into or try the case," by s. 57(2), *ibid.*

<sup>3</sup>These words, figures and marginal reference were substituted for the words, figures and marginal reference "section 167 of the Code of Criminal Procedure, 1898.—Act V of 1898," by s. 18 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74.

<sup>4</sup>These words and figures were substituted for the words and figures "the Code of Criminal Procedure, 1898," by s. 19, *ibid.*

<sup>5</sup>The words within the square brackets were substituted for the words "to whom a Collector's warrant is directed or endorsed," by s. 58 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

(Chapter IX.—Detection, Investigation and Trial of Offences and Procedure.—Sections 82—84.)

Magistrates having jurisdiction to try offences.

**82.** No Magistrate other than—

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

shall try any offence punishable under this Act.

Initiation of certain prosecutions.

**83.** No Magistrate shall take cognizance of an offence referred to—

- (a) in section 46, <sup>2</sup>[section 46A] section 48, section 52 or section 53, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the <sup>3</sup>[State Government] ; or
- (b) in section 54, <sup>4</sup>[section 54A,] section 58, clause (d) or clause (e), or section 59, except on the complaint or report of the Collector or an Excise Officer authorised by the Collector in this behalf.

Bar to transfer of trial on application of accused.

**84.** The provisions of <sup>5</sup>[section 191 of the Code of Criminal Procedure, 1973,] shall not apply in any case in which a Magistrate (not being the Collector) takes cognizance of an offence under this Act on the report of any officer referred to in clause (a) or clause (b) of section 83.

<sup>5</sup>[2 of 1974.]

<sup>1</sup>Section 82 was substituted for the original section by s. 20 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983).

<sup>2</sup>The word, figures and letter within the square brackets were inserted by s. 20(i) of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>3</sup>See foot-note 4 on page 226. *ante*.

<sup>4</sup>The word, figures and letter were inserted by s. 20(ii) of the Bengal Excise (Amendment) Act, 1979 (West Ben. Act XII of 1979).

<sup>5</sup>These words, figures and the marginal reference were substituted for the words, figures and the marginal reference "section 191 of the Code of Criminal Procedure, 1898.—Act V of 1898." by s. 21 of the Bengal Excise (Amendment) Act, 1983 (West Ben. Act XXXVIII of 1983), w.e.f. 1.4.74.

of 1909.]

(Chapter X.—Miscellaneous.—Section 85.)

CHAPTER X

Miscellaneous.

85. (1) The <sup>1</sup>[State Government] may make rules to carry out the objects of this Act or any other law for the time being in force relating to the excise-revenue.

Power of State Government to make rules.

(2) In particular, and, without prejudice to the generality of the foregoing provision, the <sup>1</sup>[State Government] may make rules—

- (a) for prescribing the powers and duties of officers of the Excise Department ;
- (b) for regulating the delegation of any powers by <sup>2</sup> \* \* the Commissioner of a Division, the Excise Commissioner or Collectors under section 7, <sup>3</sup>[sub-section (2),] clause (g) ;
- (c) for declaring in what cases or classes of cases and to what authorities appeals shall lie from orders whether original or appellate, passed under this Act or under any rule made hereunder, and for prescribing the time and manner for presenting, and the procedure for dealing with, such appeals ,
- (d) for regulating the import, export <sup>4</sup>[transport, sale, purchase, possession or consumption] of any <sup>5</sup>[intoxicant] ;
- (e) for regulating the periods for which licenses for the wholesale or retail vend of any <sup>5</sup>[intoxicant] may be granted, and the number of such licenses which may be granted for any local area ;
- (f) for prohibiting the grant of licenses for the retail sale of any <sup>5</sup>[intoxicant] at any place or within any local area described in the rules, or for defining the places in the vicinity of which shops for the retail sale of any <sup>5</sup>[intoxicant] shall not ordinarily be licensed ;

<sup>1</sup>See foot-note 4 on page 226. *ante*.

<sup>2</sup>The words "the Board" were repealed by s. 5(b) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>3</sup>These words, figure and brackets were inserted by s. 59(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>These words were substituted for the words "or transport" by s. 59(2), *ibid*.

<sup>5</sup>See foot-note 6 on page 230. *ante*.

## (Chapter X.—Miscellaneous.—Section 85.)

- (g) for prohibiting the grant to specified classes of persons of licenses <sup>1</sup>[of any particular kind or class ;]
- (h) for declaring, either generally, or in respect of areas described in the rules, the persons or classes of persons to whom any <sup>2</sup>[intoxicant] may or may not be sold ;
- <sup>3</sup>(i) for prescribing restrictions subject to which a license, permit or pass granted under this Act may be cancelled or suspended ;
- (j) for regulating the procedure to be followed and prescribing the matters to be ascertained before any license for the wholesale or retail vend of any <sup>2</sup>[intoxicant] is granted for any locality ;
- (k) for restricting the exercise of any of the powers conferred by <sup>4</sup>[section 65, {sub-section(1)}, and] sections 66 and 67;
- (l) for declaring the Excise Officers to whom, and the manner in which, information or aid should be given under section 71 ;
- (m) for the grant of expenses to witnesses ;
- (n) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with offences punishable under this Act and subsequently acquitted ; and
- (o) for prescribing restrictions or modifications in the application to Excise Officers of the provisions of <sup>5</sup>[the Code of Criminal Procedure, 1973,] relating to powers of Police Officers which are referred to in section 74, sub-section (1), of this Act.

[2 of 1974.]

<sup>1</sup>These words were substituted for the words "for the retail sale of any intoxicant" by s. 59(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). Prior to this substitution, see foot-note 2 below.

<sup>2</sup>See foot-note 6 on page 230, *ante*.

<sup>3</sup>This clause was inserted by s. 59(4) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>4</sup>Firstly, the word, figures, letter and brackets "section 65, clause(a), and" were inserted by s. 33 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914). Later, the words, figure and brackets within the second brackets were substituted for the word, letter and brackets "clause(a)" by s. 59(5) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>The words, figures and marginal reference within square brackets were substituted for the words and figures "the Code of Criminal Procedure, 1898," by s. 2(10) of the West Bengal Finance Act, 1997 (West Ben. Act V of 1997).

of 1909.]

(Chapter X.—Miscellaneous.—Section 86.)

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

Provided that any such rules may be made without previous publication if the <sup>1</sup>[State Government] considers that they should be brought into force at once.

86. The <sup>2</sup>[State Government] may make rules—

- (1) for regulating the manufacture, supply or storage of any <sup>3</sup>[intoxicant], and in particular, and without prejudice to the generality of this provision, may make rules for regulating—
  - (a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any <sup>3</sup>[intoxicant], and the provision and maintenance of fittings, implements and apparatus therein ;
  - (b) the bottling of liquor for purposes of sale ;
  - (c) the cultivation of the hemp plant (*Cannabis sativa*) ;
  - (d) the collection of portions of the hemp plant (*Cannabis sativa*) from which intoxicating drugs can be manufactured or produced, and the manufacture or production of intoxicating drugs therefrom ;
  - (e) the tapping of *tari*-producing trees and the drawing of *tari* from trees ;
  - (f) the marking of *tari*-producing trees in areas notified <sup>4</sup>[in this behalf by the State Government,] and the maintenance of such marks ;
- (2) for fixing the strength, price or quantity in excess of or below which any <sup>3</sup>[intoxicant] shall not be supplied or sold, and the quantity in excess of which denatured spirit shall not be possessed, and for prescribing a standard of quality for any <sup>3</sup>[intoxicant] ;

Further power of State Government to make rules.

<sup>1</sup>See foot-note 4 on page 226, *ante*.

<sup>2</sup>See foot-note 4 on page 232, *ante*.

<sup>3</sup>See foot-note 6 on page 230, *ante*.

<sup>4</sup>These words were substituted for the words, figures and brackets "under section 14, sub-section (1)" by s. 60(1) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).



*(Chapter X.—Miscellaneous.—Section 86.)*

- (3) for declaring how spirit manufactured in <sup>1</sup> \* India shall be denatured ;
- (4) for causing spirit so manufactured to be denatured through the agency or under the supervision of <sup>2</sup>[servants of the Government] ;
- (5) for ascertaining whether any spirit so manufactured has been denatured ;
- (6) for regulating the deposit of any <sup>3</sup>[intoxicant] in a warehouse established, authorised or continued under this Act, and the removal of any <sup>3</sup>[intoxicant] from any such warehouse or from any distillery or brewery ;
- (7) for prescribing the scale of fees or the manner of fixing the fees payable in respect of any exclusive privilege granted under section 22 or any license, permit or pass granted under this Act, or in respect of the storing of any <sup>3</sup>[intoxicant] ;
- (8) for regulating the time, place and manner of payment of such fees ;
- (9) for prescribing the restrictions under which or the conditions on which any license, permit or pass, may be granted, and in particular, and without prejudice to the generality of this provision, may make rule for—
  - (i) prohibiting the admixture with any <sup>3</sup>[intoxicant] of any article deemed to be noxious or objectionable,
  - (ii) regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength,
  - (iii) prescribing the nature and regulating the arrangement of the premises in which any <sup>3</sup>[intoxicant] may be sold, and prescribing the notices to be exposed at such premises,

<sup>1</sup>The word "British" was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

<sup>2</sup>The words "Servants of the Crown" were originally substituted for the words "Government Officers" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>3</sup>See foot-note 6 on page 230, *ante*.

of 1909.]

(Chapter X.—Miscellaneous.—Section 86.)

- (iv) prohibiting or regulating the employment by the licensee of any person or class of persons to assist him in his business,
- (v) prohibiting the sale of any <sup>1</sup>[intoxicant] except for cash,
- (vi) prescribing the days and hours during which any licensed premises may or may not be kept open, and providing for the closing of such premises on special occasions,
- <sup>2</sup>(vii) prescribing the accounts and registers (if any) to be maintained and the returns to be submitted by the licensees relating to their business, and
- (viii) regulating the transfer of licenses ;
- (10) for prescribing the particulars to be contained in licenses, permits or passes granted under this Act ;
- (11) for the payment of compensation to licensees whose premises are closed under section 26 or under any rule made under sub-clause (vi) of clause (9) of this section ;
- (12) for prescribing the time, place and manner of levying duty on <sup>3</sup>[intoxicants] ;
- (13) for providing for the destruction or <sup>4</sup>[for the disposal in any other manner,] of any <sup>1</sup>[intoxicant] deemed to be unfit for use; and
- <sup>5</sup>(14) for regulating the disposal or destruction of articles or things confiscated or seized under the provisions of this Act,

<sup>6</sup>*Explanation I.*—Fees may be prescribed under clause (7) of this section at different rates for different classes of exclusive privileges, licenses, permits, passes or storage, and for different areas.

<sup>6</sup>*Explanation II.*—The price of an intoxicant as fixed by rules made under clause (2) of this section, shall be deemed to have always been exclusive of any tax, surcharge, additional surcharge or any other impost on the sale or purchase of such intoxicant levied under any law for the time being in force.

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<sup>1</sup>See foot-note 6 on page 230, *ante*.

<sup>2</sup>This sub-clause was substituted for the original sub-clause (vii) by s. 60(2) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>3</sup>See foot-note 8 on page 237, *ante*.

<sup>4</sup>These words were substituted for the words "other disposal" by s. 60(3) of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

<sup>5</sup>Clause 14 was substituted for the original clause by s. 60(4), *ibid*.

<sup>6</sup>Existing *Explanation* was renumbered as *Explanation I* and after *Explanation I* as so renumbered, *Explanation II* was added by s. 7 of the Bengal Excise (Amendment) Act, 1974 (West Ben. Act L of 1974).

## (Chapter X.—Miscellaneous.—Sections 87—89.)

87. [Powers of Board exercisable from time to time.]—Rep. by s. 5 (d) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

Publication and effect of rules and notifications.

88. All rules made, and notifications issued, under this Act shall be published in the <sup>1</sup>[Official Gazette], and on such publication shall have effect as if enacted in this Act.

Recovery of dues.

89. (1) The following moneys, namely,—

- (a) all excise-revenue,
- (b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under section 45, and
- (c) all amounts due to the <sup>2</sup>[State Government] by any person on account of any contract relating to the excise-revenue,

may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property, <sup>3</sup>[and shall also be recoverable by the process authorised] for the recovery of arrears of revenue.

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

(3) When any money is due, in respect of an exclusive privilege to a grantee referred to in section 23, from any person holding under him,

such grantee may apply to the Collector, and the Collector may recover such money on his behalf in either of the ways provided by sub-section (1) :

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

<sup>1</sup>These words were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation in Indian Laws) Order, 1937.

<sup>2</sup>The words "Provincial Government" were originally substituted for the word "Government" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>3</sup>These words were substituted for the words "or by the process prescribed" by s. 61 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965).

of 1909.]

(Chapter X.—Miscellaneous.—Sections 90—92.)

90. The <sup>1</sup>[State Government] may, by notification, either wholly or partially, and subject to such condition (if any) as it may think fit to prescribe, exempt any <sup>2</sup>[intoxicant] from all or any of the provisions of this Act, either throughout <sup>3</sup>[West Bengal] or in any specified local area, or for any specified period or occasion or as regards any specified class of persons.

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

91. No suit shall lie in any Civil Court against the <sup>4</sup>[Government] or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise-revenue.

Bar to certain suits.

<sup>5</sup>92. (1) No Civil Court shall try any suit against the <sup>4</sup>[Government] in respect of anything done, or alleged to have been done, in pursuance of this Act,

Limitation of suits and prosecutions.

and, except with the previous sanction of the <sup>1</sup>[State Government], no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue, or made against any other person under this Act,

unless the suit or prosecution is instituted within six months after the date of the act complained of.

<sup>1</sup>(2) Notwithstanding anything to the contrary contained in this Act or in any other law in force for the time being, when any Sub-Inspector of Excise or Assistant Sub-Inspector of Excise or Excise Constable is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the State Government.

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<sup>1</sup>See foot-note 4 on page 226, *ante*.

<sup>2</sup>See foot-note 6 on page 230, *ante*.

<sup>3</sup>See foot-note 2 on page 226, *ante*.

<sup>4</sup>The word "Crown" was originally substituted for the words "Secretary of State for India in Council" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

<sup>5</sup>Section 92 was renumbered as sub-section(1) of that section and after sub-section(1) as so renumbered, sub-section(2) was inserted by s. 5 of the Bengal Excise (Second Amendment) Act, 1979 (West Ben. Act XL of 1979).

[Ben. Act V of 1909.]

*(Chapter X.—Miscellaneous.—Sections 92A, 93.—Schedule.)*

Bar to  
application  
of section  
370 of the  
Bengal  
Municipal  
Act, 1932.

<sup>1</sup>92A. <sup>2</sup>[Section 370 of the Bengal Municipal Act, 1932], shall not apply to—

Ben. Act  
XV of  
1932.

- (a) any distillery, brewery, warehouse or other place of storage licensed, established, authorised, or continued under this Act, or
- (b) the premises used for the manufacture or sale of any <sup>3</sup>[intoxicant] by the holder of a license granted under this Act for such manufacture or sale.

93. [Repeal.]—Rep. by s. 3 of, and the Second Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

#### THE SCHEDULE.

Rep. by section 3 of, and the Second Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

<sup>1</sup>Section 92A was inserted by s. 34 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

<sup>2</sup>These words and figures were substituted for the words and figures "Section 261 of the Bengal Municipal Act, 1884" by s. 62 of the Bengal Excise (Amendment) Act, 1965 (West Ben. Act XXXIV of 1965). The latter Act was repealed and re-enacted by the former Act.

<sup>3</sup>See foot-note 6 on page 230, *ante*.