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- (66) THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971
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- (73) THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989
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- (81) THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987
- (82) THE TRADE MARKS ACT, 1999
- (83) THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994
- (84) THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967
- (85) THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
- (86) THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005
- (87) THE YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1956

THE ARMS ACT, 1959

1. Short title, extent and commencement.—(1) This Act may be called THE ARMS ACT, 1959.

(2) It extends to the whole of India.

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

2. Definitions—(1) In this Act, unless the context otherwise requires,—

(a) “acquisition” with its grammatical variations and cognate expressions, includes hiring, borrowing, or accepting as a gift;

(b) “ammunition” means ammunition for any firearm, and includes,—

(i) rockets, bombs, grenades, shells and other missiles,

(ii) articles designed for torpedo service and submarine mining,

(iii) other articles containing, or designed or adapted to contain, explosive, fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with firearms or not,

(iv) charges for firearms and accessories for such charges,

(v) fuses and friction tubes,

(vi) parts of, and machinery for manufacturing, ammunition, and

(vii) such ingredients of ammunition as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(c) “arms” means articles of any description designed or adapted as weapons for offences, or defence, and includes firearms, sharp-edged and other deadly weapons, and parts of, and machinery for manufacturing arms, but does not include articles designed solely for domestic or agricultural uses such as a lathi or an ordinary walking stick and weapons

incapable of being used otherwise than as toys or of being converted into serviceable weapons;

(d) "district magistrate" in relation to any area for which a Commissioner of Police has been appointed, means the Commissioner of Police thereof and includes any such Deputy Commissioner of Police, exercising jurisdiction over the whole or any part of such area, as may be specified by the State Government in this behalf in relation to such area or part;

(e) "firearms" means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes,—

(i) artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of any noxious liquid, gas or other such things,

(ii) accessories for any such firearms designed or adapted to diminish the noise or flash caused by the firing thereof,

(iii) parts of, and machinery for manufacturing, firearms, and

(iv) carriages, platforms and appliances for mounting, transporting and serving artillery;

(f) "licensing authority" means an officer or authority empowered to grant or renew licences under rules made under the Act, and includes, the Government;

(ff) "magistrate" means an Executive Magistrate under the Code of Criminal Procedure, 1973 (2 of 1974);

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

(h) "prohibited ammunition" means any ammunition, containing, or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, missiles articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition;

(i) "prohibited arms" means—

(i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing,

and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms;

(j) "public servant" has the same meaning as in section 21 of the Indian Penal Code (45 of 1860);

(k) "transfer" with its grammatical variations and cognate expressions, includes letting on hire, lending giving and parting with possession.

(2) For the purposes of this Act, the length of the barrel of a firearm shall be measured from the muzzle to the point at which the charge is exploded on firing.

(3) Any reference in the Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

(4) Any reference in this Act to any officer or authority shall, in relation to any area in which there is no officer or authority with the same designation, be construed as a reference to such officer or authority as may be specified by the Central Government by notification in the Official Gazette.

CHAPTER II

ACQUISITION, POSSESSION, MANUFACTURE, SALE, IMPORT, EXPORT AND TRANSPORT OF ARMS AND AMMUNITION

3. Licence for acquisition and possession of firearms and ammunition.—(1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made hereunder:

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, and have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

(3) Nothing contained in sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognized by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-sections (2) to (6) (both inclusive) of section 21 shall apply in relation to any deposit of firearms under the proviso to sub-section (2) as they apply in relation to the deposit of any arm or ammunition under sub-section (1) of that section.

4. Licence for acquisition and possession of arms of specified description in certain cases.—If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made hereunder.

5. Licence for manufacture, sale, etc., of arms and ammunition.—(1) No person shall—

(a) use, manufacture, sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,
any firearms or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made hereunder.

[* * *]

(2) Notwithstanding anything contained in sub-section (1), a person may, without holding a licence in this behalf, sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act, or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition:

Provided that no firearm or ammunition in respect of which a licence is required under section 3 and no arms in respect of which a licence is required under section 4 shall be so sold or transferred by any person unless—

(a) he has informed in writing the District Magistrate having jurisdiction or the officer in charge of the nearest police station of his intention to sell or transfer such firearms, ammunition or other arms and the name and address of the person to whom he intends to sell or transfer such firearms, ammunition or the other arms, and

(b) a period of not less than forty-five days has expired after the giving of such information.

6. Licence for the shortening of guns or conversion of imitation firearms into firearms.—No person shall shorten the barrel of a firearm or convert an imitation firearm into a firearm unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made hereunder.

Explanation.—In this section, the expression “imitation firearms” means anything which has the appearance of being a firearm, whether it is capable of discharging any shot, bullet or other missile or not.

7. Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition.—No person shall—

(a) acquire, have in his possession or carry; or

(b) use, manufacture, sell, transfer, convert, repair, test or prove; or

(c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,

any prohibited arms or prohibited ammunition unless he has been specially authorized by the Central Government in this behalf.

8. Prohibition of sale or transfer of firearms not bearing identification marks.—

(1) No person, shall obliterate, remove, alter or forge any name, number or other identification mark stamped or otherwise shown on a firearm.

(2) No person shall sell or transfer any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon in a manner approved by the Central Government.

(3) Whenever any person has in his possession any firearm without such name, number or other identification mark on which such name, number or other identification mark has been obliterated, removed, altered or forged, it shall be presumed unless the contrary is proved, that he has obliterated, removed, altered or forged that name, number or other identification mark:

Provided that in relation to a person who has in his possession at the commencement of this Act any firearm without such name, number or other identification mark stamped or otherwise shown thereon, the provisions of this sub-section shall not take effect until after the expiration of one year from such commencement.

9. Prohibition of acquisition or possession by, or of sale or transfer to, young persons and certain other persons of firearms, etc.—(1) Not with-standing anything in the foregoing provisions of this Act—

(a) no person,—

(i) who has not completed the age of twenty-one years, or

(ii) who has been sentenced on conviction of any offence involving violence or moral turpitude to imprisonment for any term at any time during a period of five years after the expiration of the sentence, or

(iii) who has been ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) a bond for keeping the peace or for good behaviour, at any time during the term of the bond,

shall acquire, have in his possession or carry any firearm or ammunition;

(b) no person shall sell or transfer any firearm or ammunition to, or convert, repair, test or prove any firearm or ammunition for, any other person whom he knows, or has reason to believe—

(i) to be prohibited under clause (a) from acquiring, having in his possession or carrying any firearm or ammunition, or

(ii) to be of unsound mind at the time of such sale or transfer, or such conversion, repair, test or proof.

(2) Notwithstanding anything in sub-clause (i) of clause (a) of sub-section (1), a person who has attained the prescribed age-limit may use under prescribed conditions such firearms as may be prescribed in the course of his training in the use of such firearms:

Provided that different age-limits may be prescribed in relation to different types of firearms.

10. Licence for import and export of arms, etc.—(1) No person shall bring into, or take out of, India by sea, land or air any arms or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made hereunder:

Provided that—

(a) a person who is entitled by virtue of this Act or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having, in his possession any arms or ammunition, may without a licence in this behalf bring into, or take out of, India such arms or ammunition in reasonable quantities for his own private use;

(b) a person being a *bona fide* tourist belonging to any such country as the Central Government may, by notification in the Official Gazette, specify, who is not prohibited by the laws of that country from having in his possession any arms or ammunition, may, without a licence under this section but in accordance with such conditions as may be prescribed, bring with him into India arms and ammunition in reasonable quantities for use by him for purposes only of sport and for no other purpose.

Explanation.—For purposes of clause (b) of this proviso, the word “tourist” means a person who not being a citizen of India visits India for a period not exceeding six months with no other object than recreation, sight-seeing, or participation in a representative capacity in meetings convened by the Central Government or in international conferences, associations or other bodies.

(2) Notwithstanding anything contained in the proviso to sub-section (1) where the Commissioner of Customs or any other officer empowered by the Central Government in this behalf has any doubt as to the applicability of clause (a) or clause (b) of that proviso to any person who claims that such clause is applicable to him, or as to the reasonableness of the quantities of arms or ammunition in the possession of any person referred to in such clause, or as to the use to which such arms or ammunition may be put by such person, may detain the arms or ammunition in the possession of such person until he receives the orders of the Central Government in relation thereto.

(3) Arms and ammunition taken from one part of India to another by sea or air or across any intervening territory not forming a part of India, are taken out of, and brought into, India within the meaning of this section.

11. Power to prohibit import or export of arms, etc.—The Central Government may, by notification in the Official Gazette, prohibit the bringing into, or the taking out of, India, arms or ammunition of such classes and descriptions as may be specified in the notification.

12. Power to restrict or prohibit transport of arms.—(1) The Central Government may, by notification in the Official Gazette,—

(a) direct that no person shall transport over India or any part thereof arms or ammunition of such classes and descriptions as may be specified in the notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made hereunder; or

(b) prohibit such transport altogether.

(2) Arms or ammunition trans-shipped at a seaport or an airport in India are transported within the meaning of this section.

CHAPTER III

PROVISIONS RELATING TO LICENCES

13. Grant of licences.—(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(3) The licensing authority shall grant—

(a) a licence under section 3 where the licence is required—

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for *bona fide* crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognized by the Central Government;

(b) a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

14. Refusal of licences.—(1) Notwithstanding anything in section 13, the licensing authority shall refuse to grant—

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,—

(i) where such licence is required by a person whom the licensing authority has reason to believe—

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

15. Duration and renewal of licence.—(1) A licence under section 3 shall, unless revoked earlier, continue in force for a period of three years from the date on which it is granted:

Provided that such a licence may be granted for a shorter period if the person by whom the licence is required so desires or if the licensing authority for reasons to be recorded in writing considers in any case that the licence should be granted for a shorter period.

(2) A licence under any other provision of Chapter II shall, unless revoked earlier, continue in force for such period from the date on which it is granted as the licensing authority may in each case determine.

(3) Every licence shall, unless the licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of sections 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof.

16. Fees, etc., for licence.—The fees on payment of which, the conditions subject to which and the form in which a licence shall be granted or renewed shall be such as may be prescribed:

Provided that different fees, different conditions and different forms may be prescribed for different types of licences:

Provided further that a licence may contain in addition to prescribed conditions such other conditions as may be considered necessary by the licensing authority in any particular case.

17. Variation, suspension and revocation of licences.—(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have

been prescribed and may for that purpose require the licence holder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence—

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefore and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A Court convicting the holder of a licence of any offence under this Act or the rules made hereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

18. Appeals.—(1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a licence may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by, or under the direction of, the Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefore:

Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Indian Limitation Act, 1908 (9 of 1908), with respect to the computation of periods of limitation hereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fee as may be prescribed.

(5) In disposing of an appeal the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(6) The order appealed against shall, unless the appellate authority conditionally or unconditionally directs otherwise, be in force pending the disposal of the appeal against such order.

(7) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

CHAPTER IV

POWERS AND PROCEDURE

19. Power to demand production of licence, etc.—(1) Any police officer or any other officer specially empowered in this behalf by the Central Government may demand the production of his licence from any person who is carrying any arms or ammunition.

(2) If the person upon whom a demand is made refuses or fails to produce the licence or to show that he is entitled by virtue of this Act or any other law for the time being in force to carry such arms or ammunition without a licence, the officer concerned may require him to give his name and address and if such officer considers it necessary, seize from that person the arms or ammunition which he is carrying.

(3) If that person refuses to give his name and address or if the officer concerned suspects that person of giving a false name or address or of intending to abscond, such officer may arrest him without warrant.

20. Arrest of persons conveying arms, etc., under suspicious circumstances.—Where any person is found carrying or conveying any arms or ammunition whether covered by a licence or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are or is being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any magistrate, any police officer or any other public servant or any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, may arrest him without warrant and seize from him such arms or ammunition.

21. Deposit of arms, etc., on possession ceasing to be lawful.—(1) Any person having in his possession any arms or ammunition the possession whereof has, in consequence of the expiration of the duration of a licence or of the suspension or revocation of a licence or by the issue of a notification under section 4 or by any reason whatever, ceased to be lawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or subject to such conditions as may be prescribed, with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury.

Explanation.—In this sub-section "unit armoury" includes an armoury in a ship or establishment of the Indian Navy.

(2) Where arms or ammunition have or has been deposited under sub-section (1), the depositor or in the case of his death, his legal representative, shall, at any time before the expiry of such period as may be prescribed, be entitled—

(a) to receive back anything so deposited on his becoming entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, or

(b) to dispose, or authorize the disposal, of anything so deposited by sale or otherwise to any person entitled by virtue of this Act or any other law for the time being in force to have, or not prohibited by this Act or such other law from having, the same in his possession and to receive the proceeds of any such disposal:

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of anything of which confiscation has been directed under section 32.

(3) All things deposited and not received back or disposed of under sub-section (2) within the period therein referred to shall be forfeited to Government by order of the district magistrate:

Provided that in the case of suspension of a licence no such forfeiture shall be ordered in respect of a thing covered by the licence during the period of suspension.

(4) Before making an order under sub-section (3) the district magistrate shall, by notice in writing to be served upon the depositor or in the case of his death, upon his legal representative, in the prescribed manner, require him to show cause within thirty days from the service of the notice why the things specified in the notice should not be forfeited.

(5) After considering the cause, if any, shown by the depositor or, as the case may be, his legal representative, the district magistrate shall pass such order as he thinks fit.

(6) The Government may at any time return to the depositor or his legal representative things forfeited to it or the proceeds of disposal thereof wholly or in part.

22. Search and seizure by Magistrate.—(1) Whenever any Magistrate has reason to believe—

(a) that any person residing within the local limits of his jurisdiction has in his possession any arms or ammunition for any unlawful purpose, or

(b) that such person cannot be left in the possession of any arms or ammunition without danger to the public peace or safety,

the Magistrate may, after having recorded the reasons for his belief, cause a search to be made of the house or premises occupied by such person or in which the Magistrate has reason to believe that such arms or ammunition are or is to be found and may have such arms or ammunition, if any, seized and detain the same in safe custody for such period as he thinks necessary, although that person may be entitled by virtue of this Act or any other law for the time being in force to have the same in his possession.

(2) Every search under this section shall be conducted by or in the presence of a Magistrate or by or in the presence of some officer specially empowered in this behalf by the Central Government.

23. Search of vessels, vehicles for arms, etc.—Any Magistrate, any police officer or any other officer specially empowered in this behalf by the Central Government, may for the purpose of ascertaining whether any contravention of this Act or the rules made hereunder is being or is likely to be committed, stop and search any vessel, vehicle or other means of conveyance and seize any arms or ammunition that may be found therein along with such vessel, vehicle or other means of conveyance.

24. Seizure and detention under orders of the Central Government.—The Central Government may at any time order the seizure of any arms or ammunition in the possession of any person, notwithstanding that such person is entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, and may detain the same for such period as it thinks necessary for the public peace and safety.

24-A. Prohibition as to possession of notified arms in disturbed areas, etc.—

(1) Where the Central Government is satisfied that there is extensive disturbance of public peace and tranquillity or imminent danger of such disturbance in any area and that for the prevention of offences involving the use of arms in such area, it is necessary or expedient so to do, it may by notification in the Official Gazette—

(a) specify the limits of such area;

(b) direct that before the commencement of the period specified in the notification (which period shall be a period commencing from a date not earlier than the fourth day after the date of publication of the notification in the Official Gazette), every person having in his possession in such area any arms of such description as may be specified in the notification (the arms so specified being hereafter in this section referred to as notified arms), shall deposit the same before such commencement in accordance with the provisions of section 21 and for this purpose the possession by such person of any notified arms, shall, notwithstanding anything contained in any other provision of this Act (except section 41) or in any other law for the time being in force, as from the date of publication such notification in the Official Gazette be deemed to have ceased to be lawful;

(c) declare that as from the commencement of, and until the expiry of, the period specified in the notification, it shall not be lawful for any person to have in his possession in such area any notified arms;

(d) authorize any such officer subordinate to the Central Government or a State Government as may be specified in the notification,—

(i) to search at any time during the period specified in the notification any person in, or passing through, or any premises in, or any animal or vessel or vehicle or other conveyance of whatever nature in or passing through, or any receptacle or other container of whatever nature in, such area if such officer has reason to believe that any notified arms are secreted by such person or in such premises or on such animal or in such vessel, vehicle or other conveyance or in such receptacle or other container;

(ii) to seize at any time during the period specified in the notification any notified arms in the possession of any person in such area or discovered through a search under sub-clause (i), and detain the same during the period specified in the notification.

(2) The period specified in a notification issued under sub-section (1) in respect of any area shall not, in the first instance, exceed ninety days, but the Central Government may amend such notification to extend such period from time to time by any period not exceeding ninety days at any one time if, in the opinion of that Government, there continues to be in such area such disturbance of public peace and tranquillity as is referred to in sub-section (1) or imminent danger thereof and that for the prevention of offences involving the use of arms in such area it is necessary or expedient so to do.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures shall, so far as may be, apply to any search or seizure made under sub-section (1).

(4) For the purposes of this section,—

(a) “arms” includes ammunition;

(b) where the period specified in a notification, as originally issued under sub-section (1), is extended under sub-section (2), then, in relation to such notification, references in sub-section (1) to “the period specified in the notification” shall be construed as references to the period as so extended.

24-B. Prohibition as to carrying of notified arms in or through public places in disturbed areas, etc.—(1) Where the Central Government is satisfied that there is extensive disturbance of public peace and tranquillity or imminent danger of such disturbance in any area and that for the prevention of offences involving the use of arms in such area it is necessary or expedient so to do, it may, by notification in the Official Gazette,—

(a) specify the limits of such area;

(b) direct that during the period specified in the notification which period shall be a period commencing from a date not earlier than the second day after the date of publication of the notification in the Official Gazette), no person shall carry or otherwise have in his possession any arms of such description as may be specified in the notification (the arms so specified being hereafter in this section referred to as notified arms) through or in any public place in such area;

(c) authorize any such officer subordinate to the Central Government or a State Government as may be specified in the notification,—

(i) to search at any time during the period specified in the notification any person in, or passing through, or any premises in or forming part of, or any animal or vessel or vehicle or other conveyance of whatever nature, in or passing through, or any receptacle or other container of whatever nature in, any public place in such area if such officer has reason to believe that any notified arms are secreted by such person or in such premises or on such animal or in such vessel, vehicle or other conveyance or in such receptacle or other container;

(ii) to seize at any time during the period specified in the notification any notified arms being carried by or otherwise in the possession of any person, through or in a public place in such area or discovered through a search under such-clause (i), and detain the same during the period specified in the notification.

(2) The period specified in a notification issued under sub-section (1) in respect of any area shall not, in the first instance, exceed ninety days, but the Central Government may

amend such notification to extend such period from time to time by any period not exceeding ninety days at any one time if, in the opinion of that Government, there continues to be in such area such disturbance of public peace and tranquillity as is referred to in sub-section (1) or imminent danger thereof and that for the prevention of offences involving the use of arms in such area it is necessary or expedient so to do.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures shall, so far as may be, apply to any search or seizure made under sub-section (1).

(4) For the purposes of this section,—

(a) “arms” includes ammunition;

(b) “public place” means any place intended for use by, or accessible to, the public or any section of the public; and

(c) where the period specified in a notification, as originally issued under sub-section (1), is extended under sub-section (2), then, in relation to such notification, references in sub-section (1) to “the period specified in the notification” shall be construed as references to the period as so extended.

CHAPTER V

OFFENCES AND PENALTIES

25. Punishment for certain offences.—(1) Whoever—

(a) manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm in contravention of section 6; or

[***]

(d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(1-A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine.

(1-AA) Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(1-AAA) Whoever has in contravention of a notification issued under section 24-A in his possession or in contravention of a notification issued under section 24-B carries or otherwise has in his possession, any arms or ammunition shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

(1-B) Whoever—

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or

(c) sells or transfers any firearm which does not bear the name of the maker, manufacturer’s number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or

(e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or

(f) brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or

(g) transports any arms or ammunition in contravention of section 12; or

(h) fails to deposit arms or ammunition as required by sub-section (2) of section 3, or sub-section (1) of section 21; or

(i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries there from or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

(1-C) Notwithstanding anything contained in sub-section (1-B), whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this sub-section, “disturbed area” means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, and includes any areas specified by notification under section 24-A or section 24-B.

(2) Whoever being a person to whom sub-clause (i) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever sells or transfers any firearm, ammunition or other arms—

(i) without informing the district magistrate having jurisdiction or the officer in charge of the nearest police station, of the intended sale or transfer of that firearm, ammunition or other arms; or

(ii) before the expiration of the period of forty-five days from the date of giving such information to such district magistrate or the officer in charge of the police station, in contravention of the provisions of clause (a) or clause (b) of the proviso to sub-section (2) of section 5, shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(4) Whoever fails to deliver-up a licence when so required by the licensing authority under sub-section (1) of section 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under sub-section (10) of that section on its suspension or revocation shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(5) Whoever, when required under section 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to two hundred rupees, or with both.

26. Secret contraventions.—(1) Whoever does any act in contravention of any of the provisions of section 3, 4, 10 or 12 in such manner as to indicate an intention that such act

may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and also with fine.

(2) Whoever does any act in contravention of any of the provisions of section 5, 6, 7 or 11 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine.

(3) Whoever on any search being made under section 22 conceals or attempts to conceal any arms or ammunition, shall be punishable with imprisonment for a term which may extend to ten years and also with fine.

27. Punishment for using arms, etc.—(1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.

28. Punishment for use and possession of firearms or imitation firearms in certain cases.—Whoever makes or attempts to make any use whatsoever of a firearm or an imitation firearm with intent to resist or prevent the lawful arrest or detention of himself or any other person shall be punishable with imprisonment for a term which may extend to seven years and with fine.

Explanation.—In this section the expression “imitation firearm” has the same meaning as in section 6.

29. Punishment for knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.—Whoever—

(a) purchases any firearms or any other arms of such class or description as may be prescribed or any ammunition from any other person knowing that such other person is not licensed or authorized under section 5; or

(b) delivers any arms or ammunition into the possession of another person without previously ascertaining that such other person is entitled by virtue of this Act or any other law for the time being in force to have, and is not prohibited by this Act or such other law from having, in his possession the same;

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

30. Punishment for contravention of licence or rule.—Whoever contravenes any condition of a licence or any provision of this Act or any rule made hereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

31. Punishment for subsequent offences.—Whoever having been convicted of an offence under this Act is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.

32. Power to confiscate.—(1) When any person is convicted under this Act of any offence committed by him in respect of any arms or ammunition, it shall be in the discretion of the convicting Court further to direct that the whole or any portion of such arms or ammunition, and any vessel, vehicle or other means of conveyance and any receptacle or thing containing, or used to conceal, the arms or ammunition shall be confiscated:

Provided that if the conviction is set aside on appeal or otherwise, the order of confiscation shall become void.

(2) An order of confiscation may also be made by the Appellate Court or by the High Court when exercising its powers of revision.

33. Offence by companies.—(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section—

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

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

CHAPTER VI

MISCELLANEOUS

34. Sanction of the Central Government for warehousing of arms.—Notwithstanding anything contained in the Customs Act, 1962 (52 of 1962) no arms or ammunition shall be deposited in any warehouse licensed under section 58 of that Act without the sanction of the Central Government.

35. Criminal responsibility of persons in occupation of premises in certain cases.—Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone.

36. Information to be given regarding certain offences.—(1) Every person aware of the commission of any offence under this Act shall, in the absence of reasonable excuse the burden of proving which shall lie upon such person, give information of the same to the officer in charge of the nearest police station or the magistrate having jurisdiction.

(2) Every person employed or working upon any railway, aircraft, vessel, vehicle or other means of conveyance shall, in the absence of reasonable excuse the burden of proving which shall lie upon such person, give information to the officer in charge of the nearest police station regarding any box, package or bale in transit which he may have reason to suspect contains arms or ammunition in respect of which an offence under this Act has been or is being committed.

37. Arrest and searches.—Save as otherwise provided in this Act,—

(a) all arrests and searches made under this Act or under any rules made hereunder shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating respectively to arrests and searches made under that Code;

(b) any person arrested and any arms or ammunition seized under this Act by a person not being a magistrate or a police officer shall be delivered without delay to the officer in charge of the nearest police station and that officer shall—

(i) either release that person on his executing a bond with or without sureties to appear before a magistrate and keep the things seized in his custody till the appearance of that person before the magistrate, or

(ii) should that person fail to execute the bond and to furnish, if so required, sufficient sureties, produce that person and those things without delay before the magistrate.

38. Offences to be cognizable.—Every offence under this Act shall be cognizable within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).

39. Previous sanction of the district magistrate necessary in certain cases.—No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate.

40. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

41. Power to exempt.—Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,—

(a) exempt any person or class of persons (either generally or in relation to such description of arms and ammunition as may be specified in the notification), or exclude any description of arms or ammunition, or withdraw any part of India, from the operation of all or any of the provisions of this Act; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons or the description of arms and ammunition or the part of India to the operation of such provisions.

42. Power to take census of firearms.—(1) The Central Government may, by notification in the Official Gazette, direct a census to be taken of all firearms in any area and empower any officer of Government to take such census.

(2) On the issue of any such notification all persons having in their possession any firearms in that area shall furnish to the officer concerned such information as he may require in relation thereto and shall produce before him such firearms if he so requires.

43. Power to delegate.—(1) The Central Government may, by notification in the Official Gazette, direct that any power or function which may be exercised or performed by it under this Act other than the power under section 41 or the power under section 44 may, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed also by—

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to the State Government,
as may be specified in the notification.

(2) Any rules made by the Central Government under this Act may confer powers or impose duties or authorize the conferring of powers or imposition of duties upon any State Government or any officer or authority subordinate thereto.

44. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the appointment, jurisdiction, control and functions of licensing authorities (including the areas and the categories of arms and ammunition for which they may grant licences;

(b) the form and particulars of application for the grant or renewal of a licence and where the application is for the renewal of a licence, the time within which it shall be made;

(c) the form in which and the conditions subject to which any licence may be granted or refused, renewed, varied, suspended or revoked;

(d) where no period has been specified in this Act, the period for which any licence shall continue to be in force;

(e) the fees payable in respect of any application for the grant or renewal of a licence and in respect of any licence granted or renewed and the manner of paying the same;

(f) the manner in which the maker's name, the manufacturer's number or other identification mark of a firearm shall be stamped or otherwise shown thereon;

(g) the procedure for the test or proof of any firearms;

(h) the firearms that may be used in the course of training, the age limits of persons who may use them and the conditions for their use by such persons;

(i) the authority to whom appeals may be preferred under section 18, the procedure to be followed by such authority and the period within which appeals shall be preferred, the fees to be paid in respect of such appeals and the refund of such fees;

(j) the maintenance of records or accounts of anything done under a licence other than a licence under section 3 or section 4, the form of, and the entries to be made in, such records or accounts and the exhibition of such records or accounts to any police officer or to any officer of Government empowered in this behalf;

(k) the entry and inspection by any police officer or by any officer of Government empowered in this behalf of any premises or other place in which arms or ammunition are or is manufactured or in which arms or ammunition are or is kept by a manufacturer of or dealer in such arms or ammunition and the exhibition of the same to such officer;

(l) the conditions subject to which arms or ammunition may be deposited with a licensed dealer or in a unit armoury as required by sub-section (1) of section 21 and the period on the expiry of which the things so deposited may be forfeited;

(m) any other matter which is to be, or may be, prescribed.

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

45. Act not to apply in certain cases.—Nothing in this Act shall apply to—

(a) arms or ammunition on board any sea-going vessel or any aircraft and forming part of the ordinary armament or equipment of such vessel or aircraft;

(b) the acquisition, possession or carrying, the manufacture, repair, conversion, test or proof, the sale or transfer or the import, export or transport of arms or ammunition—

(i) by or under orders of the Central Government, or

(ii) by a public servant in the course of his duty as such public servant, or

(iii) by a member of the National Cadet Corps raised and maintained under the National Cadet Corps Act, 1948 (31 of 1948), or by any officer, or enrolled person of the Territorial Army raised and maintained under the Territorial Army Act, 1948 (56 of 1948) or by any member of any other forces raised and maintained or that may hereafter be raised and maintained under any Central Act, or by any member of such other forces as the Central Government may, by notification in the Official Gazette, specify, in the course of his duty as such member, officer or enrolled person;

(c) any weapon of an obsolete pattern or of antiquarian value or in disrepair which is not capable of being used as a firearm either with or without repair;

(d) the acquisition, possession or carrying by a person of minor parts of arms or ammunition which are not intended to be used along with complementary parts acquired or possessed by that or any other person.

46. Repeal of Act 11 of 1878.—(1) The Indian Arms Act, 1878 (11 of 1878), is hereby repealed.

(2) Notwithstanding the repeal of the Indian Arms Act, 1878 (11 of 1878), and without prejudice to the provisions of sections 6 and 24 of the General Clauses Act, 1897 (10 of 1897), every licence granted or renewed under the first mentioned Act and in force immediately before the commencement of this Act shall, unless sooner revoked, continue in force after such commencement for the unexpired portion of the period for which it has been granted or renewed.

THE ARMS RULES, 1962

1. Short title.—(1) These rules may be called THE ARMS RULES, 1962.

(2) They shall come into force on the 1st October, 1962.

2. Interpretation.—In these rules, unless the context otherwise requires,—

- (a) "Act" means the Arms Act, 1959 (54 of 1959);
- (b) "appellate authority" means the appellate authority referred to in rule 5;
- (c) "authority" or "officer" means, except where otherwise specifically provided in these rules, the District Magistrate or such other Officer as may, from time to time, be notified in the Official Gazette by the Central Government;
- (d) "company" has the same meaning as that assigned to it in the *Explanation* under section 33;
- (e) "dealer" means a person who, by way of trade or business, manufacturers, converts, repairs, proves, tests sells, exports, imports, or transfers or keep, for sale, repair or test arms or ammunition;
- (f) "District Magistrate", includes—
 - (ii) in relation to any district or part thereof, an Additional District Magistrate or any other officer specially empowered in this behalf by the Government of the State concerned;
 - (iii) in relation to a Union territory, any officer specially empowered by the Central Government in this behalf;
 - (iv) in relation to the tribal areas of Assam, specified in Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution, a Political Officer; and
 - (v) in relation to the suburbs of Calcutta, as defined by notification issued from time to time by the Government of West Bengal in their Official Gazette under the Calcutta Suburban Police Act, 1866 (Bengal Act 2 of 1866), the Commissioner of Police, Calcutta, and a Deputy Commissioner of Police, Calcutta, nominated by the State Government in this behalf;
- (g) "Form" means a form as set out in Schedule III;
- (h) "Port" includes an airport;
- (i) "Schedule" means a Schedule appended to these rules;
- (j) "section" means a section of the Act;
- (k) "Sub-divisional Magistrate" includes Additional Sub-divisional Magistrate, Sub-divisional Officer and Additional Sub-divisional Officer.

3. Classification of arms and ammunition.—For the purposes of the Act and these rules, "arms" or "ammunition" shall be of the categories specified in columns 2 and 3 respectively of Schedule I and references to any category of arms or ammunition in these rules shall be construed accordingly.

4. Licensing authority and forms of licences.—Licences under Chapter II of the Act may be granted or renewed for such purposes, by such authorities, in such Forms and to be valid for such period and in such areas as are specified in Schedule II, subject to such conditions as are specified in that Schedule and in the licence:

Provided that the licences granted or renewed by a licensing authority may be signed by such officer subordinate to that authority as may be specially empowered in this behalf by the State Government.

5. Appellate authorities.—(1) For the purposes of the Act and these rules the appellate authority to whom an appeal shall lie from an order of the licensing or other authority specified in column (1) of the Table below shall be that specified in the corresponding entry in column (2) thereof:

6. Reasons to be communicated to the appellate authority in certain cases.—Where a licensing authority is of opinion that it will not be in the public interest to furnish reasons for the refusal, renewal, variation of conditions, revocation or suspension, of a licence, to the applicant, the recorded reasons therefore and the facts of the case shall be communicated by him to the appellate authority.

7. Direction and control over licensing authorities.—All licensing authorities shall work under the direction and control of their respective appellate authorities.

8. Restriction in granting licences for acquisition, possession or carrying of arms or ammunition of category I.—(a) No licence shall be granted for acquisition, possession or carrying of arms or ammunition of categories I(b), I(c) and I(d) unless they have been lawfully imported into India or are being imported into India with the sanction of the Central Government.

(b) A licence for acquisition, possession or carrying of ammunition of categories I(b) and I(c) shall be granted only if the licensing authority is satisfied that the ammunition is to be used with rifles or muskets which are lawfully possessed for sporting purposes or with pistols or revolvers which have been lawfully imported into India; and the amount of ammunition which the licensee may possess during each period of 12 months immediately succeeding the date of grant of licence shall be entered in the licence.

9. Copies of licences of categories I and II to be sent to certain authorities.—A copy of every licence granted for arms or ammunition of categories I(a), I(b), I(c), I(d) and II, shall forthwith be sent—

(a) to the District Magistrate of the place in which the arms or ammunition are to be kept, or

(b) to the State Government, if such place is in the State of Jammu and Kashmir.

10. Possession of arms or ammunition for certain purposes to include use thereof.—Possession of the following arms or ammunition for the purposes mentioned against each includes use thereof, for such purposes only provided that such use does not involve manufacture of any arms or ammunition (including explosives and fireworks):—

(a) arms, for theatrical performance, cinematograph production or signalling for starting races or athletic meets;

(b) ingredients of ammunition, for *bona fide* industrial, agricultural or medicinal purposes.

11. Restrictions may be imposed by Central Government.—(1) Any licence having effect outside the State in which it is granted, shall be subject to any restrictions which may be imposed by a general or special order of the Central Government.

(2) Save where he is specially authorized in this behalf by the District Magistrate concerned, the licensee shall not carry any arms covered by the licence within the campus or precincts of any educational institution.

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13. Of retainers.—(1) When the owner of any arms or ammunition licensed in Form III applies for permitting his agent, relative or employee to possess or carry any of the arms or ammunition covered by the licence for sport, protection or display, on his behalf, whether in attendance on him or not, and in circumstances different from those mentioned in the proviso to section 3, such agent, relative or employee may, if the licensing authority considers it fit, be shown as a retainer by entering his name and other particulars in column 6 of the owner's licence in Form III.

(2) A licence in Form III granted to a company for the protection of its premises or property shall be in the name of a member, agent or other representative of the company, who shall be responsible for the custody of the weapon. The name of a servant or any other employee entrusted with the weapon for guarding the premises or property of the company shall be entered as a retainer in the appropriate column of the licence. The licensing authority shall issue to the licensee a permit in Form III-B for each of such retainers shown in the licence. The permit shall remain in the personal custody of the representative of the company and shall be made over to the retainers when they are entrusted with the weapon covered by the licence:

Provided that the licensing authority shall obtain a report from the Police about the antecedents of the retainer and take into consideration such report before admitting him as a retainer.

(3) A licence in Form III-A for possession and carrying of arms or ammunition may be granted to a person nominated to be his retainer by a person exempted from licensing requirements:

Provided that the retainer shall have no right, independent of the person so exempted, to use the arms or ammunition covered by the licence, and the licence shall cease to be in force on the day on which the person so exempted has ceased to be an exemptee, or the retainer has ceased to be in the service of the exemptee:

Provided further that the licensing authority shall obtain a report from the Police about the antecedents of the retainer and take into consideration such report before admitting him as a retainer.

14. Licences for protection of crops and cattle.—(1) Where a licence is granted in Form V, any member of the family of the licensee or a servant employed by the licensee to watch the crops or cattle and residing with him, may, in the discretion of the licensing authority, be allowed to carry any of the arms or ammunition covered by the licence to protect crops or cattle against wild animals in the area specified in the licence by entering his name and particulars in column 2 thereof.

(2) Where, after the end of any harvest season, the State Government considers it expedient that for the protection of wildlife in any area, any arms or ammunition licensed in Form V should be deposited in a police station or with a licensed dealer, it may, by order, require any licensee to deposit such arms or ammunition for such period as the arms or ammunition are not required for the protection of crops or cattle and as may be specified therein, and thereupon the licensee shall be bound to comply with such order.

15. Licence for target practice.—Where a licence in Form VI has been granted in the name of any military mess, club or association, it shall be lawful for any member of such mess, club or association to use the firearms or ammunition covered by such licence for the purposes of the mess, club or association in accordance with the conditions of the licence.

16. Age-limit for training and target practice.—Any person below the age of sixteen years but not below the age of twelve years may be allowed to use a firearm for the purpose of training in the use of such firearm in the immediate presence, or under the direct supervision and guidance, of an adult instructor or the licensee:

Provided that no person below the age of sixteen years shall be allowed to carry any firearm requiring a licence, in public place, except in the immediate presence and supervision of the person who is lawfully entitled to carry such firearm.

Explanation.—For the purpose of this rule, an “adult” means a person who has completed the age of twenty-one years.

17. Traveller’s (temporary) licence.—(1) Subject to the provisions of rule 8, a licence in Form VIII may be granted to any *bona fide* traveller, proceeding from the place of his arrival in India to his place of destination in India, for the possession and carrying of arms or ammunition for the duration of the journey, by the licensing authority at the place of arrival.

(2) A copy of every such licence shall be forthwith sent to the District Magistrate having jurisdiction over the place of destination of the licensee; such authority shall satisfy himself, when necessary, that the licensee has complied with condition 7 entered on the Form of the licence.

18. Application of section 4 of the Act.—In any area specified in the notification issued by the Central Government under section 4, licences for acquisition, possession or carrying in that area of arms of such class or description as may be specified in that notification may also be granted or renewed as provided in Schedule II, subject to such conditions as are specified in that Schedule and in the licence.

19. Arms other than firearms.—Unless the Central or State Government by notification in the Official Gazette so directs, no licence shall be required for the manufacture, sale, possession for sale, or test, of arms of category V except in the areas notified under section 4.

20. Manufacture, conversion, shortening, repair, test, sale, etc., of arms or ammunition.—(1) The licensing authority while granting a licence in Form IX shall show clearly in the licence form—

(i) the categories and description of the arms or ammunition covered by the licence;

(ii) the transactions permitted in respect of the different categories of arms or ammunition, and

omit any transactions or categories or arms or ammunition, not covered by the licence.

(2) A copy of every licence granted in Form IX by an authority other than the District Magistrate of the place of business, factory or shop of the licensee shall forthwith be sent to that District Magistrate.

21. Conversion, repair, test, sale, etc.—(1) Where a licence is granted in Form IX or Form XI for conversion or repair, but not manufacture, of any category of firearms or ammunition, it entitles the licensee to fabricate components or parts, for the purpose of conversion or repair of such firearms or ammunition but not to manufacture such components or parts to be utilised for assembling into complete firearms or ammunition of any category which he is not allowed to manufacture.

(2)(a) A licence in Form XI shall not entitle the dealer to shorten a firearm or to convert an imitation firearm, into a firearm, unless he has a licence in Form IX showing specifically that he is permitted to shorten a firearm or convert an imitation firearm into a firearm.

(b) Under no circumstances shall a dealer shorten the barrel of a rifle or smooth-bore gun so that the resultant length becomes less than 20 inches.

(c) The details of the cases in which barrels are shortened and imitation firearms are converted into firearms shall be reported every month to the District Magistrate, in such form, if any, as may be required.

(3) A dealer having a licence in Form XI, Form XII or Form XIII to repair to test or to sell firearms or ammunition shall not take the firearms or ammunition for testing to a testing range or other place, unless specifically permitted to do so by his licence, and he shall carry out tests only in such manner and subject to such conditions as are laid down therein.

(4) Where a licence is granted in Form IX or Form XI for conversion of ammunition, it shall not entitle the licensee to convert blank cartridges or any ammunitions having no projectile into single/multiple projectile ammunition or to load or re-load any ammunition.

22. Proof-testing of firearms.—(1) Proof-testing of firearms manufactured by a licensed dealer shall be carried out only in accordance with the regulations which may be framed by the Central Government or framed by such authorities as the Central Government may specify in this behalf and approved by that Government.

(2) No dealer shall sell a firearm which has not been duly proof-tested.

23. Licensing authorities to furnish information to the District Magistrate.—A copy of every licence granted in any Form by any authority other than a District Magistrate shall be sent forthwith to the District Magistrate having jurisdiction over the area in which the place of business or residence of the licensee is situated.

24. Sale or keeping for sale certain arms and ammunition.—(1) The State Government or, in the States of Tamil Nadu, Andhra Pradesh or Kerala, the Board of Revenue, may, by licence granted by it in Form XI or Form XII, authorize selected dealers to sell or keep for sale a specified amount of ammunition of category I(c).

(2) A dealer possessing a licence in Form IX, Form XI, or Form XII shall not sell or transfer any arms or ammunition of category I(b) or I(c) to any person, unless the acquisition or possession of such arms or ammunition is expressly permitted in his licence or in his certificate of exemption.

25. Identification marks on firearms.—(1) A manufacturer of firearms shall get every firearm manufactured by him stamped so as to show distinctly—

(a) the maker's name and registered trade mark, if any;

(b) the serial number of the weapon as entered in his register and the year of stamping; and

(c) proof-mark;

as shown in the following Table:—

(2) When an imported firearm kept for sale by a dealer does not bear the manufacturer's name, such distinguishing mark of the importer as allotted by the State Government shall be engraved on the barrel (adjacent to the number, if any, existing thereon) and on other parts as shown in column (2) of the Table under sub-rule (1); if a barrel bears more than one number, the distinguishing mark shall be affixed to the number appearing on the original invoice. When the manufacturer's number appears only on the trigger guard or other replaceable part, that number shall be engraved on the part shown in column (3) of the Table.

(3) A person, who has in his possession any firearm which does not bear distinctly a manufacturer's name, number of other identification mark as mentioned in sub-rule (1), shall get the identification mark stamped on the firearm consisting of—

(a) such distinct letters as may be prescribed for the purpose by the State Government;

(b) serial number of the possession licence in the Arms Register of the licensing authority concerned or, in respect of the firearms in possession of a person exempt from the obligation to take out licence for their possession, the letters "Ex"; and

(c) the year of stamping,

in that order and in the following manner:—

1. Rifles —On the barrel and breech.
2. Guns and Pistols —On the barrel.
3. Revolvers —On the breech and cylinder.

26. Records of transactions in arms and ammunition.—(1) Every dealer shall maintain such registers as may be prescribed by the Central Government to show receipts, disposals, balance of stocks in hand and daily sales of arms or ammunition of different categories and provide such other information as may be required.

(2) Every entry of transactions in such registers shall be made before the close of business hours on the same day and in the case of a sale or transfer the dealer shall, at the time of the transaction, require the purchaser or transferee, if not known to him, to furnish particulars sufficient for identification, and shall immediately enter the said particulars in the registers.

27. Inspection of premises, stock and record.—Every Magistrate and police-officer not below the rank of Inspector, or if the Central Government so directs, of Sub-Inspector, acting within the local limits of his authority, or any officer of the Central Government specially empowered in this behalf may—

(a) enter and inspect the premises in which arms or ammunition are manufactured or in which arms or ammunition are kept by a manufacturer or in such arms or ammunition; and

(b) examine the stock and accounts of receipts and disposals of arms and ammunition or any other register or document.

28. Restrictions upon import or export for re-import of arms or ammunition.—A licence shall not be granted for the import or export for re-import of any arms or ammunition through the medium of post office.

29. Import by sea or air.—Arms or ammunition shall be deemed to have been brought into India by a person when such arms or ammunition are imported through an agent and are either—

(i) consigned to such person direct, or

(ii) consigned to the said agent, if the agent possesses, a certificate from the said person that the arms or ammunition are *bona fide* his property and the agent only clears the arms or ammunition from the customs house and forwards the same.

30. Vessels entering the territorial waters of India.—Arms or ammunition carried by a vessel entering the territorial waters of India or leaving such waters, shall be deemed to be imported or exported as the case may be, irrespective of whether the vessel carrying the arms or ammunition does not berth.

31. Import by land or river of arms and ammunition.—(1) Where a licence is granted in Form XVI and the articles are consigned to an area not on the frontier of India, a copy of the licence shall forthwith be sent by the authority granting it to the Government of the State concerned or the District Magistrate having jurisdiction over the area in which they cross such frontier; and the State Government/District Magistrate may in its/his discretion require the licensee to produce the arms or ammunition for its/his inspection before allowing the same to be taken out.

(2) Where arms or ammunition are imported by rail, a copy of the licence shall forthwith be sent by the authority granting it to the railway authorities at the place to which such arms or ammunition are consigned.

32. Bringing of arms or ammunition into India by *bona fide* tourists.—(1) A licence, valid for a period of six months from the date of endorsement referred to in sub-rule (1-A), may be granted in Form III to *bona fide* tourists referred to in clause (b) of the proviso to sub-section (1) of section 10, so far as practicable, six months prior to the expected date of arrival of the tourist in India:

Provided that the validity of the licence so granted shall commence only from the date of endorsement of the said licence and that the arms and ammunition covered by the licence shall not be used till the date of endorsement of the licence.

(1-A) When a licence is granted in Form III to a *bona fide* tourist, under sub-rule (1), the licence, together with the passport/visa of the tourist, shall be presented to the licensing authority as soon as may be after the disembarkment of the tourist and the latter shall—

(a) after obtaining the undertaking referred to in sub-rule (2), endorse the licence making it valid for a period of six months from the date of the endorsement; and

(b) make an entry in the passport/visa giving full particulars of all the arms and ammunition for which the licence has been granted.

(2) The licensing authority shall obtain an undertaking in writing from the licensee that he shall not sell or transfer the arms or ammunition to anyone in India without the prior permission of the District Magistrate having jurisdiction over the place where such sale or transfer is to be made, and where the arms or ammunition are sold or transferred he shall inform the customs authority and pay the duty, if any.

(3) The passport checking authority or any other officer empowered by the District Magistrate in this behalf at the port or other place of departure from India shall verify that the arms entered in the passport/visa are being taken out of India by the licensee and recover the licence and forward the same to the authority who issued it with the remarks that the arms have been duly re-exported or lawfully sold or transferred in India, as the case may be.

33. Of exports.—(1) The authority granting a licence in Form XVII for export by sea or air of arms or ammunition from customs ports to ports in foreign territory or Commonwealth shall send a copy of such licence to the agent or master of the vessel or to the air carrier by which the arms or ammunition covered by the licence are intended to be taken out of India.

(2) The weapons of the following descriptions shall not be allowed to be exported, namely:—

(i) weapons falling within the definition of “antiquity” under the Antiquities (Export Control) Act, 1947 (31 of 1947);

(ii) weapons of current and popular bores for which ammunition is available in the country; and

(iii) automatic weapons and weapons which are in use by the police or the armed forces of the Union.

(3) Every application for the grant of a licence in Form XVII or Form XVIII for export of firearms shall be accompanied by a certificate from the Director-General of Archaeology of the Central Government to the effect that the arms intended to be exported do not fall within the definition of “antiquity” under the Antiquities (Export Control) Act, 1947 (31 of 1947). If the application is made to the Central Government, it shall be accompanied by a further certificate from the licensing authority of the place from where the weapons are intended to be exported certifying that the weapons do not belong to any of the descriptions mentioned in sub-rule (2).

34. Export by land or river of arms and ammunition.—When a licence for export of arms or ammunition by land or river is granted in Form XVIII a copy of the licence shall forthwith be sent by the licensing authority—

(a) where the arms or ammunition are exported by rail, to the District Magistrate of the place from which the consignment is to be despatched or, in the State of Jammu and Kashmir, to the State Government, and such authority shall forthwith send a copy to the railway authorities at the station from which the consignment is to be despatched;

(b) where the arms or ammunition are exported by road or river, to the District Magistrate having jurisdiction over the area out of which they are to cross the frontier of India; and such Magistrate may, in his discretion, require the licensee to produce the arms or ammunition for his inspection before allowing them to leave the area.

35. Export and re-import of arms and ammunition by sea or air.—(1) A licence in Form XIX may be granted for export of arms or ammunition by sea or air from one place in India and re-import into another place in India—

(a) by the Central Government or any other officer specially empowered by it, if—

(i) the arms or ammunition are taken by sea or by an International Air Service or across intervening territory not forming part of India, or

(ii) the arms or ammunition form part of the estate of a deceased or insane person who was or is subject to the Indian Navy Act, 1957 (62 of 1957), or whose estate is dealt with under the Army and Air Force (Disposal of Private Property) Act, 1950 (40 of 1950), where such arms or ammunition are to be sent to the wife, widow, legal representative or next-of-kin of such deceased or insane person; or

(b) by the licensing authority—

(i) for import, at the place of destination, or

(ii) for export, at the place of despatch subject to the previous consent of the licensing authority at the place of destination as required under rule 50—

if the arms or ammunition are carried by sea or by an internal air service.

Explanation.—For the purpose of this rule, “India” includes any of ex-French Settlements in India.

(2) A copy of every licence granted under sub-rule (1) shall forthwith be sent by the authority granting it to—

(a) the licensing authority/authorities of the place of despatch/destination of the articles as the case may be, or if the place of despatch/destination is in any of the ex-French Settlements in India, to the Secretary, General Administration Department, Government of Pondicherry; and

(b) where the place of despatch/destination of the articles is other than a port—

(i) to the licensing authority at the port of export/re-import; and

(ii) if the route includes transport by rail, to the railway authorities at the station from which the consignment is to be despatched.

36. Arms or ammunition to be delivered to Commissioner of Customs in certain cases.—Where a vessel or aircraft bound for a port other than a port in India calls at any port in India in the course of its voyage, and remains there for a period exceeding forty-eight hours, any arms or ammunition in the possession of any passenger not exempted from liability to take out a licence in respect of such possession shall be delivered by him to the Commissioner of Customs to be detained until the departure by sea or air, as the case may be, of such passenger, and it shall not be necessary for such passenger to take out any licence in respect of the arms or ammunition so delivered and detained.

37. Prohibition of transport of arms and ammunition.—(1) Save as herein otherwise provided, no person shall transport over India or any part thereof any firearms or ammunition or any arms of category V, except under and in accordance with the conditions of a licence granted under these rules.

(2) Nothing in sub-rule (1) or in section 12 shall be deemed to apply to arms or ammunition—

(a) transported personally or as personal luggage, in reasonable quantities for his own use, by a person lawfully entitled to possess or carry such arms or ammunition;

(b) transported by a person licensed to manufacture such articles, for proof testing, in a case or package legibly addressed to a Government establishment or an establishment approved in this behalf by the Central Government, or re-transported by such establishment to such person;

(c) of category V, transported through an area where the Central Government has, by notification in the Official Gazette, applied section 4, or from such area to an area where section 4 does not apply, provided that the weapons are properly packed and labelled, showing clearly the description of the articles and the name and address of the consignee;

(d) transported by a licensed dealer for export or after import, in accordance with a licence for their export or import,—

(i) from the place of despatch to the port or other place of export, or

(ii) from the port or other place of import to the place of destination, or

(iii) by transshipment in the port of import for re-export by sea or air;

(e) transported—

(i) by a person lawfully entitled to possess such articles, in reasonable quantities for his own use from the premises of a licensed dealer, or for purposes of examination or repair or test to or from any such premises, or to the address of any other person lawfully entitled to possess such articles; or

(ii) by a licensed dealer in a case or package legibly addressed to a person lawfully entitled to possess such articles, in compliance with an order given by such person for the supply of such articles, in reasonable quantities, for his own use or carrying out necessary repairs thereto;

(f) being chlorates, transported for *bona fide* industrial, agricultural or medical purposes:

Provided that—

(i) transport of arms or ammunition under clause (d), clause (e) or clause (f) shall be subject to obtaining a certificate of no objection from the licensing authority at the destination of the articles as provided for in rule 50;

(ii) transport of arms or ammunition personally for any of the purposes stated in sub-clause (i) of clause (e) without using them through any area outside the area of validity of his possession licence, shall be subject to his obtaining a permit from the licensing authority at the starting place of transport; and

(iii) prior intimation of the transport of arms of category V under clause (c) or of chlorates under clause (f) shall be given to the officer in charge of the nearest police-station or a Magistrate having jurisdiction over the place of despatch.

(3) The officer or Magistrate receiving prior intimation under clause (iii) of the proviso to sub-rule (2) shall immediately inform the District Magistrate and, if the articles are transported by rail, the superintendent of railway police having jurisdiction—

(i) over the place of destination in the case of transport of chlorates, and

(ii) over the place of entry into the area, where section 4 applies, in the case of transport of arms of category V.

Explanation.—For the purposes of this rule, “transport” includes movement of arms or ammunition across any part of the country, but does not include movement of arms or ammunition by a licensed dealer from a warehouse, godown or any other similar place to his factory, shop or other places of business within the same village, town or city.

38. Transport of arms or ammunition.—(1) A copy of licence granted in Form XX for transport of arms or ammunition beyond the local limits of the jurisdiction of the authority granting it shall forthwith be sent to the District Magistrate having jurisdiction over the area where the place to which the articles are consigned is situated, or if such place is in the State of Jammu and Kashmir, to the Government of the State.

(2) A copy of every such licence granted by a District Magistrate for transport within the limits of his jurisdiction shall forthwith be sent to the Subordinate Magistrate (if any) having jurisdiction over the place to which the arms or ammunition are consigned.

(3) Where arms or ammunition are transported by rail, a copy of such licence or a copy of the no objection certificate referred to in rule 50 shall be attached to the way-bill or invoice, as the case may be, and telegraphic advice of every such consignment shall be sent by the railway authorities from the forwarding to the receiving station.

(4) A licence of the transport of arms or ammunition shall not, save for special reasons to be recorded by the authority granting it, be granted for a period longer than twice the time likely to be occupied in the journey to the place of destination by the route indicated in the licence:

Provided that a licence for a longer period, not exceeding a quarter of a year at one time, may be granted in connection with industrial purposes for transporting ingredients of ammunition in instalments from the godown to the factory of the licensee situated within the same district but not in the same locality. A licensee transporting any ingredients of ammunition under such licence shall give prior intimation to the nearest Magistrate/officer in charge of the police station; and he shall make necessary entries promptly in the stock registers maintained for the purpose at both the godown and the factory.

39. Licence for import, transport and re-export of arms and ammunition.—Where under the authority of a licence for import, transport and re-export of arms or ammunition granted in Form XIX, the arms or ammunition are to be—

(a) transported across Indian territory entirely by rail, a copy of the licence shall forthwith be sent by the authority granting it, to the licensing authority and to the railway authority at the places from which the consignment is to be despatched;

(b) transported across Indian territory and re-exported by land or river, a copy of the licence shall forthwith be sent by the authority granting it to the District Magistrate having jurisdiction over the area out of which the consignment is to cross the frontier of India.

40. Scrutiny by authorities of consignments containing arms and ammunition.—

(1)(a)(i) Where a package or case containing arms or ammunition is brought for export and transport, to a railway authority or shipping agent or a master of vessel or air carrier, the latter shall, before receiving the articles for despatch or despatching them, verify that they are accompanied by the original licence in the case of export or an attested copy of the licence in the case of transport or of export for re-import.

(ii) Where a consignment is received after import, or transport, by an authority at a port checking import or by a railway authority, such authority shall require the production of the original licence before delivering the consignment.

(b) Where arms or ammunition consigned to an area not on the frontier of India are imported, or where a consignment of arms or ammunition is exported, by land or river, the District Magistrate having jurisdiction over the area in India into or out of which it crosses the frontier of India or an officer appointed by him in this behalf shall require the licensee to produce original licence and may, in his discretion, require the licensee to produce the arms or ammunition for his inspection before allowing the articles to leave the area.

(c) The aforesaid authority shall satisfy himself—

(i) that the licence accompanying the consignment or produce by the licensee is identical in substance with the copy sent to him; and

(ii) that the arms or ammunition correspond with the description given in such licence.

(2) Where in any case referred to in sub-rule (1)—

(a) the original licence is not produced by the consignee or the original or attested copy of the licence does not accompany the case or package, as the case may be, or

(b) the licence is not identical in substance with the copy sent to the authority, or

(c) the arms or ammunition do not correspond with the description given in such licence,

the authority shall not receive the articles or despatch or allow the articles to proceed further or deliver the consignment, as the case may be, and shall, in case he is not a Magistrate, forthwith inform the nearest Magistrate.

41. Production and delivery of licence for import/export/transport.—(1) The consignee of arms or ammunition imported/transported under a licence or his agent in the case of arms or ammunition exported under a licence shall—

(a) produce the licence, where the consignment in the course of import crosses the frontiers of India by land or river, within six days of such crossing, before the District Magistrate having jurisdiction over the area into which the consignment so crosses or before such other officer as the District Magistrate may appointment in that behalf;

(b) deliver the licence within six days of the arrival of the consignment—

(i) at the destination, in case of such consignment has been imported or transported to a place in India, or

(ii) in the area out of which such consignment, being exported/transported across Indian territory for re-export, is to cross the frontier of India and before it so crosses, to the District Magistrate having jurisdiction over the area in which the destination or place of crossing as the case may be, is situated, or such other officer as the District Magistrate/State Government may appoint in that behalf.

(2) Every officer, to whom a licence is produced or delivered under sub-rule (1), shall satisfy himself that—

(a) the arms or ammunition correspond with the description given in the licence, and

(b) any deficiency is properly accounted for.

(3) If the officer to whom a licence is delivered under sub-rule (1) is an officer other than the District Magistrate, the licence shall be forwarded by such other officer to the District Magistrate.

42. Import, transport and export of arms and ammunition for the Government of Nepal or the King of Nepal.—(1) Where arms or ammunition are imported into India for despatch to the Government of Nepal or His Majesty the King of Nepal, the customs authorities at the port of disembarkation, of the licensing authority in other places, shall check

the consignment against the list of arms or ammunition received from the Central Government; the packages shall be sealed thereafter in the presence of a Customs Examiner or any other authority appointed for the purpose by the Central Government.

(2)(a) Where arms or ammunition imported into, or acquired in India are to be despatched to Nepal for the Government of Nepal, or His Majesty the King of Nepal, they shall be accompanied by a certificate from the Collector of Customs or the licensing authority of the area concerned to that effect; the certificate shall also contain a description of the marks on each package or case sufficient to enable it to be readily identified and a general statement of the contents of such package or case;

(b) On receipt of requisition from the clearing agents or the firm concerned, as the case may be, the District Magistrate shall arrange for necessary escort up to the railway station;

(c) The railway authorities shall not receive for despatch any package or case containing arms or ammunition unless accompanied by a certificate as required under clause (a).

(3) Where in any case—

(i) the list referred to in sub-rule (1) is not received from the Central Government, or

(ii) the arms or ammunition imported into, or intended to be despatched from India do not correspond with the description given in such list,

the authorities concerned shall not allow the consignment to be despatched to Nepal and shall forthwith inform the Central Government.

43. Transport of arms from any place in Nepal to any other place in Nepal through Indian territory.—(1) Notwithstanding anything contained in rules 8 and 28, the Ambassador of India in Nepal, on application made by or on behalf of His Majesty the King of Nepal, or the Government of Nepal and subject to confirmation by the Central Government, may grant a licence in Form XXI for the import into, possession in, transport across, or export out of, India from any place in the territory of Nepal to any other place in that territory across the frontiers of India, of arms or ammunition of categories I and II or any other category, by His Majesty the King of Nepal, personal accompanying him, his brothers, the Prime Minister of Nepal and Nepal Government's Troops or Police, as the case may be.

(2) Where under the authority of a licence granted under sub-rule (1), arms or ammunition are to pass across Indian territory—

(a) if entirely by rail, a copy of the licence shall forthwith be sent by the Ambassador to the District Magistrate having jurisdiction over the areas through which the arms or ammunition shall pass across the frontiers of India and also to the railway authorities of the place in the Indian territory through which the consignment shall pass;

(b) if by road or river, a copy of the licence shall forthwith be sent to the District Magistrate having jurisdiction over the areas through which the arms or ammunition shall pass to Nepal across the frontiers of India.

(3) The Central Government, or the Ambassador with the approval of the Central Government, may make any order regulating the safe transit to Nepal across the frontiers of India of the arms or ammunition mentioned in this rule.

44. Transit licences for *bona fide* travellers.—(1) Where a licence is granted in Form XXII, the licensing authority shall endorse the passport/visa of the tourist to that effect.

(2) A copy of every licence granted in Form XXII shall forthwith be sent to such officer of the Government of the State in which the place of his departure from India is situated as may be specially empowered in this behalf by the State Government or the Administrator or Lieutenant-Governor or Chief Commissioner of a Union territory, as the case may be.

(3)(a) The licensee shall not, while in India, sell or transfer any arms or ammunition covered by his licence without prior permission of the licensing authority of the place where such sale or transfer is to be effected. He shall produce the arms or ammunition or the permission of the licensing authority, as the case may be, at the time of leaving India and return his licence to the passport checking authority, or other authority empowered by the District Magistrate in this behalf, at the port or other place of departure from India;

(b) The passport checking authority or other authority to whom the licence is returned by the licensee, shall forward the same to the authority who issued it, with the remarks that

the arms or ammunition have been duly exported, or sold or transferred with the permission of the authority concerned as required under clause (a).

45. Licence to keep in custody arms and ammunition.—The licensee in Form XIV shall not accept for custody arms or ammunition without satisfying himself that there is no *mala fide* intention on the part of the depositor or any person on whose behalf the deposit is being made. The dealer shall either inform the nearest police station and the District Magistrate personally, or despatch information to the officer in charge of the police station and the District Magistrate by registered post on the day of deposit or return or disposal, as the case may be, of such arms or ammunition.

46. Deposit of arms and ammunition under section 21.—(1) When a licensing authority decides to suspend or revoke a licence or to refuse to renew it, he shall, while communicating his decision in writing to the licensee, inform him that—

(a) under section 21(1) he is required to deposit within such time as may be specified in the order suspending, revoking or refusing to renew the licence, the arms or ammunition covered by the licence, either with the officer in charge of the nearest police-station or with a dealer holding a licence in Form XIV, or, in case he is a member of the armed forces of the Union, in the unit armoury;

(b) subject to the proviso to section 21(2), during the period prescribed under sub-rule (4), he or, in the case of his death, his legal representative is entitled to sell or otherwise dispose of the arms or ammunition to any person lawfully entitled to possess the same and to receive the sale proceeds, if any; and

(c) if the arms or ammunition have not been disposed of or their possession by the licensee or his legal representative, as the case may be, has not become lawful within the prescribed period, they shall, subject to the proviso to section 21(3), be forfeited to Government by order of the District Magistrate.

(2) Where any arms or ammunition is deposited by an owner under section 21(1), in a police station or unit armoury, or with a dealer holding a licence in Form XIV, the officer in charge of the police station or unit armoury or the licensed dealer, as the case may be, shall—

(a) attach to each article deposited, a card showing the following:—

Deposit u/s21 (1) :-

- (i)Description (No.etc) of the article
- (ii)Particular of licence of exemption (If any)
- (iii)Name and address of depositor
- (iv)Serial No. in register and date of deposit
- (v)Date due for forfeiture/ disposal
- (vi)
(Signature of depositor)
- (vii)
(Signature of dealer/ or officer in charge of police station/unit armoury)

(b) issue to the depositor a receipt containing the same details as in (a); and

(c) immediately send a copy of the receipt to the authority who granted the licence or renewed it last.

(3)(a)(i) Any arms or ammunition deposited in a unit armoury under section 21(1) may, unless returned or disposed of earlier, be transferred, after the expiry of a period of 30 days after such deposit to the nearest police station.

(ii) Any arms or ammunition deposited in a police station under section 21(1) which have not been returned or disposed of within 30 days of the deposit and the arms or ammunition transferred under clause (i) may be transferred for the sake of better maintenance or safety to a police armoury in the district/taluqua headquarters or such other place as may be specified by the District Magistrate, in accordance with such instructions as may be issued by the State Government for the purpose:

Provided that the District Magistrate, may, when he considers it desirable, extend the said period of 30 days.

(b) Intimation of such transfer shall be given to the depositor of the article and to the licensing authority who granted or last renewed the licence for the article.

(4) The period within which a depositor or his legal representative may exercise his rights under sub-section (2) of section 21 shall be—

(a) Six months from the date of deposit, if the arms or ammunition are deposited as a consequence or contravention by its, owner of any provision of the Act or these rules or any condition of the licence.

(b) One year—

(i) from the date of deposit, if the arms or ammunition are deposited as a consequence of its possession becoming unlawful under section 21(1) otherwise than as under clause (a); or

(ii) if it is already in deposit, from the date of communication to the owner, of the order revoking, suspending, or refusing to renew the licence; or

(iii) from the date of notification issued under section 4:

Provided that any period under clause (a) or (b) shall be reckoned—

(i) where an appeal is preferred by the owner under section 18 from the date of the final order of the appellate authority;

(ii) where the arms or ammunition is the subject of a legal suit or dispute or is owned or inherited by a person who has not completed the age of sixteen years from the date of termination of the dispute or of completion by that person of the age of sixteen years; and

(iii) where the owner of the arms or ammunition is on active service outside India—from the date of his return to India:

Provided further that—

(i) when the arms or ammunition is owned by a person who is considered by the licensing authority to be unfit, for the time being to carry the arms or ammunition for any reason, or in any other suitable case, the District Magistrate or the Commissioner of Police, in relation to any metropolitan area, may extend the period prescribed under clause (a) or clause (b) for a period upto six months; and

(ii) the State Government may by special or general order extend the period beyond six months:

Provided further that when the arm or ammunition is owned by a person who is considered by the licensing authority to be unfit, for the time being, to carry the arms or ammunition for any reason, the period prescribed under clause (a) may be extended suitably by the District Magistrate, or the Commissioner of Police in relation to any metropolitan area.

(c) Two years if the firearms are deposited as a consequence of proviso to sub-section (2) of section 3.

(5)(a) Any arm or ammunition not returned or disposed of before the expiry of the period prescribed under sub-rule (4) shall be notified to the District Magistrate; and subject to the provisos of sub-rule (4) and the proviso to the section 21(3), transferred to the district malkhana or such other place as required by order of the District Magistrate, for the purpose of forfeiture under section 21(3).

(b) The District Magistrate shall, before making an order of forfeiture after the expiry of the prescribed period serve a notice as required under section 21(4) in like manner as for service of summons under the Code of Criminal Procedure, 1898 (5 of 1898):

Provided that, in the case of the depositor being a member of the armed forces of the Union, the notice shall be served personally through the Commanding Officer of such member.

(6) Charges for maintaining in good condition articles deposited may be levied at such rates as may be fixed from time to time by the State Government.

47. Deposit of arms and ammunition for safe custody otherwise than under section 21.—(1)(a) A person lawfully possessing arms or ammunition may deposit them for safe custody with a dealer holding a licence in Form XIV or in a police station or, if he is a member of the armed forces of the Union, in a unit armoury;

(b) before accepting the arms or ammunition for deposit otherwise than under section 21(1), the dealer or officer in charge of a police station or unit armoury shall satisfy

himself that they are possessed under a valid licence issued under the Act and these rules or under exemption from the need for such licence;

(c) members of the armed forces of the Union may be allowed to keep their arms or ammunition in safe custody in a unit armoury only during the tenure of their service.

(2) Where the arms or ammunition have been deposited under sub-rule (1), the dealer or the officer in charge of the police station or unit armoury shall—

(a) attach to each article deposited a card, easily distinguishable from that described in rule 46(2)(a) showing the following:—

(i)Description (No.etc) of the article	
(ii)Name and address of depositor	
(iii)Particular of licence / exemption	
(iv)Serial No. in register and date of deposit	
(v)Date of expiry of licence	
(vi) Date up to which deposited	
(vii)	

(Signature of depositor)

(Signature of dealer/ or officer in charge of police station/unit armoury)

(b) issue to the depositor a receipt containing the same particulars as in clause (a); and

(c) on the same day send a copy of the receipt to the authority who granted the licence or renewed it last.

(3)(a) In the event of failure to get the licence renewed, the arms or ammunition shall continue to be possessed by the dealer on the authority of his licence in Form XIV or by the officer in charge of the police station or unit armoury; but, if the licence is not renewed for a period of 3 years after its expiry, the dealer or the officer in charge of the police station or unit armoury shall bring this to the notice of the District Magistrate for such action as he may consider necessary.

(b) the articles shall in no case be returned to the owner, unless the licence to possess them is renewed or a new licence is obtained.

(4) The depositor may be charged a fee for the custody of the articles deposited at the following rates:—

1. For each firearm—Fifty rupees per year or portion thereof.
2. For every other weapon or package of ammunition—Rs. 25 per year or portion thereof.

Any extra charges for maintenance of the articles in good condition may be levied at such rates as may be fixed from time to time by the State Government.

48. Records and returns of the articles deposited.—(1) The dealer, or the officer in charge of the police station or unit armoury shall maintain such registers as may be prescribed by the Central Government.

(2) A copy of the entries in the registers relating to the quarters ending on the last day of March, June, September and December each year, certified as true copy under the signature of the dealer or officer in charge, of the police station or unit armoury, as the case may be, shall be forwarded to the District Magistrate as early as possible after the expiry of each quarter.

(3) The licensed dealer or the officer in charge of the police-station or unit armoury or of any other place specified under rule 46(3)(a)(ii) where the arms or ammunition are kept, shall submit to the District Magistrate by the 15th in December each year, a report showing the particulars of arms or ammunition in their custody which have, or will become liable to forfeiture by the end of that year.

49. Inspection.—(1) Arms and ammunition deposited in a police station or with a dealer and those transferred to the district malkhana and the register maintained for the purpose

shall be inspected periodically by the District Magistrate or other officer appointed by the State Government in this behalf in accordance with such procedure as may be prescribed by the State Government.

(2) The arms or ammunition deposited in a unit armoury and the register maintained for this purpose shall be inspected periodically by the officer commanding the unit or any other officer empowered by him in accordance with the procedure prescribed by the Government of the State, where the unit is for the time being located.

50. Previous consent in certain cases.—(1) A licence having effect beyond the local limits of the authority of the officer granting it shall not be granted for the transport or export or re-import of any arms or ammunition to a place, without ascertaining that there is no objection to the grant of such licence on the part of—

(i) the District Magistrate having jurisdiction over the area in which such place is situated; or

(ii) the Government of the State of Jammu and Kashmir, if such place is in that State; or

(iii) the Secretary, General Administration Department, Government of Pondicherry, if such place is in any of the ex-French Settlements in India.

(2) For the purposes of sub-rule (1), either—

(i) a certificate of “no objection” may be obtained by the applicant for the licence; or

(ii) an enquiry may be made by the authority to whom application for grant of such licence is made.

51. Application for licence.—Every application for the grant of a licence under these rules—

(a) shall be submitted in Form “A”;

(b) may be presented by the applicant in person or sent through the medium of post office or otherwise, to the licensing authority, as far as possible having jurisdiction in respect of the place, where he ordinarily resides or has his occupation;

(c) shall contain all such information as is necessary for the consideration of the application, and in particular—

(i) where the application is for a licence for the acquisition, possession and carrying of arms and ammunition for crop-protection, shall specify details of the land and cultivation requiring protection and area within which the arms or ammunition are required to be carried;

(ii) where the application is for a licence for import by land or river or for export or for transport or for export and re-import, or for import, transport and re-export of arms or ammunition, shall specify the place or destination, the route, the time likely to be occupied in the journey and the quantity, description and price of each kind of arms or ammunition in respect of which the licence is required and the purpose for which they are intended;

(d) where the grant of licence requires a certificate of no objection from some other authority as provided in rule 50, shall state whether such certificate has been obtained and, if so, shall be supported by evidence thereof;

(e) where an application is for the grant of licence in Form II, Form III, Form III-A, Form IV, Form V or Form VI from a person other than a *bona fide* tourist as defined in section 10(1)(b) of the Act, it shall be accompanied by two passport size copies of the latest photograph of the applicant:

Provided that—

(i) an application by a member of the armed forces of the Union shall be made through his Commanding Officer to the licensing authority having jurisdiction in respect of the place to which he is for the time being posted; and

(ii) the licensing authority may, in accordance with any instructions issued by the State Government in respect of all or any class of firearms, require the personal attendance of the applicant before granting or renewing the licence applied for.

51-A. The applicant shall not suppress any factual information or furnish any false or wrong information in the application form.

52. Form of licence.—(1) A licence in Form II, Form III, Form III-A, Form IV, Form V or Form VI, if granted for more than a year to a person other than *bona fide* tourist as defined in

section 10(1)(b) of the Act, shall be in book-form and shall contain the latest photograph of the licensee.

(2) When a licence is granted in Form II, Form III, Form III-A, Form IV, Form V or Form VI for the possession of arms to be acquired by the licensee subsequent to the grant of the licence, the authority granting the licence shall at the time of granting the same, direct that within a period specified by him, in this behalf, which he may from time to time extend, the arms covered by the licence shall be acquired and that the licence or the arms or both shall be produced for his inspection and if within the period so specified or extended the licensee fails to acquire the arms and to produce the licence or the arms or both, as the case may be, the licence shall cease to be in force:

Provided that, if during the period so specified or extended, the licensee wishes to acquire and possess any weapon or weapons of a different description and the licensing authority has no objection to allow the acquisition and possession of such weapon or weapons, he may amend the licence accordingly:

Provided further that—

(i) where the licensing authority is the State Government, the licensee residing at any place within the State in which the license was issued may produce the licence or the arms or both for inspection, before the State Government or any authority which the State Government may, by a general or special order, specify in this behalf;

(ii) where the licensing authority is the State Government, the licensee may, if he changes his place of residence from one State to another State, produce the licence or arms or both for inspection before the Government of the second mentioned State or any authority which that Government may, by a general or special order, specify in this behalf;

(iii) where the licensing authority is other than the State Government, the licensee may if he changes his place of residence, produce the licence or arms or both for inspection before the licensing authority of the place of his new residence to which the licensee may have shifted after the grant of licence,

within the period so specified, or extended and the authority other than the licensing authority who inspected the arms as well as the licensee shall intimate the fact of such inspection to the authority who issued the licence.

53. Variation of conditions of licences.—(1) On application from a licence-holder, a licensing authority may extend the area of validity specified in his licence, if he is satisfied about the need of such extension, subject to the condition that the licensing authority has the power to grant a licence in relation to the area to which extension is sought.

(2) On application from a company holding a licence in Form II or Form III, for a change in the name of the member, agent or other representative of the company in whose name the licence has been granted or of a retainer included in the licence the necessary amendment may be made in the licence by the licensing authority.

54. Renewal of licences.—(1) Every licence may, at its expiration and subject to the same condition (if any) as to the grant thereof, be renewed by the authority mentioned in Schedule II as renewing authority:

Provided that the licence so renewed may be signed in the appropriate column of the licence by such officer as may be specially empowered in this behalf by the State Government under rule 4.

(2) The authority issuing a licence shall ordinarily be responsible for watching all future renewals of the licence. Where a licence is renewed by an authority other than the authority who granted it, the former shall forthwith inform the latter of the fact of renewal and the period for which such renewal is valid. The applicant for the renewal of a licence under this rule shall always be required to state his permanent residence, and, if he notifies a change in his permanent residence to the district in which the renewal is sought, the licensing authority of such district shall hence-forward become responsible for watching all future renewals of his licence and shall inform the original issuing authority accordingly. The procedure shall be repeated on each subsequent occasion of renewal of the licence, the necessary intimation being sent by the renewing authority to the original issuing authority or to the authority who last renewed the licence on a permanent change of residence, as the case may be.

(3) An application for renewal of a licence for arms or ammunition deposited under sub-rule (1) of rule 47 may be made by the depositor, or where it is not practicable to make the application direct, through the dealer or any other person authorized by him in this behalf while the arms or ammunition continue to be so deposited.

(4) The licensing authority may consider an application for renewal of a licence, if the period between the date of its expiry and the date of application is not, in his opinion, unduly long with due regard to the circumstances of the case, and all renewal fee for the intervening period are paid; otherwise the application may be treated as one for grant of a fresh licence.

55. Appeal against the order of a licensing authority or an authority suspending or revoking a licence under section 17(6).—In any case in which an authority issues an order—

(a) refusing to grant or renew a licence or to give an objection certificate for such grant or renewal, or

(b) varying any condition of a licence or suspending or revoking a licence under sub-section (1), or sub-section (3), or sub-section (6) of section 17, the person aggrieved by such order may, within thirty days from the date of issues of the order, and subject to the proviso to sub-section (2) of section 18, prefer an appeal against that order to the concerned appellate authority.

56. Procedure to be followed by the appellate authority.—On receipt of an appeal the appellate authority may call for the records of the case from the authority who passed the order appealed against and after giving the appellant a reasonable opportunity of being heard pass final orders.

57. Fees payable for licence.—(1)(a) Every licence granted or renewed under these rules shall, save as herein otherwise expressly provided, be chargeable with the fee (if any) specified in Schedule IV.

(b) In any case where fee is prescribed for a year, fee for a fraction of a year shall be the same as for a whole year.

(2) Where a licensee submits his application for renewal of his licence after the expiry of the period for which the licence was granted, the licensing authority may, if he decides to renew the licence, at his discretion levy—

(a) full fee as for initial grant of the licence, and

(b) if he is satisfied that the delay is not justifiable, or excusable, nor serious enough to warrant revocation of the licence or prosecution of the licensee, a late fee not exceeding the amount of the licence fee is charged, or Rs. 100 in other cases.

(3) The Central Government may, by general or special order and for reasons to be recorded in writing and subject to such conditions, if any, as it may specify in the order, grant exemption from, or reduction of, the fee payable in respect of any licence:

Provided that it shall be a condition of every exemption from payment of the fee chargeable in respect of the grant or renewal of any licence, in Form III that if application for renewal of such licence is not made within one month of the date on which the licence expires, the licensing authority may, unless the applicant satisfies the licensing authority that he had sufficient cause for not making the application within that period, levy renewal fee at the rate specified in the Form.

(4) No separate fee shall be chargeable from retainers.

(5) No fee shall be chargeable in respect of the grant or renewal of a licence in Form XV by a State Government or the Board of Revenue (in the State of Andhra Pradesh, Kerala or Tamil Nadu) for the import of sulphur in reasonable quantities, if the State Government or the Board of Revenue is satisfied that the sulphur is required in good faith for medicinal, industrial or agricultural purposes (other than for manufacturing arms, ammunition or explosives).

(6) Any political representative authorized to grant licences in Form XVIII may remit the fee payable in respect of the grant or renewal of any such licence in the case of arms or ammunition exported for personal use, or in the case of ammunition exported for use for blasting purpose (whether on a public work or not) of the Government of any territory or place outside India.

(7)(i) No fee shall be chargeable for the grant of a licence for export and re-import of any arms or ammunition in a case of package legibly addressed to a person lawfully entitled to

possess such articles, in compliance with a requisition made by a such person for the supply of such articles in reasonable quantities for his own use or after carrying out necessary repairs thereto.

(ii) Where any arms or ammunition are imported under a licence into any customs port in India and re-exported thence for re-import into any other customs port in India under rule 35 the necessary licence for such re-export and re-import under the said rule shall be chargeable with a fee of rupees one hundred only.

(8) No fee shall be chargeable in respect of—

(i) a change of description of the weapon entered in a licence granted for its acquisition under the proviso to rule 52(2) but if the licence fee in respect of the weapon so changed is higher than that for the original weapon, the difference of such fee may be charged;

(ii) an endorsement under rule 12 of a licence granted in the State of Pondicherry or endorsement to extend or change the area of validity of a licence under sub-rule (1) of rule 53;

(iii) a change of name, under rule 53(2), of member, agent or other representative of the company or retainer; or

(iv) a grant of consent or permit certificate or endorsement or any other document under these rules, except as otherwise expressly provided.

58. Fee payable for copies and duplicates.—Where a licence granted or renewed under these rules is lost or accidentally destroyed, the authority empowered to grant such licence may grant a duplicate—

(a) where the original licence was granted without the payment of any fee, on payment of a fee of Rs. 50; and

(b) in any other case on payment of a fee of Rs. 100 or the fee with which the original licence was chargeable; whichever is less.

59. Fee payable on a petition for appeal made under section 18(1).—Every petition for appeal under section 18(1) shall be accompanied by a fee of—

(a) Rs. 100, if the fee for the licence in relation to which the appeal is preferred is Rs. 50 or more; and

(b) Rs. 50 in any other case.

60. Collection of fees.—All fees payable shall be paid in cash either in person or, at the option of the person concerned, by a money order/postal order, at the time of application.

61. Dealers to maintain registers, etc., in certain cases.—Where no licence is required for the manufacture, sale, import, export or transport of any category or description of arms or ammunition by or through a dealer, the dealer may be asked to registers his name and address and place of business in such manner and at such place as the Central Government may prescribe and the dealer shall maintain such register and furnish such information to the Central Government as it may require in respect of the arms or ammunition so manufactured, sold, imported, exported, or transported.

62. Production of licence.—(1) Any person who—

(a) holds a licence granted or renewed or a pass, permit or certificate granted under these rules, or

(b) is acting under colour of such licence, pass, permit or certificate, shall forthwith produce such licence, pass, permit or certificate upon demand by any Magistrate or any police officer of a rank not below that of an officer in charge of a police station.

(2) While granting or renewing a licence, no authority shall impose a condition inconsistent with sub-rule (1).

(3) If a person who holds a licence in Form II changes his place of residence, permanently or temporarily for more than thirty consecutive days, and carries with him the weapon covered by the licence, to a place other than indicated in column 2 of the licence, he shall within thirty days of such change, send intimation about such change to the licensing authority of the place of his new residence as well as to the authority which granted the licence or last renewed it, as the case may be, and shall on demand forthwith produce the

licence and the weapon to the first mentioned authority for making necessary entry in the licence to indicate therein the particulars of the new residence of the licensee.

(4) The licensee shall intimate within a period of thirty days in regard to change of residence to the licensing authority of the new place of his residence and produce his licence before the licensing authority of the new place for appropriate endorsement. On such change of residence and after such endorsement on the licence, the said licence shall be deemed to have been transferred to the jurisdiction of the licensing authority and renewing authority of the new place of residence and such authority shall be the licensing authority and the renewing authority in relation to the said licence for purposes of provisions of the Arms Act, 1959 and the Arms Rules, 1962.

63. Production of arms.—The authority by whom any licence in Form II, Form III, Form IV, Form V or Form VI has been granted or renewed may, for the purpose of satisfying itself that any arms covered by such licence are still in the possession of the licensee, at any time while the licence is in force, by order in writing, require the licensee—

(a) to produce the arms at such time and place for inspection of such officer as may be specified in the order; or

(b) at the option of the licensee, to produce a certificate from—

(i) a Magistrate or the officer in charge of the nearest police station in whose jurisdiction the licensee resides or has his occupation, or

(ii) if he is a Government servant, a Gazetted Officer to whom he is subordinate, to the effect that he has seen the arms in the possession of the licensee and that they correspond to the description given in the licence.

64. Savings.—(1) The Indian Arms Rules, 1951, are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any exemption, exclusion or withdrawal made, fee imposed, levied, remitted or reduced or power conferred) or deemed to have been done or taken under the said rules, shall, so far as it is consistent with these rules, be deemed to have been done or taken under the corresponding provisions of these rules.

THE ADVOCATES ACT, 1961

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE ADVOCATES ACT, 1961.

(2) It extends to the whole of India.

(3) It shall, in relation to the territories other than those referred to in sub-section (4), come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

(4) This Act shall, in relation to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) “advocate” means an advocate entered in any roll under the provisions of this Act;

(b) “appointed day”, in relation to any provision of this Act, means the day on which that provision comes into force;

[* * *]

(d) “Bar Council” means a Bar Council constituted under this Act;

(e) “Bar Council of India” means the Bar Council constituted under section 4 for the territories to which this Act extends;

[* * *]

(g) “High Court”, except in sub-section (1) and sub-section (1-A) of section 34 and in sections 42 and 43, does not include a Court of the Judicial Commissioner, and, in relation to a State Bar Council, means,—

(i) in the case of a Bar Council constituted for a State or for a State and one or more Union territories, the High Court for the State;

(ii) in the case of the Bar Council constituted for Delhi, the High Court of Delhi;

(h) "law graduate" means a person who has obtained a bachelor's degree in law from any University established by law in India;

(i) "legal practitioner" means an advocate, or vakil of any High Court, a pleader, mukhtar or revenue agent;

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

(k) "roll" means a roll of advocates prepared and maintained under this Act;

(l) "State" does not include a Union territory;

(m) "State Bar Council" means a Bar Council constituted under section 3;

(n) "State roll" means a roll of advocates prepared and maintained by State Bar Council under section 17.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir or in the Union territory of Goa*, Daman and Diu, shall, in relation to that State or that territory, be construed as a reference to the corresponding law, if any, in force in that State or that territory, as the case may be.

CHAPTER II

BAR COUNCILS

3. State Bar Councils.—(1) There shall be a Bar Council—

(a) for each of States of Andhra Pradesh, Bihar, Gujarat, Jammu and Kashmir, Jharkhand, Madhya Pradesh and Chhattisgarh, [***], [***], Karnataka, Orissa, Rajasthan, Uttar Pradesh and Uttaranchal to be known as the Bar Council of that State;

(b) for the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura to be known as the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh;

(c) for the State of Kerala and the Union territory of Lakshadweep, to be known as the Bar Council of Kerala;

(cc) for the State of Tamil Nadu and the Union territory of Pondicherry, to be known as the Bar Council of Madras*;

(ccc) for the States of Maharashtra and Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu, to be known as the Bar Council of Maharashtra and Goa;

(d) for the States of Punjab and Haryana and the Union territory of Chandigarh, to be known as the Bar Council of Punjab and Haryana;

(dd) for the State of Himachal Pradesh, to be known as the Bar Council of Himachal Pradesh;

(e) for the State of West Bengal and the Union territory of Andaman and Nicobar Islands, to be known as the Bar Council of West Bengal; and

(f) for the Union territory of Delhi, to be known as the Bar Council of Delhi.

(2) A State Bar Council shall consist of the following members, namely:—

(a) in the case of the State Bar Council of Delhi, the Additional Solicitor- General of India, *ex officio*, in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate-General of each of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura, *ex officio*; in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the States of Punjab and Haryana, *ex officio*; and in the case of any other State Bar Council, the Advocate-General of the State, *ex officio*;

(b) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of the State Bar Council with an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council:

Provided that as nearly as possible one-half of such elected members shall subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at

least ten years been advocates on a State roll, and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indian Bar Councils Act, 1926 (38 of 1926).

(3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed.

(3-A) Every person holding office as Chairman or as Vice-Chairman of any State Bar Council immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977) shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be:

Provided that every such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of each State Bar Council, elected after the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), assumes charge of the office.

(4) An advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as, and for being, a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.

(5) Nothing in the proviso to sub-section (2) shall affect the term of office of any member elected before the commencement of the Advocates (Amendment) Act, 1964 (21 of 1964), but every election after such commencement shall be held in accordance with the provisions of the rules made by the Bar Council of India to give effect to the said proviso.

(6) Nothing in clause (b) of sub-section (2) shall affect the representation of elected members in any State Bar Council as constituted immediately before the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), until that State Bar Council is reconstituted in accordance with the provisions of this Act.

CHAPTER V

CONDUCT OF ADVOCATE

36. Disciplinary powers of Bar Council of India.—(1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate [* * *] whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

(3) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section 35, and where any proceedings have been withdrawn for inquiry before the disciplinary committee of the Bar Council of India, the State Bar Council concerned shall give effect to any such order.

36-A. Changes in constitution of disciplinary committees.—Whenever in respect of any proceedings under section 35 or section 36, a disciplinary committee of the State Bar Council or a disciplinary committee of the Bar Council of India ceases to exercise jurisdiction and is succeeded by another committee which has and exercises jurisdiction, the disciplinary committee of the State Bar Council or the disciplinary committee of the Bar Council of India, as the case may be, so succeeding may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee.

36-B. Disposal of disciplinary proceedings.—(1) The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the

receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of section 36.

(2) Notwithstanding anything contained in sub-section (1), where on the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), any proceedings in respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, that disciplinary committee of the State Bar Council shall dispose of the same within a period of six months from the date of such commencement or within a period of one year from the date of the receipt of the complaint or, as the case may be, the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing which such other proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (1).

37. Appeal to the Bar Council of India.—(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under section 35 or the Advocate-General of the State may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order (including an order varying the punishment awarded by the disciplinary committee of the State Bar Council) thereon as it deems fit:

Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.

38. Appeal to the Supreme Court.—Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be, may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order (including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India) thereon as it deems fit:

Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

41. Alteration in roll of Advocates.—(1) Where an order is made under this Chapter reprimanding or suspending an advocate, a record of the punishment shall be entered against his name—

- (a) in the case of an advocate whose name is entered in a State roll, in that roll;
[* * *]

and where any order is made removing an advocate from practice, his name shall be struck off the State roll [* * *].

[* * *]

(3) Where any advocate is suspended or removed from practice, the certificate granted to him under section 22, in respect of his enrolment shall be recalled.

42. Powers of disciplinary committee.—(1) The disciplinary committee of a Bar Council shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any Court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed:

Provided that no such disciplinary committee shall have the right to require the attendance of—

- (a) any presiding officer of a Court except with the previous sanction of the High Court to which such Court is subordinate;

(b) any officer of a revenue Court except with the previous sanction of the State Government.

(2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and every such disciplinary committee shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898 (5 of 1898)*.

(3) For the purposes of exercising any of the powers conferred by sub-section (1), a disciplinary committee may send to any Civil Court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the Civil Court shall cause such process to be served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date:

Provided that no final orders of the nature referred to in sub-section (3) of section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present.

(5) Where no final orders of the nature referred to in sub-section (3) of section 35 can be made in any proceeding in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the Chairman or a member of the disciplinary committee, before the Vice-Chairman of the Bar Council, and the said Chairman or the Vice-Chairman of the Bar Council, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the final order of the disciplinary committee shall follow such opinion.

42-A. Powers of Bar Council of India and other committees.—The provisions of section 42 shall, so far as may be, apply in relation to the Bar Council of India, the enrolment committee, the election committee, the legal aid committee, or any other committee of a Bar Council as they apply in relation to the disciplinary committee of a Bar Council. CHAPTER VI MISCELLANEOUS

45. Penalty for persons illegally practising in Courts and before other authorities.—Any person who practises in any Court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months

THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981.

(2) It extends to the whole of India.

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

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

(a) "air pollutant" means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant;

(c) "approved appliance" means any equipment or gadget used for the burning of any combustible material or for generating or consuming any fume, gas or particulate matter and approved by the State Board for the purposes of this Act;

(d) "approved fuel" means any fuel approved by the State Board for the purposes of this Act;

(e) "automobile" means any vehicle powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel;

(f) "Board" means the Central Board or a State Board;

(g) "Central Board" means the Central Pollution Control Board constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(h) "chimney" includes any structure with an opening or outlet from or through which any air pollutant may be emitted;

(i) "control equipment" means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant;

(j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

(l) "member" means a member of the Central Board or a State Board, as the case may be, and includes the Chairman thereof;

(m) "occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;

(n) "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

(o) "State Board" means,—

(i) in relation to a State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State Government has constituted for that State a State Pollution Control Board under section 4 of that Act, the said State Board; and

(ii) in relation to any other State, the State Board for the Prevention and Control of Air Pollution constituted by the State Government under section 5 of this Act.

CHAPTER VI

PENALTIES AND PROCEDURE

37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31-A.—(1) Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31-A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

38. Penalties for certain acts.—Whoever—

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or

(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or

(f) in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or

(g) for the purpose of obtaining any consent under section 21, makes a statement which is false in any material particular,

shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

39. Penalty for contravention of certain provisions of the Act.—Whoever contravenes any of the provisions of this Act or any order or direction issued hereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

40. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

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

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

41. Offences by Government Departments.—(1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government 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 officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

42. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any member or any officer or other employee of the Board in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made hereunder.

43. Cognizance of offences.—(1) No Court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorized in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorized as aforesaid,

and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

44. Members, officers and employees of Board to be public servants.—All members and all officers and other employees of a Board when acting or purporting to act in pursuance of any of the provisions of this Act or the rules made hereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

45. Reports and returns.—The Central Board shall, in relation to its functions under this Act, furnish to the Central Government, and a State Board shall, in relation to its functions under this Act, furnish to the State Government and to the Central Board such reports, returns, statistics, accounts and other information as that Government, or, as the case may be, the Central Board may, from time to time, require.

46. Bar of jurisdiction.—No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

THE ARMY ACT, 1950

20/05/1950

1. Short title and commencement.—(1) This Act may be called THE ARMY ACT, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Persons subject to this Act.—(1) The following persons shall be subject to this Act wherever they may be, namely,—

- (a) officers, junior commissioned officers and warrant officers of the regular Army;
- (b) persons enrolled under this Act;
- (c) persons belonging to the Indian Reserve Forces;
- (d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;
- (e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territorial Army Act, 1948 (56 of 1948);
- (f) persons holding commissions in the Army in Indian Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;
- (g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;
- [* * *]
- (i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

(2) Every person subject to this Act under clauses (a) to (g) of sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

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

(i) “active service”, as applied to a person subject to this Act, means the time during which such person—

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country;

(ii) “civil offence” means an offence which is triable by a Criminal Court;

(iii) “civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (9 of 1894), or under any other law for the time being in force;

(iv) “Chief of the Army Staff” means the officer commanding the regular Army;

(v) “commanding officer”, when used in any provision of this Act, with reference to any separate portion of the regular Army or to any department thereof, means the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service, to discharge with respect to that portion of the regular Army or that department, as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provision;

(vi) “corps” means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act;

(vii) “Court-martial” means a Court-martial held under this Act;

(viii) “Criminal Court” means a Court of ordinary criminal justice in any part of India, [* * *]

(ix) “department” includes any division or branch of a department;

(x) “enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act;

(xi) “the Forces” means the regular Army, Navy and Air Force or any part of any one or more of them;

(xii) “junior commissioned officer” means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army or the Indian Reserve Forces, and includes a person holding a junior commission in the Indian Supplementary Reserve Forces, or the Territorial Army, [* * *] who is for the time being subject to this Act;

(xiii) “military custody” means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody;

(xiv) “military reward” includes any gratuity or annuity for long service or good conduct, good service pay or pension, and any other military pecuniary reward;

(xv) “non-commissioned officer” means a person holding a non-commissioned rank or an acting non-commissioned rank in the regular Army or the Indian Reserve Forces, and includes a non-commissioned officer or acting non-commissioned officer of the Indian Supplementary Reserve Forces, or the Territorial Army, [* * *] who is for the time being subject to this Act;

(xvi) “notification” means a notification published in the Official Gazette;

(xvii) “offence” means any act or omission punishable under this Act and includes a civil offence as hereinbefore defined;

(xviii) “officer” means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes—

(a) an officer of the Indian Reserve Forces;

(b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act;

(c) an officer of the Army in Indian Reserve of Officers who is for the time being subject to this Act;

(d) an officer of the Indian Regular Reserve of Officers who is for the time being subject to this Act;

[* * *]

(f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Navy or Air Force;

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;

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

(xx) "provost-marshal" means a person appointed as such under section 107 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(xxi) "regular Army" means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service;

(xxii) "regulation" includes a regulation made under this Act;

(xxiii) "superior officer" when used in relation to a person subject to this Act, includes a junior commissioned officer, warrant officer and a non-commissioned officer, and, as regards persons placed under his orders, an officer, warrant officer, petty officer and non-commissioned officer of the Navy or Air Force;

(xxiv) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the regular Army or of the Indian Reserve Forces, and includes a warrant officer of the Indian Supplementary Reserve Forces, or of the Territorial Army, [* * *] who is for the time being subject to this Act;

(xxv) all words (except the word "India") and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860) shall be deemed to have the meanings assigned to them in that Code.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

4. Application of Act to certain forces under Central Government.—(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, [* * *] and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of sub-section (1) of section 2.

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

5. Application of Act to Forces of Part B States.—*[Repealed by the Adaptation of Laws (No. 3) Order, 1956.]*

6. Special provision as to rank in certain cases.—(1) The Central Government may, by notification, direct that any person or class of persons subject to this Act under clause (i) of

sub-section (1) of section 2 shall be so subject as officers, junior commissioned officers, warrant officers or non-commissioned officers and may authorize any officer to give a like direction and to cancel such direction.

(2) All persons subject to this Act other than officers, junior commissioned officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

7. Commanding officer of persons subject to military law under clause (i) of sub-section (1) of section 2.—(1) Every person subject to this Act under clause (i) of sub-section (1) of section 2 shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment, if any, to which he is attached, and, if he is not so attached, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person for the time being is serving, or any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under clause (i) of sub-section (1) of section 2 under the command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under whose command he can be placed.

8. Officers exercising powers in certain cases.—(1) Whenever persons subject to this Act are serving under an officer commanding any military organisation, not in this section specifically named and being in the opinion of the Central Government not less than a brigade, that Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions, as it may think fit.

9. Power to declare persons to be on active service.—Notwithstanding anything contained in clause (i) of section 3, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

CHAPTER VI

OFFENCES

34. Offences in relation to the enemy and punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or

(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(f) treacherously or through cowardice sends a flag of truce to the enemy; or

(g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, picquet, patrol or party without being regularly relieved or without leave; or

(i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner; or
 (k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or
 (l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces,
 shall, on conviction by Court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

35. Offences in relation to the enemy and not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or

(b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge of any such correspondence or communication, wilfully omits to discover it immediately to his commanding or other superior officer; or

(c) without due authority sends a flag of truce to the enemy;

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

36. Offences punishable more severely on active service than at other times.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, picquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received,

shall, on conviction by Court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

37. Mutiny.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) begins, incites, causes, or conspires with any other person to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny, or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union,

shall, on conviction by Court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

38. Desertion and aiding desertion.—(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by Court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act, who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

39. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or

(f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

40. Striking or threatening superior officers.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer,

shall, on conviction by Court-martial,

if, such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

41. Disobedience to superior officer.—(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by Court-martial,

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

42. Insubordination and obstruction.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

(b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) neglects to obey any general, local or other order; or

(f) impedes the provost-marshal or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or

(g) uses criminal force to or assaults any person bringing provisions or supplies to the forces,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

43. Fraudulent enrolment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) without having obtained a regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enrol or enter, enrolls himself in, or enters the same or any other corps or department or any part of the naval or air forces of India or the Territorial Army; or

(b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

44. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

45. Unbecoming conduct.—Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by Court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

46. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

47. Ill-treating a subordinate.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by Court-

martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Intoxication.—(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by Court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when in command of a guard, picquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or

(b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard, shall, on conviction by Court-martial, be liable, if he has acted wilfully to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has not acted wilfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

50. Irregularity in connection with arrest or confinement.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(b) having committed a person to military custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

51. Escape from custody.—Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

52. Offences in respect of property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) wilfully destroys or injures any property of the Government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person;

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

53. Extortion and corruption.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service, shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

54. Making away with equipment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

55. Injury to property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) destroys or injures any property mentioned in clause (a) of section 54 or any property belonging to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with, or attached to, the regular Army; or

(b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or

(c) kills, injures, makes away with, ill-treats or loses any animal entrusted to him,

shall, on conviction by Court-martial, be liable, if he has acted, wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse, to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

56. False accusations.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

57. Falsifying official documents and false declaration.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any documents which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

58. Signing in blank and failure to report.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or

(b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

59. Offences relating to Courts-martial.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being duly summoned or ordered to attend as a witness before a Court-martial, wilfully or without reasonable excuse, makes default in attending; or

(b) refuses to take an oath or make an affirmation legally required by a Court-martial to be taken or made; or

(c) refuses to produce or deliver any document in his power or control legally required by a Court-martial to be produced or delivered by him; or

(d) refuses when a witness to answer any question which he is by law bound to answer; or

(e) is guilty of contempt of Court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such Court,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

60. False evidence.—Any person subject to this Act who, having been duly sworn or affirmed before any Court-martial or other Court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

61. Unlawful detention of pay.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

62. Offences in relation to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or

(b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or

(c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or

(d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or

(e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State of any aircraft belonging to the Government,

shall, on conviction by Court-martial, be liable, if he is acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

63. Violation of good order and discipline.—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

64. Miscellaneous offences.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of warrant officer, when off duty, appears without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from any town or *bazar*, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving,

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

65. Attempt.—Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 64 inclusive and in such attempt does any act towards the commission of the offence, shall, on conviction by Court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

66. Abetment of offences that have been committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by Court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

67. Abetment of offences punishable with death and not committed.—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38, shall, on conviction by Court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

68. Abetment of offences punishable with imprisonment and not committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by Court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

69. Civil offences.—Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence, shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a Court-martial and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping,

assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

70. Civil offences not triable by Court-martial.—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Court-martial, unless he commits any of the said offences—

(a) while on active service, or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf.

[* * *]

CHAPTER VII

PUNISHMENTS

71. Punishments awardable by Courts-martial.—Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Court-martial, according to the scale following, that is to say,—

(a) death;

(b) transportation for life or for any period not less than seven years;

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;

(d) cashiering, in the case of officers;

(e) dismissal from the service;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers:

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

(g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

72. Alternative punishments awardable by Court-martial.—Subject to the provisions of this Act, a Court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.

73. Combination of punishments.—A sentence of a Court-martial may award in addition to, or without any one other punishment, the punishment specified in clause (d) or clause (e) of section 71 and any one or more of the punishments specified in clauses (f) to (l) of that section.

74. Cashiering of officers.—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 71.

75. Field punishment.—*[Omitted by the Army (Amendment) Act, 1992 (37 of 1992), section 2 (w.e.f. 6-9-1992).]*

76. Position of field punishment in scale of punishments.—*[Omitted by the Army (Amendment) Act, 1992 (37 of 1992), section 2 (w.e.f. 6-9-1992).]*

77. Result of certain punishments in the case of a warrant officer or non-commissioned officer.—A warrant officer or a non-commissioned officer sentenced by a Court-martial to transportation, imprisonment, [* * *] or dismissal from the service, shall be deemed to be reduced to the ranks.

78. Retention in the ranks of a person convicted on active service.—When, on active service, any enrolled person has been sentenced by a Court-martial to dismissal, or to transportation or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of transportation or imprisonment, if any.

79. Punishments otherwise than by Court-martial.—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a Court-martial and in the manner stated in sections 80, 83, 84 and 85.

80. Punishment of persons other than officers, junior commissioned officers and warrant officers.—Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff, may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

- (a) imprisonment in military custody up to twenty-eight days;
- (b) detention unto twenty-eight days;
- (c) confinement to the lines unto twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen days' pay in any one month;
- (i) penal deductions under clause (g) of section 91;
- [* * *]

81. Limit of punishments under section 80.—[* * *].

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of the said section, the punishment specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

(3) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses (a), (b) and (c) of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

82. Punishments in addition to those specified in section 80.—The Chief of the Army Staff may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others.—An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government specified by the Chief of the Army Staff may, in the prescribed manner, proceed against an officer below the rank of a field officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) severe reprimand or reprimand;

(b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others.—An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general Court-martial or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff may, in the prescribed manner, proceed against an officer below the rank of lieutenant-colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a Court-martial;

(b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

85. Punishment of junior commissioned officers.—A commanding officer or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff may, in the prescribed manner, proceed against a junior commissioned officer who is charged with an offence under this Act and award one or more of the following punishments, that is to say,—

(i) severe reprimand or reprimand;

(ii) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good:

Provided that the punishment specified in clause (i) shall not be awarded if the commanding officer or such other officer is below the rank of Colonel.

86. Transmission of proceedings.—In every case in which punishment has been awarded under any of the sections 83, 84 and 85, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section 88.

87. Review of proceedings.—If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

88. Superior military authority.—For the purpose of sections 86 and 87, a “superior military authority” means—

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer;

(b) in the case of punishments awarded by any other authority, the Central Government, the Chief of the Army Staff or other officer specified by the Chief of the Army Staff.

89. Collective fines.—(1) Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such unit belongs may, after obtaining the report of a Court of inquiry, impose a collective fine upon the junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER VIII

PENAL DEDUCTIONS

90. Deductions from pay and allowances of officers.—The following penal deductions may be made from the pay and allowances of an officer, that is to say,—

(a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a Criminal Court or a Court-martial or by an officer exercising authority under section 83 or section 84;

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;

(d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the Court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84;

(e) all pay and allowances ordered by a Court-martial [* * *] to be forfeited or stopped;

(f) any sum required to pay a fine awarded by a Criminal Court or a Court-martial exercising jurisdiction under section 69;

(g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;

(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a Court of inquiry constituted by the Chief of the Army Staff in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy, through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

91. Deductions from pay and allowances of persons other than officers.—Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of transportation or imprisonment awarded by a Criminal Court, a Court-martial or an officer exercising authority under section 80, [* * *];

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a Criminal Court or a Court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment [* * *] by an officer exercising authority under section 80;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government;

(e) all pay and allowances ordered by a Court-martial or by an officer exercising authority under any of the sections 80, 83, 84 and 85, to be forfeited or stopped;

(f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;

(g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;

(h) any sum required to pay a fine awarded by a Criminal Court, a Court-martial exercising jurisdiction under section 69, or an officer exercising authority under any of the sections 80 and 89;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

92. Computation of time of absence or custody.—For the purposes of clauses (a) and (b) of section 91,—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

93. Pay and allowances during trial.—In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 90 and 91.

94. Limit of certain deductions.—The total deductions from the pay and allowances of a person made under clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

95. Deduction from public money due to a person.—Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

96. Pay and allowances of prisoner of war during inquiry into his conduct.—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the Chief of the Army Staff or any officer authorized by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

97. Remission of deductions.—Any deduction from pay and allowances authorized by this Act may be remitted in such manner and to such extent, and by such authority, as may, from time to time, be prescribed.

98. Provision for dependants of prisoner of war from remitted deductions.—In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

99. Provision for dependants of prisoner of war from his pay and allowances.—It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act who is a prisoner of war or is missing, out of his pay and allowances.

100. Period during which a person is deemed to be a prisoner of war.—For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

101. Custody of offenders.—(1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) An officer may order into military custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

102. Duty of commanding officer in regard to detention.—(1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service.

(2) The case of every person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the Commanding Officer to the general or other officer to whom application would be made to convene a general or district Court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in military custody, pending the trial by any competent authority for any offence committed by him.

103. Interval between committal and Court-martial.—In every case where any such person as is mentioned in section 101 and as is not on active service remains in such custody for a longer period than eight days, without a Court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a Court-martial is assembled or such person is released from custody.

104. Arrest by civil authorities.—Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

105. Capture of deserters.—(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

106. Inquiry into absence without leave.—(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a Court of inquiry shall, as soon as practicable be, assembled, and such Court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such

absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the Court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

107. Provost-marshals.—(1) Provost-marshals may be appointed by the Chief of the Army Staff or by any prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the regular Army.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with an offence, and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a Court-martial, or by an officer exercising authority under section 80 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

(4) For the purposes of sub-sections (2) and (3), a provost-marshal shall be deemed to include a provost-marshal appointed under any law for the time being in force relating to the Government of the Navy or Air Force, and any person legally exercising authority under him or on his behalf.

CHAPTER X

COURTS-MARTIAL

108. Kinds of Courts-martial.—For the purposes of this Act there shall be four kinds of Courts-martial, that is to say,—

- (a) general Courts-martial;
- (b) district Courts-martial;
- (c) summary general Courts-martial; and
- (d) summary Courts-martial.

109. Power to convene a general Court-martial.—A general Court-martial may be convened by the Central Government or the Chief of the Army Staff or by any officer empowered in this behalf by warrant of the Chief of the Army Staff.

110. Power to convene a district Court-martial.—A district Court-martial may be convened by an officer having power to convene a general Court-martial or by officer empowered in this behalf by warrant of any such officer.

111. Contents of warrants issued under sections 109 and 110.—A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

112. Power to convene a summary general Court-martial.—The following authorities shall have power to convene a summary general Court-martial, namely:—

- (a) an officer empowered in this behalf by an order of the Central Government or of the Chief of the Army Staff;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general Court-martial.

113. Composition of general Court-martial.—A general Court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

114. Composition of district Court-martial.—A district Court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

115. Composition of summary general Court-martial.—A summary general Court-martial shall consist of not less than three officers.

116. Summary Court-martial.—(1) A summary Court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the Court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

117. Dissolution of Courts-martial.—(1) If a Court-martial after the commencement of a trial reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of the illness of the judge-advocate or of the accused before the finding, it is impossible to continue the trial, a Court-martial shall be dissolved.

(3) The officer who convened a Court-martial may dissolve such Court-martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said Court-martial.

(4) Where a Court-martial is dissolved under this section, the accused may be tried again.

118. Powers of general and summary general Courts-martial.—A general or summary general Court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorized thereby.

119. Powers of district Courts-martial.—A district Court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, transportation, or imprisonment for a term exceeding two years:

Provided that a district Court-martial shall not sentence a warrant officer to imprisonment.

120. Powers of summary Courts-martial.—(1) Subject to the provisions of sub-section (2), a summary Court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district Court-martial or on active service a summary general Court-martial for the trial of the alleged offender, an officer holding a summary Court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the Court.

(3) A summary Court-martial may try any person subject to this Act and under the command of the officer holding the Court, except an officer, junior commissioned officer or warrant officer.

(4) A summary Court-martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary Court-martial is of the rank of lieutenant-colonel and upwards, and three months, if such officer is below that rank.

121. Prohibition of second trial.—When any person subject to this Act has been acquitted or convicted of an offence by a Court-martial or by a Criminal Court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a Court-martial or dealt with under the said sections.

122. Period of limitation for trial.—(1) Except as provided by sub-section (2), no trial by Court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and such period shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

123. Liability of offender who ceases to be subject to Act.—(1) Where an offence under this Act and been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such persons shall be tried for an offence, unless his trial commences within a period of three years after he had ceased to be subject to this Act; and in computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded:

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a Criminal Court to try any offence triable by such Court as well as by a Court-martial.

(3) When a person subject to this Act is sentenced by a Court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a Court-martial to death, this Act shall apply to him till the sentence is carried out.

124. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

125. Choice between Criminal Court and Court-martial.—When a Criminal Court and a Court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which Court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a Court-martial, to direct that the accused person shall be detained in military custody.

126. Power of Criminal Court to require delivery of offender.—(1) When a criminal Court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

127. Successive trials by a Criminal Court and Court-martial.—*[Omitted by the Army (Amendment) Act, 1992 (37 of 1992), section 11 (w.e.f. 6-9-1992).]*

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

144. Evidence of previous convictions and general character.—(1) When any person subject to this Act has been convicted by a Court-martial of any offence, such Court-martial may inquire into, and receive and record evidence of any previous convictions of such person,

either by a Court-martial or by a Criminal Court, or any previous award of punishment under any of the sections 80, 83, 84 and 85, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, Court-martial books or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary Court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

145. Lunacy of accused.—(1) Whenever, in the course of a trial by a Court-martial, it appears to the Court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the Court shall record a finding accordingly.

(2) The presiding officer of the Court, or, in the case of a summary Court-martial, the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 162, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another Court-martial for the offence with which he was charged.

(4) The authority to whom the finding of a summary Court-martial is reported under sub-section (2), and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4), the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

146. Subsequent fitness of lunatic accused for trial.—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 145, the officer commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (4) of section 145, on the report of a medical officer that he is capable of making his defence; or

(b) if such person is detained in a jail under sub-section (5) of section 145, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another Court-martial for the offence with which he was originally charged or, if the offence is a civil offence, by a Criminal Court.

147. Transmission to Central Government of orders under section 146.—A copy of every order made by an officer under section 146 for the trial of the accused shall forthwith be sent to the Central Government.

148. Release of lunatic accused.—Where any person is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section,—

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 146 that, in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person,

the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

149. Delivery of lunatic accused to relatives.—Where any relative or friend of any person who is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

150. Order for custody and disposal of property pending trial.—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a Court-martial during a trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

151. Order for disposal of property regarding which offence is committed.—
(1) After the conclusion of a trial before any Court-Martial the Court or the officer confirming the finding or sentence of such Court-Martial, or any authority superior to such officer, or, in the case of a Court-Martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the Court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1), in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), or any corresponding law in force in the State of Jammu and Kashmir.

(3) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

152. Powers of Court-Martial in relation to proceedings under this Act.—Any trial by a Court-Martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the Court-Martial shall be deemed to be a Court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

05/09/1988

1. Short title, extent and commencement.—(1) This Act may be called THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sections 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 19th day of May, 1988.

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

(a) "*Benami* transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

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

(c) "property" means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

3. Prohibition of *benami* transactions.—(1) No person shall enter into any *benami* transaction.

(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a—

(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996 (22 of 1996);

(ii) participant as an agent of a depository.

Explanation.—The expressions “depository” and “participants” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996).

(3) Whoever enters into any *benami* transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

4. Prohibition of the right to recover property held *benami*.—(1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held *benami*, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,—

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

5. Property held *benami* liable to acquisition.—(1) All properties held *benami* shall be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed.

(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).

6. Act not to apply in certain cases.—Nothing in this Act shall affect the provisions of section 53 of the Transfer of Property Act, 1882 (4 of 1882), or any law relating to transfers for an illegal purpose.

7. Repeal of provisions of certain Acts.—(1) Sections 81, 82 and 94 of the Indian Trusts Act, 1882 (2 of 1882), section 66 of the Code of Civil Procedure, 1908 (5 of 1908), and section 281-A of the Income-tax Act, 1961 (43 of 1961), are hereby repealed.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall affect the continued operation of section 281-A of the Income-tax Act, 1961 (43 of 1961), in the State of Jammu and Kashmir.

8. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the authority competent to acquire properties under section 5;

(b) the manner in which, and the procedure to be followed for, the acquisition of properties under section 5;

(c) any other matter which is required to be, or may be, prescribed.

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

9. Repeal and saving.—(1) The Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 (Ord. 2 of 1988), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995

25/03/1995

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 29th day of September, 1994.

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

(a) “authorised officer” means, within his local limits of jurisdiction,—

(i) a District Magistrate, or

(ii) a Sub-divisional Magistrate, or

(iii) a Commissioner of Police,

and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government;

(aa) “cable operator” means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;

(b) “cable service” means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

(c) “cable television network” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;

(d) “company” means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956);

(e) “person” means—

(i) an individual who is a citizen of India;

(ii) an association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;

(iii) a company in which not less than fifty-one per cent. of the paid-up share capital is held by the citizens of India;

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

(g) “programme” means any television broadcast and includes—

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation,

and the expression “programming service” shall be construed accordingly;

(h) "registering authority" means such authority as the Central Government may, by notification in the Official Gazette, specify to perform the functions of the registering authority under this Act;

(i) "subscriber" means a person who receives the signals of cable television network at a place indicated by him to the cable operator, without further transmitting it to any other person.

CHAPTER II

REGULATION OF CABLE TELEVISION NETWORK

3. Cable television network not to be operated except after registration.—No person shall operate a cable television network unless he is registered as a cable operator under this Act:

Provided that a person operating a cable television network, immediately before the commencement of this Act, may continue to do so for a period of ninety days from such commencement; and if he has made an application for registration as a cable operator under section 4 within the said period, till he is registered under that section or the registering authority refuses to grant registration to him under that section.

4. Registration as cable operator.—(1) Any person who is operating or is desirous of operating a cable television network may apply for registration as a cable operator to the registering authority.

(2) An application under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

(3) On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished all the required information and on being so satisfied, register the applicant as a cable operator and grant to him a certificate of such registration:

Provided that the registering authority may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant registration to him if it is satisfied that he does not fulfill the conditions specified in clause (e) of section 2.

4-A. Transmission of programmes through addressable system, etc.—(1) Where the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, make it obligatory for every cable operator to transmit or re-transmit programme of any pay channel through an addressable system with effect from such date as may be specified in the notification and different dates may be specified for different States, cities, towns or areas, as the case may be.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, specify one or more free-to-air channels to be included in the package of channels forming basic service tier and any or more such channels may be specified, in the notification, *genre-wise* for providing a programme mix of entertainment, information, education and such other programmes.

(3) The Central Government may specify in the notification referred to in sub-section (2), the number of free-to-air channels to be included in the package of channels forming basic service tier for the purposes of that sub-section and different numbers may be specified for different States, cities, towns or areas, as the case may be.

(4) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, specify the maximum amount which a cable operator may demand from the subscriber for receiving the programmes transmitted in the basic service tier provided by such cable operator.

(5) Notwithstanding anything contained in sub-section (4), the Central Government may, for the purposes of that sub-section, specify in the notification referred to in that sub-section different maximum amounts for different States, cities, towns or areas, as the case may be.

(6) Notwithstanding anything contained in this section, programmes of basic service tier shall be receivable by any subscriber on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, 2002 without any addressable system attached with such receiver set in any manner.

(7) Every cable operator shall publicise, in the prescribed manner, to the subscribers the subscription rates and the periodic intervals at which such subscriptions are payable for receiving each pay channel provided by such cable operator.

(8) The cable operator shall not require any subscriber to have a receiver set of a particular type to receive signals of cable television network:

Provided that the subscriber shall use an addressable system to be attached to his receiver set for receiving programmes transmitted on pay channel.

(9) Every cable operator shall submit a report to the Central Government in the prescribed form and manner containing the information regarding—

(i) the number of total subscribers;

(ii) subscription rates;

(iii) number of subscribers receiving programmes transmitted in basic service tier or particular programme or set of programmes transmitted on pay channel,

in respect of cable services provided by such cable operator through a cable television network, and such report shall be submitted periodically at such intervals as may be prescribed and shall also contain the rate of amount, if any, payable by the cable operator to any broadcaster.

Explanation.—For the purposes of this section,—

(a) “addressable system” means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorization made, on the choice and request of such subscriber, by the cable operator to the subscriber;

(b) “basic service tier” means a package of free-to-air channels provided by a cable operator, for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscribers on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, 2002 without any addressable system attached to such receiver set in any manner;

(c) “channel” means a set of frequencies used for transmission of a programme;

(d) “encrypted”, in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment and the expression “unencrypted” shall be construed accordingly;

(e) “free-to-air channel”, in respect of a cable television network, means a channel, the reception of which would not require the use of any addressable system to be attached with the receiver set of a subscriber;

(f) “pay channel”, in respect of a cable television network, means a channel the reception of which by the subscriber would require the use of an addressable system to be attached to his receiver set.

5. Programme code.—No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.

[* * *]

6. Advertisement code.—No person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code.

[* * *]

7. Maintenance of register.—Every cable operator shall maintain a register in the prescribed form indicating therein in brief the programmes transmitted or re-transmitted through the cable service during a month and such register shall be maintained by the cable operator for a period of one year after the actual transmission or re-transmission of the said programmes.

8. Compulsory transmission of Doordarshan channels.—(1) Every cable operator shall re-transmit,—

(i) channels operated by or on behalf of Parliament in the manner and name as may be specified by the Central Government by notification in the Official Gazette;

(ii) at least two Doordarshan terrestrial channels and one regional language channel of a State in the prime band, in satellite mode on frequencies other than those carrying terrestrial frequencies.

(2) The channels referred to in sub-section (1) shall be re-transmitted without any deletion or alteration of any programme transmitted on such channels.

(3) The Prasar Bharati (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) may, by notification in the Official Gazette, specify the number and name of every Doordarshan channel to be re-transmitted by cable operators in their cable service and the manner of reception and re-transmission of such channels.

9. Use of standard equipment in cable television network.—No cable operator shall, on and from the date of the expiry of a period of three years from the date of the establishment and publication of the Indian Standard by the Bureau of Indian Standards in accordance with the provisions of the Bureau of Indian Standards Act, 1986 (63 of 1986), use any equipment in his cable television network unless such equipment conforms to the said Indian Standard:

Provided that the equipment required for the purposes of section 4-A shall be installed by cable operator in his cable television network within six months from the date, specified in the notification issued under sub-section (1) of that section, in accordance with the provisions of the said Act for said purposes.

10. Cable television network not to interfere with any telecommunication system.—Every cable operator shall ensure that the cable television network being operated by him does not interfere, in any way, with the functioning of the authorised telecommunication systems.

CHAPTER III

SEIZURE AND CONFISCATION OF CERTAIN EQUIPMENT

11. Power to seize equipment used for operating the cable television network.—

(1) If any authorised officer has reason to believe that the provisions of section 3, 4-A, 5, 6 or 8 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network.

(2) No such equipment shall be retained by the authorised officer for a period exceeding ten days from the date of its seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure has been made, has been obtained for such retention.

12. Confiscation.—The equipment seized under sub-section (1) of section 11 shall be liable to confiscation unless the cable operator from whom the equipment has been seized registers himself as a cable operator under section 4 within a period of thirty days from the date of seizure of the said equipment.

13. Seizure or confiscation of equipment not to interfere with other punishment.—No seizure or confiscation of equipment referred to in section 11 or section 12 shall prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of this Act.

14. Giving of opportunity to the cable operator of seized equipment.—(1) No order adjudicating confiscation of the equipment referred to in section 12 shall be made unless the cable operator has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such equipment and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice against the confiscation and if he so desires of being heard in the matter:

Provided that where no such notice is given within a period of ten days from the date of the seizure of the equipment, such equipment shall be returned after the expiry of that period to the cable operator from whose possession it was seized.

(2) Save as otherwise provided in sub-section (1), the provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, so far as may be, apply to every proceeding referred to in sub-section (1).

15. Appeal.—(1) Any person aggrieved by any decision of the Court adjudicating a confiscation of the equipment may prefer an appeal to the Court to which an appeal lies from the decision of such Court.

(2) The appellate Court may, after giving the appellant an opportunity of being heard, pass such order as it thinks fit confirming, modifying or revising the decision appealed against

or may send back the case with such directions as it may think fit for a fresh decision or adjudication, as the case may be, after taking additional evidence if necessary.

(3) No further appeal shall lie against the order of the Court made under sub-section (2).

CHAPTER IV

OFFENCES AND PENALTIES

16. Punishment for contravention of provisions of this Act.—(1) Whoever contravenes any of the provisions of this Act shall be punishable,—

(a) for the first offence, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both;

(b) for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the contravention of section 4-A shall be a cognizable offence under this section.

17. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

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

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

18. Cognizance of offences.—No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by any authorised officer.

CHAPTER V

MISCELLANEOUS

19. Power to prohibit transmission of certain programmes in public interest.—Where any authorised officer thinks it necessary or expedient so to do in the public interest, he may, by order, prohibit any cable operator from transmitting or re-transmitting any programme or channel if, it is not in conformity with the prescribed programme code referred to in section 5 and advertisement code referred to in section 6 or if it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquillity.

20. Power to prohibit operation of cable television network in public interest.—(1) Where the Central Government thinks it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf.

(2) Where the Central Government thinks it necessary or expedient so to do in the interest of the—

- (i) sovereignty or integrity of India; or
- (ii) security of India; or
- (iii) friendly relations of India with foreign State; or
- (iv) public order, decency or morality,

it may, by order, regulate or prohibit the transmission or re-transmission of any channel or programme.

(3) Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme.

21. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940), the Pharmacy Act, 1948 (8 of 1948), the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950), the Drugs (Control) Act, 1950 (26 of 1950), the Cinematograph Act, 1952 (37 of 1952), the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954), the Prevention of Food Adulteration Act, 1954 (37 of 1954), the Prize Competitions Act, 1955 (42 of 1955), the Copyright Act, 1957 (14 of 1957), the Trade and Merchandise Marks Act, 1958 (43 of 1958), the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986) and the Consumer Protection Act, 1986 (68 of 1986).

22. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form of application and the fee payable under sub-section (2) of section 4;
- (aa) the manner of publicising the subscription rates and the periodical intervals at which such subscriptions are payable under sub-section (7) of section 4-A;
- (aaa) the form and manner of submitting report under sub-section (9) of section 4-A and the interval at which such report shall be submitted periodically under that sub-section;
- (b) the programme code under section 5;
- (c) the advertisement code under section 6;
- (d) the form of register to be maintained by a cable operator under section 7;
- (e) any other matter which is required to be, or may be, prescribed.

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

23. Repeal and savings.—(1) The Cable Television Networks (Regulation) Ordinance, 1995 (Ord. 3 of 1995) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provision of this Act.

THE CATTLE-TRESPASS ACT, 1871

13/01/1871

CHAPTER I PRELIMINARY

1. Title and extent.—(1) This Act may be called THE CATTLE-TRESPASS ACT, 1871; and

(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States, and the Presidency-towns and such local areas as the State Government, by notification in the Official Gazette, may from time to time exclude from its operation.

[* * *]

2. Repeal of Acts. References to repealed Acts.—[Repealed by the Repealing Act, 1938 (1 of 1938), section 2 and Schedule.]

3. Interpretation clause.—In this Act,—

“officer of police” includes also village-watchman, and

“cattle” includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids, and

“local authority” means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

“local fund” means any fund under the control or management of a local authority.

CHAPTER II

POUNDS AND POUND-KEEPERS

4. Establishment of pounds.—Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the State Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

5. Control of pounds. Rates of charge for feeding impounded cattle.—The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

6. Appointment of pound-keepers.—The State Government shall appoint a pound-keeper for every pound.

Pound-keepers may hold other offices.—Any pound-keeper may hold simultaneously any other office under the Government.

Pound-keepers to be public servants.—Every pound-keeper shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

DUTIES OF POUND-KEEPERS

7. To keep registers and furnish returns.—Every pound-keeper shall keep such registers and furnish such returns as the State Government from time to time directs.

8. To register seizures.—When cattle are brought to a pound, the pound-keeper shall enter in his register,—

(a) the number and description of the animals,

(b) the day and hour on and at which they were so brought,

(c) the name and residence of the seizer, and

(d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

9. To take charge of and feed cattle.—The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III

IMPOUNDING CATTLE

10. Cattle damaging land.—The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof, may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and send them or cause them to be sent within twenty-four hours to the pound established for the village in which the land is situate.

Police to aid seizures.—All officers of police shall, when required, aid in preventing (a) resistances to such seizures, and (b) rescues from persons making such seizures.

11. Cattle damaging public roads, canals and embankments.—Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon,

and shall send them or cause them to be sent within twenty-four hours to the nearest pound.

12. Fines for cattle impounded.—For every head of cattle impounded as aforesaid, the pound-keepers shall levy a fine in accordance with the scale for the time being prescribed by the State Government in this behalf by notification in the Official Gazette. Different scales may be prescribed for different local areas.

All fines so levied shall be sent to the Magistrate of the District through such officer as the State Government may direct.

List of fines and charges for feeding.—A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound.

CHAPTER IV

DELIVERY OR SALE OF CATTLE

13. Procedure when owner claims the cattle and pays fines and charges.—If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

14. Procedure if cattle be not claimed within a week.—If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time direct:

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. Delivery to owner disputing legality of seizure but making deposit.—If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. Procedure when owner refuses or omits to pay the fines and expenses.—If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions as are referred to in section 14.

Deduction of fines and expenses.—The fines leviable and the expenses of feeding and watering together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.—The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,

(e) the proceeds of sale, and

(f) the manner in which those proceeds have been disposed of.

Receipts.—The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

17. Disposal of fines, expenses and surplus proceeds of sales.—The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, be deemed to hold them as part of the revenues of the State.

18. Application of fines and unclaimed proceeds of sale.—[*Repealed by A.O. 1937.*]

19. Officers and pound-keepers not to purchase cattle at sales under Act.—No officer of police or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.—No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

CHAPTER V

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION

20. Power to make complaints.—Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorised to receive and try charges without reference by the Magistrate of the District.

21. Procedure on complaint.—The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an inquiry into the case.

22. Compensation for illegal seizure or detention.—If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle.

Release of cattle.—and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

23. Recovery of compensation.—The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate.

CHAPTER VI

PENALTIES

24. Penalty for forcibly opposing the seizure of cattle or rescuing the same.—Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act, shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

25. Recovery of penalty for mischief committed by causing cattle to trespass.—Any fine imposed under the next following section or for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

26. Penalty for damage caused to land or crops or public roads by pigs.—Any owner or keeper of pigs who through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

The State Government, by notification in the Official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees" or as if there were both such reference and such substitution.

[* * *]

27. Penalty on pound-keeper failing to perform duties.—Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. Application of fines recovered under section 25, 26 or 27.—All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII

SUITS FOR COMPENSATION

29. Saving of right to sue for compensation.—Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

30. Set-off.—Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

CHAPTER VIII

SUPPLEMENTAL

31. Power for State Government to transfer certain functions to local authority.—The State Government may, from time to time by notification in the Official Gazette,—

(a) transfer to any local authority within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the State Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority.

THE CHITS FUNDS ACT, 1982

09/08/1982

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE CHIT FUNDS ACT, 1982.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States.

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

(a) “approved bank” means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955), or a subsidiary bank constituted under section 3 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), or a banking institution notified by the Central Government under section 51 of that Act or such other banking institution as the State Government may, in consultation with the Reserve Bank, approve for the purposes of this Act:

(b) “chit” means a transaction whether called chit, chit fund, *chitty*, *kuri* or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical instalments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

Explanation.—A transaction is not a chit within the meaning of this clause, if in such transaction—

(i) some alone, but not all, of the subscribers get the prize amount without any liability to pay future subscriptions; or

(ii) all the subscribers get the chit amount by turns with a liability to pay future subscriptions;

(c) “chit agreement” means the document containing the articles of agreement between the foreman and the subscribers relating to the chit;

(d) “chit amount” means the sum total of the subscriptions payable by all the subscribers for any instalment of a chit without any deduction of discount or otherwise;

(e) “chit business” means the business of conducting a chit;

(f) “defaulting subscriber” means the subscriber who has defaulted in the payment of subscriptions due in accordance with the terms of the chit agreement;

(g) “discount” means the sum of money or the quantity of grain which a prized subscriber is, under the terms of the chit agreement, required to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscribers or for both;

(h) “dividend” means the share of the subscriber in the amount of discount available under the chit agreement for rateable distribution among the subscribers at each instalment of the chit;

(i) “draw” means the manner specified in the chit agreement for the purpose of ascertaining the prized subscriber at any instalment of the chit;

(j) “foreman” means the person who under the chit agreement is responsible for the conduct of the chit and includes any person discharging the functions of the foreman under section 39;

(k) “non-prized subscriber” does not include a defaulting subscriber;

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

(m) “prize amount” means the difference between the chit amount and the discount, and in the case of a fraction of a ticket means the difference between the chit amount and the discount proportionate to the fraction of the ticket, and when the prize amount is payable otherwise than in cash, the value of the prize amount shall be the value at the time when it becomes payable;

(n) “prized subscriber” means a subscriber who has either received or is entitled to receive the prize amount ;

(o) “Registrar” means the Registrar of Chits appointed under section 61, and includes an Additional, a Joint, Deputy or an Assistant Registrar appointed under that section;

(p) “Reserve Bank” means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934);

(q) "State Government", in relation to a Union territory, means the administrator of that Union territory appointed by the President under article 239 of the Constitution;

(r) "subscriber" includes a person who holds a fraction of a ticket and also a transferee of a ticket or fraction thereof by assignment in writing or by operation of law;

(s) "ticket" means the share of a subscriber in a chit.

CHAPTER II

REGISTRATION OF CHITS, COMMENCEMENT AND CONDUCT OF CHIT BUSINESS

4. Prohibition of chits not sanctioned or registered under the Act.—(1) No chit shall be commenced or conducted without obtaining the previous sanction of the State Government within whose jurisdiction the chit is to be commenced or conducted or of such officer as may be empowered by that Government in this behalf, and unless the chit is registered in that State in accordance with the provisions of this Act;

Provided that a sanction obtained under this sub-section shall lapse if the chit is not registered within twelve months from the date of such sanction or within such further period or periods not exceeding six months in the aggregate as the State Government may, on application made to it in this behalf, allow.

(2) An application for the purpose of obtaining a sanction under sub-section (1) shall be made by the foreman in such form and in such manner as may be prescribed.

(3) The previous sanction referred to in sub-section (1) may be refused, if the foreman,—

(a) had been convicted of any offence under this Act or under any other Act regulating chit business and sentenced to imprisonment for any such offence; or

(b) had defaulted in the payment of fees or the filing of any statement or record required to be paid or filed under this Act or had violated any of the provisions of this Act or the rules made hereunder; or

(c) had been convicted of any offence involving moral turpitude and sentenced to imprisonment for any such offence unless a period of five years has elapsed since his release: Provided that before refusing any such sanction, the foreman shall be given a reasonable opportunity of being heard.

(4) The order of the State Government, and, subject to the provisions of sub-section (5), the order of the officer empowered under sub-section (1), issuing or refusing previous sanction under this section shall be final.

(5) Any person aggrieved by the refusal to issue previous sanction by an officer empowered under sub-section (1), may appeal to the State Government within thirty days of the date of communication to him of such refusal and the decision of that Government on such appeal shall be final.

5. Prohibition of invitation for subscriptions except under certain conditions.—No person shall issue or cause to be issued any notice, circular, prospectus, proposal or other document inviting the public to subscribe for tickets in any chit unless such notice, circular, prospectus, proposal or document contains a statement that the previous sanction required under section 4 has been obtained and the particulars of such sanction.

8. Minimum capital requirements for the commencement, etc., of a chit, and creation of a reserve fund, by a company.—(1) Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), but subject to the provisions of this Act, a company shall not commence or carry on chit business unless it has a paid-up capital of not less than rupees one lakh.

(2) Every company having a paid-up capital of less than rupees one lakh and carrying on chit business on the commencement of this Act, shall, before the expiry of a period of three years from such commencement, increase its paid-up capital to not less than rupees one lakh: Provided that the State Government may, if it considers it necessary in the public interest or for avoiding any hardship, extend the said period of three years in respect of any company by such further period or periods not exceeding two years in the aggregate:

Provided further that no such company shall commence any new chit the duration of which would extend beyond the said period of three years or such extended period or periods under the first proviso unless it increases its paid-up capital to not less than rupees one lakh.

(3) Every company carrying on chit business shall create and maintain a reserve fund and shall, out of the balance of profit of each year as disclosed in its profit and loss account and before any dividend on its shares is declared, transfer to such reserve fund, a sum equal to not less than ten per cent of such profit.

(4) No company shall appropriate any sum or sums from the reserve fund except with the prior approval of the Registrar and, for the purpose of obtaining such approval, it shall make an application in the prescribed form to the Registrar explaining the circumstances relating to such appropriation.

9. Commencement of chit.—(1) Every foreman shall, after all the tickets specified in the chit agreement are fully subscribed, file a declaration to that effect with the Registrar.

(2) As soon as may be after a declaration is filed under sub-section (1), the Registrar shall, after satisfying himself that all the requirements relating to sanction, registration of chit and other matters have been duly complied with, grant a certificate of commencement to the foreman.

(3) No foreman shall commence any auction or the draw of any chit or appropriate any chit amount unless a certificate of commencement referred to in sub-section (2) is obtained by him.

11. Use of the words "chit", "chit fund", "chitty" or "kuri".—(1) No person shall carry on chit business unless he uses as part of his name any of the words "chit", "chit fund", "chitty" or "kuri" and no person other than a person carrying on chit business shall use as part of his name any such word.

(2) Where at the commencement of this Act,—

(a) any person carrying on chit business without using as part of his name any of the words specified in sub-section (1) ; or

(b) any person not carrying on chit business is using any such word as part of his name,

he shall, within a period of one year from such commencement, add as part of his name any such word or, as the case may be, delete such word from his name:

Provided that the State Government may, if it considers it necessary in the public interest or for avoiding any hardship, extend the said period of one year by such further period or periods not exceeding one year in the aggregate.

12. Prohibition of transacting business other than chit business by a company.—

(1) Except with the general or special permission of the State Government, no company carrying on chit business shall conduct any other business.

(2) Where at the commencement of this Act, any company is carrying on any business in addition to chit business, it shall wind up such other business before the expiry of a period of three years from such commencement:

Provided that the State Government may, if it considers it necessary in the public interest or for avoiding any hardship, extend the said period of three years by such further period or periods not exceeding two years in the aggregate.

13. Aggregate amount of chits.—(1) No foreman, other than a firm or other association of individuals or a company or co-operative society, shall commence or conduct chits, the aggregate chit amount of which at any time exceeds rupees one lakh.

(2) Where the foreman is a firm or other association of individuals, the aggregate chit amount of the chits conducted by the firm or other association shall not at any time exceed,—

(a) where the number of partners of the firm or the individuals constituting the association is not less than four, a sum of rupees six lakh:

(b) in any other case, a sum calculated on the basis of rupees one lakh with respect to each such partner or individual.

(3) Where the foreman is a company or co-operative society, the aggregate chit amount of the chits conducted by it shall not at any time exceed ten times the net owned funds of the company or the co-operative society, as the case may be.

Explanation.—For the purposes of this sub-section, “net owned funds” shall mean the aggregate of the paid-up capital and free reserves as disclosed in the last audited balance sheet of the company or co-operative society, as reduced by the amount of accumulated balance of loss, deferred revenue, expenditure and other intangible assets, if any, as disclosed in the said balance sheet.

14. Utilisation of funds.—(1) No person carrying on chit business shall utilise the moneys collected in respect of such business (other than commission or remuneration payable to such person or interest or penalty, if any, received from a defaulting subscriber), except for—

- (a) carrying on chit business; or
- (b) giving loans and advances to non-prized subscribers on the security of subscriptions paid by them; or
- (c) investing in trustee securities within the meaning of section 20 of the Indian Trusts Act, 1882 (2 of 1882); or
- (d) making deposits with approved banks mentioned in the chit agreement.

(2) Where any person carrying on chit business has utilised the moneys collected in respect of such business before the commencement of this Act, otherwise than for the purposes specified in sub-section (1), he shall secure that so much of such moneys as have not been realised before such commencement are realised before the expiry of a period of three years from such commencement:

Provided that the State Government may, if it considers it necessary in the public interest or for avoiding any hardship, extend the said period of three years by such further period or periods not exceeding one year in the aggregate.

19. Restriction on opening of new place of business.—(1) No person carrying on chit business shall open a new place of business without obtaining the prior approval of the Registrar within whose territorial jurisdiction his registered office or, as the case may be, the place or the principal place of business is situated.

(2) Before granting approval under sub-section (1), the Registrar shall consult the Registrar of the State within whose territorial jurisdiction the new place of business is proposed to be opened and shall also keep in view the financial condition and methods of operation of the foreman, the extent to which public interest will be served by the opening of the new place of business and such other matters as may be prescribed.

(3) Where a person carrying on chit business opens a new place of business in a State other than the State (hereinafter referred to as the State of origin) in which his registered office or the place or the principal place of his business is situated, the Registrar of the State in which such new place of business is opened may also exercise and perform any of the powers and functions which the Registrar of the State of origin may exercise and perform in respect of the chit business carried on at such new place of business.

(4) For the purposes of this section, “place of business” shall include any branch office, sub-office, or any place of business where the chit business may be conducted by such person.

CHAPTER III

RIGHTS AND DUTIES OF FOREMAN

20. Security to be given by foreman.—(1) For the proper conduct of the chit, every foreman shall, before applying for a previous sanction under section 4,—

- (a) deposit in the name of Registrar, an amount equal to,—
 - (i) fifty per cent of the chit amount in cash in an approved bank; and
 - (ii) fifty per cent of the chit amount in the form of bank guarantee from an approved bank; or
- (b) transfer Government securities of the face value or market value (whichever is less) of not less than one and a half times the chit amount in favour of the Registrar; or
- (c) transfer in favour of the Registrar such other securities, being securities in which a trustee may invest money under section 20 of the Indian Trusts Act, 1882 (2 of 1882) of such value, as may be prescribed by the State Government from time to time:

Provided that the value of the securities referred to in clause (c) shall not, in any case, be less than one and a half times the value of the chit amount.

(2) Where a foreman conducts more than one chit, he shall furnish security in accordance with the provisions of sub-section (1) in respect of each chit.

(3) The Registrar may, at any time during the currency of the chit, permit the substitution of the security:

Provided that the face value or market value (whichever is less) of the substituted security shall not be less than the value of the security given by the foreman under sub-section (1).

(4) The security given by the foreman under sub-section (1), or any security substituted under sub-section (3), shall not be liable to be attached in execution of a decree or otherwise until the chit is terminated and the claims of all the subscribers are fully satisfied.

(5) Where the chit is terminated and the Registrar has satisfied himself that the claims of all the subscribers have been fully satisfied, he shall order the release of the security furnished by the foreman under sub-section (1), or the security substituted under sub-section (3), as the case may be, and in doing so, he shall follow such procedure as may be prescribed.

(6) Notwithstanding anything to the contrary contained in any other law for the time being in force, the security furnished under this section shall not be dealt with by the foreman during the currency of the chit to which it relates and any dealing by the foreman with respect thereto by way of transfer or other encumbrances shall be null and void.

22. Duties of foreman.—(1) The foreman shall, on the prized subscriber furnishing sufficient security for the due payment of future subscriptions, be bound to pay him the prize amount:

Provided that the prized subscriber shall be entitled to the payment of the prize amount without any security whatsoever if he agrees to the deduction there from of the amount of all future subscriptions and in such a case, the foreman shall pay the prize amount to the prized subscriber within seven days after the date of the draw or before the date of the next succeeding instalment, whichever is earlier:

Provided further that where the prize amount has been paid to the prized subscriber under the first proviso, the amount deducted shall be deposited by the foreman in an approved bank mentioned in the chit agreement and he shall not withdraw the amount so deposited except for the payment of future subscriptions.

(2) If, owing to the default of the prized subscriber, the prize amount due in respect of any draw remains unpaid until the date of the next succeeding instalment, the foreman shall deposit the prize amount forthwith in a separated account in an approved bank mentioned in the chit agreement and intimate in writing the fact of such deposit and the reasons therefore to the prized subscriber and the Registrar:

Provided that where any prized subscriber does not collect the prize amount in respect of any instalment of a chit within a period of two months from the date of the draw, it shall be open to the foreman to hold another draw in respect of such instalment.

(3) Every payment of the prize amount or the amount of future subscriptions under sub-section (1), and the deposit of the prize amount under sub-section (2), shall be intimated to the subscribers at the next succeeding draw and the particulars of such payment or deposit shall be entered in the minutes of the proceedings of that draw.

(4) The foreman shall not appropriate to himself any amount in excess of what he is entitled to under clause (b) or clause (c) of sub-section (1) of section 21:

Provided that where the foreman is himself a prized subscriber, he shall be entitled to appropriate to himself the prize amount subject to his complying with the provisions of section 31:

Provided further that the foreman may appropriate to himself the interest accruing on the amount deposited under the second proviso to sub-section (1).

(5) The foreman shall not admit any person as a subscriber to a chit, if, by such admission, the total number of tickets mentioned in the chit agreement is increased.

(6) The foreman shall distribute among the subscribers in accordance with the chit agreement, the dividend either in cash, grain or by way of adjustment towards the subscriptions payable for the next instalment, if any.

24. Balance sheet.—Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), every foreman shall prepare and file with the Registrar within such time as may be prescribed, a balance sheet as on the last date of each calendar year, or, as the case may be, the financial year of the foreman, and a profit and loss account relating to the year of account, in the forms set out in Parts I and II of the Schedule, or as near thereto as circumstances admit, in respect of the chit business and audited by auditors qualified to act as auditors under the Companies Act, 1956 (1 of 1956), or by a chit auditor appointed under section 61:

Provided that where a balance sheet is audited by an auditor qualified to act as auditor under the Companies Act, 1956 (1 of 1956), a chit auditor appointed under section 61 shall have the right to audit the balance sheet at any time if so authorised by the Registrar in this behalf.

30. Amounts due to defaulting subscribers.—(1) A foreman shall, out of the amounts payable by and realised from the substituted subscriber towards the instalments relatable to the period before the date of the substitution (including the arrears due from the defaulting subscriber), deposit, before the date of the next succeeding instalment, in a separate identifiable account in an approved bank mentioned in the chit agreement, an amount equal to the contributions made by the defaulting subscriber less such deductions as may be provided for in the chit agreement, and shall inform the defaulting subscriber as well as the Registrar of the fact of such deposit and shall not withdraw the amount so deposited except for payment to the defaulting subscriber.

(2) The amount so deposited under sub-section (1) shall be paid to the defaulting subscriber as and when he claims the amount and the amount so deposited shall not be withdrawn by the foreman for any purpose other than for such payment.

(3) The contributions of any defaulting subscriber who has not been substituted till the termination of the chit shall be paid to him within fifteen days from the date of termination of the chit subject to such deductions as may be provided for in the chit agreement.

CHAPTER V

RIGHTS AND DUTIES OF PRIZED SUBSCRIBERS

31. Prized subscriber to furnish security.—Every prized subscriber shall, if he has not offered to deduct the amount of all future subscriptions from the prize amount due to him, furnish, and a foreman shall take, sufficient security for the due payment of all future subscriptions and, if the foreman is a prized subscriber, he shall give security for the due payment of all the future subscriptions to the satisfaction of the Registrar.

33. Foreman to demand future subscriptions by written notice.—(1) A foreman shall not be entitled to claim a consolidated payment from a defaulting prized subscriber under section 32 unless he makes a demand to that effect in writing.

(2) Where a dispute is raised under this Act by a foreman for a consolidated payment of future subscriptions from a defaulting prized subscriber and if the subscriber pays to the foreman on or before the date to which the dispute is posted for hearing the arrears of subscriptions till that date together with the interest thereon at the rate provided for in the chit agreement and the cost of adjudication of the dispute, the Registrar or his nominee hearing the dispute shall, notwithstanding any contract to the contrary, make an order directing the subscriber to pay to the foreman the future subscriptions on or before the dates on which they fall due, and that, in case of any default of such payments by the subscriber, the foreman shall be at liberty to realise, in execution of that order, all future subscriptions and interest together with the costs, if any, less the amount, if any, already paid by the subscriber in respect thereof:

Provided that if any such dispute is on a promissory note, no order shall be passed under this sub-section unless such promissory note expressly states that the amount due under the promissory note is towards the payment of subscriptions to the chit.

(3) Any person who holds any interest in the property furnished as security or part thereof, shall be entitled to make the payment under sub-section (2).

(4) All consolidated payment of future subscriptions realised by a foreman shall be deposited by him in an approved bank mentioned in the chit agreement before the date of the succeeding instalment and the amount so deposited shall not be withdrawn except for payment of future subscriptions.

(5) Where any property is obtained as security in lieu of the consolidated payment of future subscriptions, it shall remain as security for the due payment of future subscriptions.

CHAPTER VII

MEETINGS OF GENERAL BODY OF SUBSCRIBERS

38. Meetings of general body of subscribers.—(1) The foreman may, on his own motion, convene a special meeting of the general body of subscribers for considering any proposal to pass a special resolution.

(2) The foreman shall convene such a meeting on the requisition in writing of not less than twenty-five per cent. of the number of non-prized and unpaid prized subscribers, and the meeting so convened shall be held within thirty days of the date of receipt of the requisition and if the foreman refuses or fails to call such a meeting within fourteen days of the date of receipt of such requisition, not less than twenty-five per cent. of the number of non-prized and unpaid prized subscribers may give notice of the fact to the Registrar.

(3) The Registrar shall, within twenty-one days of the receipt of the notice under sub-section (2), convene or direct the convening of a special meeting of the general body of the subscribers and on receipt of such a direction, it shall be the duty of the foreman to comply with such direction.

(4) Notice of not less than fourteen days shall be given to all the subscribers of a meeting under this section specifying the object, date, hour and place of meeting and a copy of the special resolution shall also be sent along with the notice of the meeting.

Explanation.—For the purposes of this section and section 39, “special resolution” means a resolution which is passed at a meeting of the general body of the subscribers specially convened for the purpose by a majority of not less than two-thirds of the subscribers to the chit present at the meeting in person or by proxy and representing not less than three-fourths of the amount or, as the case may be, the value of the grain, subscribed by all the non-prized and unpaid prized subscribers, if any.

CHAPTER IX

INSPECTION OF DOCUMENTS

46. Inspection of chit books and records by Registrar.—(1) Without prejudice to the provisions of sections 209 and 209-A of the Companies Act, 1956 (1 of 1956), the Registrar or an officer authorised by the State Government in this behalf may inspect chit books and all the records of a chit during working hours on any working day at the premises of the foreman with or without giving notice and it shall be the duty of every foreman to produce to the Registrar or the officer so authorised, all such books and records as are in his custody or power and to furnish him with any statement or information relating to the chits as he may require from the foreman within such time as he may specify.

(2) The Registrar or an officer authorised by the State Government in this behalf may, after giving seven days’ notice in writing to the foreman, direct him to produce before him for inspection such chit books and records as he may require at the time and place mentioned in the notice.

(3) If on an inspection made under sub-section (1) or sub-section (2), any defects are found, the Registrar may bring such defects to the notice of the foreman and may also make an order directing the foreman to take such action as may be specified in the order to remedy the defects within the time specified therein.

(4) Every foreman shall be bound to comply with the directions contained in an order made under sub-section (3).

47. Power of Reserve Bank to inspect chit books and records.—(1) Nothing in section 46 shall be deemed to affect the power of the Reserve Bank to inspect the books and records of any foreman under the provisions of section 45-N of the Reserve Bank of India Act, 1934 (2 of 1934).

(2) The Reserve Bank may, if it considers necessary, forward a copy of its report or of any part of its report on the inspection of the books and records of a foreman to the foreman for taking necessary action.

(3) Every foreman shall, on receipt of the report or part thereof under sub-section (2), be bound to comply with the directions, if any, given by the Reserve Bank in this behalf and shall, if so required, submit periodical reports in regard to the action taken by him.

(4) The Reserve Bank may also forward a copy of the report on the inspection of the books and records of a foreman to the State Government within whose jurisdiction the registered office of the company, if the foreman is a company, or the place or the principal place of business of the foreman in any other case, is situated for such action as may be considered necessary.

CHAPTER XI

APPOINTMENT OF OFFICERS AND LEVY OF FEES

61. Appointment of Registrar and other officers.—(1) The State Government may, by notification in the Official Gazette, appoint a Registrar of Chits and as many Additional, Joint, Deputy and Assistant Registrars as may be necessary for the purpose of discharging the duties imposed upon the Registrar by or under this Act.

(2) The Registrar may appoint as many inspectors of chits and chit auditors as may be necessary for the purpose of discharging the duties imposed on the inspectors of chits or chit auditors by or under this Act.

(3) All inspectors of chits and chit auditors shall discharge the duties imposed upon them by or under this Act under the general superintendence and control of the Registrar.

(4) If the Registrar is of the opinion that the accounts of any chit are not properly maintained and that such accounts should be audited, it shall be lawful for him to have such accounts audited by a chit auditor.

(5) It shall be the duty of the foreman of the chit whose accounts are to be audited by a chit auditor under sub-section (4) to produce before the chit auditor, all accounts, books and other records relating to the chit, to furnish him with such information as may be required and afford him all such assistance and facilities as may be necessary and reasonable in regard to the audit of the accounts of the chit.

(6) The foreman shall pay to the chit auditor such fees as may be prescribed for the audit of accounts of the chit under sub-section (4):

Provided that different scales of fees may be prescribed for different chits depending on the quantum of the chit amount.

CHAPTER XIII

MISCELLANEOUS

76. Penalties.—(1) Whoever contravenes or abets the contravention of any of the provisions of sections 4, 5, 8, 9, 11, 12, 13, 14, 19, 20, 22, 24, 30, 31, sub-section (4) of section 33, sections 46, 47 or sub-section (5) of section 61 shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(2) Any foreman,—

(a) who fails to file any document required to be filed under this Act within the period specified therefore or within such further time as may be allowed; or

(b) who fails to comply with the requirements of the chit agreement regarding the date, time and place at which the chit is to be drawn or who fails to comply with the requirements of any direction given under sub-section (3) of section 38; or

(c) who contravenes or fails to comply with any other requirement under this Act, shall, on conviction, be punishable with fine which may extend to three thousand rupees.

(3) Whoever wilfully makes a statement in any document required to be filed under this Act which is false in any material particular shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

77. Penalty for second and subsequent convictions.—If any person convicted of an offence under sub-section (1) or sub-section (3) of section 76 is again convicted of an offence under any of the said sub-section he shall be punishable for the second and for every

subsequent offence with imprisonment for a term which may extend to two years and shall also be liable to fine.

78. Application of fine.—A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in, or towards payment of, the cost of the proceedings.

79. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

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

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

80. Cognizance of offences.—(1) All offences under section 11 shall be cognizable.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence punishable under this Act.

81. Power to compound offences.—(1) Subject to such conditions as may be prescribed, any officer empowered by the State Government in this behalf may, either before or after the institution of criminal proceedings under this Act, accept from the person who has committed or is reasonably suspected to have committed an offence under this Act, by way of composition of such offence, a sum of money not exceeding such amount as may be prescribed.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

82. Power to enter and search any place and to seize any documents.—(1) If the Registrar or any other officer authorised by him in this behalf, has reason to suspect that any person conducts, or is responsible for the conduct of, a chit in any place in contravention of the provisions of this Act, he may, for reasons to be recorded in writing and at any reasonable time, enter into and search such place, and may seize such books, registers, accounts or documents as may be necessary.

(2) The Registrar or officer authorised by him in this behalf, may apply for assistance to an officer in charge of a police station and take police officers to accompany and assist him in discharging his duties under sub-section (1).

(3) All searches under sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

83. Officers to be public servants.—The Registrar and all officers appointed by the State Government to perform any functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

[18th May, 2003]

1. Short title, extent and commencement.—(1) This Act may be called THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. Declaration as to expediency of control by the Union.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry.

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

(a) “advertisement” includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;

(b) “cigarette” includes,—

(i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,

(ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include beedi, cheroot and cigar;

(c) “distribution” includes distribution by way of samples, whether free or otherwise;

(d) “export”, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(e) “foreign language” means a language which is neither an Indian language nor the English language;

(f) “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(g) “Indian language” means a language specified in the Eighth Schedule to the Constitution, and includes any dialect of such language;

(h) “label” means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;

(i) “package” includes a wrapper, box, carton, tin or other container;

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

(k) “production”, with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include—

(i) packing, labelling or re-labelling, of containers;

(ii) re-packing from bulk packages to retail packages; and

(iii) the adoption of any other method to render the tobacco product marketable;

(l) “public place” means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centres, restaurants, public offices, Court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open space;

(m) “sale”, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit,

or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale;

(n) “smoking” means smoking of tobacco in any form whether in the form of cigarette, cigar, beedis or otherwise with the aid of a pipe, wrapper or any other instruments;

(o) "specified warning" means such warnings against the use of cigarettes or other tobacco products to be printed, painted or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by rules made under this Act;

(p) "tobacco products" means the products specified in the Schedule.

4. Prohibition of smoking in a public place.—No person shall smoke in any public place:

Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.

5. Prohibition of advertisement of cigarettes and other tobacco products.—(1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall—

(a) display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorize to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to—

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of—

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

6. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area.—No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product—

(a) to any person who is under eighteen years of age, and

(b) in an area within a radius of one hundred yards of any educational institution.

7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.—(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products, produced, supplied or distributed by him bears thereon, or on its label, such specified warning including a pictorial warning as may be prescribed.

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

8. Manner in which specified warning shall be made.—(1) The specified warning on a package of cigarettes or any other tobacco products shall be—

- (a) legible and prominent;
- (b) conspicuous as to size and colour;
- (c) in such style or type of lettering as to be boldly and clearly presented in distinct contrast to any other type, lettering or graphic material used on the package or its label and shall be printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its labels.

(2) The manner in which a specified warning shall be printed, painted or inscribed on a package of cigarettes or any other tobacco products shall be such as may be specified in the rules made under this Act.

(3) Every package containing cigarettes or any other tobacco products shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.

9. Language in which the specified warning shall be expressed.—(1) Where the language used on a package containing cigarettes and any other tobacco products or on its label is—

- (a) English, the specified warning shall be expressed in the English language;
- (b) any Indian language or languages, the specified warning shall be expressed in such Indian language or languages;
- (c) both English and one or more Indian languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;
- (d) partly English and partly any Indian language or languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;
- (e) any foreign language, the specified warning shall be expressed in the English language;
- (f) partly any foreign language and partly English or any Indian language or languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages.

(2) No package of cigarettes or any other tobacco products or its label shall contain any matter or statement which is inconsistent with, or detracts from, the specified warning.

10. Size of letters and figures.—No specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both used on such warning and indication is less than the height as may be prescribed by rules made under this Act.

11. Testing laboratory for nicotine and tar contents.—For purposes of testing the nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.

12. Power of entry and search.—(1) Any police officer, not below the rank of a Sub-Inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government may, if he has any reason to suspect that any provision of this Act has been, or is being, contravened, enter and search in the manner

prescribed, at any reasonable time, any factory, building, business premises or any other place,—

(a) where any trade or commerce in cigarettes or any other tobacco products is carried on or cigarettes or any other tobacco products are produced, supplied or distributed; or

(b) where any advertisement of the cigarettes or any other tobacco products has been or is being made.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to every search and seizure made under this Act.

13. Power to seize.—(1) If any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government, has any reasons to believe that,—

(a) in respect of any package of cigarettes or any other tobacco products, or

(b) in respect of any advertisement of cigarettes or any other tobacco products,

the provisions of this Act have been, or are being, contravened, he may seize such package or advertisement material in the manner prescribed.

(2) No package of cigarettes or any other tobacco products or advertisement material seized under clause (a) of sub-section (1) shall be retained by the officer who seized the package or advertisement material for a period exceeding ninety days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention.

14. Confiscation of package.—Any package of cigarettes or any other tobacco products or any advertisement material of cigarettes or any other tobacco products, in respect of which any provision of this Act has been or is being contravened, shall be liable to be confiscated:

Provided that, where it is established to the satisfaction of the Court adjudging the confiscation that the person in whose possession, power or control any such package of cigarettes or any other tobacco products is found is not responsible for the contravention of the provisions of this Act, the Court may, instead of making an order for the confiscation of such package, make such other order authorised by this Act against the person guilty of the breach of the provisions of this Act as it may think fit.

15. Power to give option to pay costs in lieu of confiscation.—(1) Whenever any confiscation of any package of cigarettes or any other tobacco products is authorised by this Act, the Court adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated.

(2) On payment of the costs ordered by the Court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package.

16. Confiscation not to interfere with other punishments.—No confiscation made, costs ordered to be paid under this Act shall prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

17. Adjudication.—Any confiscation of cigarettes or any other tobacco products may be adjudged or costs may be ordered to be paid:—

(a) without any limit, by the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction such confiscation has been made, costs have been ordered to be paid;

(b) subject to such limits as may be specified by the Central Government in this behalf, by such other Court, not below a Civil Court having pecuniary jurisdiction exceeding rupees five thousand, as the Central Government may, by notification in the Official Gazette, authorize in this behalf.

18. Giving opportunity to the owner of seized packages.—(1) No order adjudging confiscation or directing payment of costs shall be made unless the owner or person in possession of the package of cigarettes or any other tobacco products has been given a notice

in writing informing him of the grounds on which it is proposed to confiscate such package, and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice, against the confiscation mentioned therein, and, if he so desires, of being heard personally or through a representative in the matter:

Provided that, where no such notice is given within a period of ninety days from the date of the seizure of the package of cigarettes or of any other tobacco products, such package shall be returned, after the expiry of that period, to the owner or the person from whose possession it was seized.

(2) Save as otherwise provided in sub-section (1), the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall, as far as may be, apply to every proceeding referred to in sub-section (1).

19. Appeal.—(1) Any person, aggrieved by any decision of the Court adjudging a confiscation, ordering the payment of costs, may prefer an appeal to the Court to which an appeal lies from the decision of such Court.

(2) The appellate Court may, after giving to the appellant an opportunity of being heard, pass such order as it thinks fit confirming, modifying or reversing the decision or order appealed against or may send back the case with such directions as it may think fit for a fresh decision or adjudication, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing any find in lieu of confiscation or confiscating of goods of greater value shall not be made under this section unless the appellant has had an opportunity of making a representation and, if he so desires, of being heard in person or through a representative in his defence.

(3) No further appeal shall lie against the order of the Court of appeal.

20. Punishment for failure to give specified warning and nicotine and tar contents.—(1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees.

21. Punishment for smoking in certain places.—(1) Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to two hundred rupees.

(2) An offence under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974).

22. Punishment for advertisement of cigarettes and tobacco products.—Whoever contravenes the provision of section 5 shall, on conviction, be punishable—

(a) in the case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and

(b) in the case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

23. Forfeiture of advertisement and advertisement material.—Where any person has been convicted under this Act for the contravention of the provision of section 5, the advertisement and the advertisement material for cigarettes and other tobacco products may be forfeited to the Government and such advertisement and advertisement material shall be disposed of in such manner as may be prescribed by rules made under this Act.

24. Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years.—(1) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees.

(2) All offences under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974).

25. Prevention, detention and place of trial of offences under sections 4 and 6.—

(1) Notwithstanding anything contained in any other law for the time being in force, the Central Government or the State Government may, by notification in the Official Gazette, authorize one or more persons who shall be competent to act under this Act:

Provided that the person so authorised may, if he has reasonable ground for believing that any person has committed an offence under section 4 or section 6, may detain such person unless the accused person furnishes his name and address, and otherwise satisfies the officer detaining him that he will duly answer any summons or other proceedings which may be taken against him.

(2) Any person detained under sub-section (1) shall forthwith be taken before Magistrate to be dealt with according to law.

(3) Any person committing an offence under section 4 or section 6 shall be triable for such offence in any place in which he may be or which the State Government may notify in this behalf, as well as in any other place in which is he liable to be tried under any law for the time being in force.

(4) Every notification issued under sub-sections (1) and (3) shall be published in the Official Gazette, and a copy thereof shall be exhibited for information to the public in some conspicuous place or places as the State Government may direct.

(5) Every person authorised under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

26. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall 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 in the firm.

27. Offences to be bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) an offence punishable under this Act shall be bailable.

28. Composition of offences.—(1) Any offence committed under section 4 or section 6 may either before or after the institution of the prosecution be compounded by such officer authorised by Central Government or State Government and for an amount which may not exceed two hundred rupees.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

29. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.

30. Power to add any tobacco products in the Schedule.—The Central Government, after giving by notification in the Official Gazette, not less than three months’ notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which

it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated under this Act, and thereupon the Schedule shall in its application to such products be deemed to be amended accordingly.

31. Power of the Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (o) of section 3;

(b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;

(c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;

(d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;

(e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;

(f) provide for any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act and every notification made under section 30 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

32. Act not to apply to cigarettes or other tobacco products which are exported.— Nothing contained in this Act shall apply to any cigarette or other tobacco products or package of cigarettes or other tobacco products which is exported:

Provided that nothing in this section shall be deemed to authorize the export of any package of cigarettes or other tobacco products, not containing the specified warning and indication of nicotine and tar contents to any country if the law in force in that country requires that the same or similar warning and nicotine and tar contents shall be specified on each package of cigarettes or other tobacco products.

Explanation.—For the purpose of this section, any cigarette or other tobacco products or package of cigarettes or other tobacco products shall be deemed to be exported before the commencement of this Act, if the necessary steps for export have already been taken notwithstanding that the actual export has not taken place.

33. Repeal and savings.—(1) The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 (49 of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the aforesaid Act, shall, insofar as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

THE CINEMATOGRAPH ACT, 1952

21/03/1952

PART I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE CINEMATOGRAPH ACT, 1952.

(2) Parts I, II and IV extends to the whole of India [* * *] and Part III extends to the Union territories only.

(3) This Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that Parts I and II shall come into force in the State of Jammu and Kashmir only on such date after the commencement of the Cinematograph (Amendment) Act, 1973 (25 of 1973), as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) "adult" means a person who has completed his eighteenth year;

(b) "Board" means the Board of Film Certification constituted by the Central Government under section 3;

(bb) "certificate" means the certificate granted by the Board under section 5-A;

(c) "cinematograph" includes any apparatus for the representation of moving pictures or series of pictures;

(d) "district magistrate", in relation to a presidency-town, means the Commissioner of police;

(dd) "film" means a cinematograph film;

(e) "place" includes a house, building, tent and any description of transport, whether by sea, land or air;

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

(g) "regional officer" means a regional officer appointed by the Central Government under section 5 and includes an additional regional officer and an assistant regional officer;

(h) "Tribunal" means the Appellate Tribunal constituted under section 5-D.

2-A. Construction of references to any law not in force or any functionary not in existence in the State of Jammu and Kashmir.—Any reference in this Act to any law which is not in force, or any functionary not in existence, in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that State.

PART II

CERTIFICATION OF FILMS FOR PUBLIC EXHIBITION

3. Board of Film Certification.—(1) For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the Official Gazette, constitute a Board to be called the Board of Film Certification which shall consist of a Chairman and not less than twelve and not more than twenty-five other members appointed by the Central Government.

(2) The Chairman of the Board shall receive such salary and allowances as may be determined by the Central Government, and the other members shall receive such allowances or fees for attending the meetings of the Board as may be prescribed.

(3) The other terms and conditions of service of the members of the Board shall be such as may be prescribed.

4. Examination of films.—(1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner,—

(i) sanction the film for unrestricted public exhibition:[*]

Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of

such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or

(ii) sanction the film for public exhibition restricted to adults; or

(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or

(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or

(iv) refuse to sanction the film for public exhibition.

(2) No action under the proviso to clause (i), clause (ii), clause (ii-a), clause (iii) or clause (iv) of sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.

5. Advisory panels.—(1) For the purpose of enabling the Board to efficiently discharge its functions under this Act, the Central Government may establish at such regional centres as it thinks fit, advisory panels each of which shall consist of such number of persons, being persons qualified in the opinion of the Central Government to judge the effect of films on the public, as the Central Government may think fit to appoint thereto.

(2) At each regional centre there shall be as many regional officers as the Central Government may think fit to appoint, and rules made in this behalf may provide for the association of regional officers in the examination of films.

(3) The Board may consult in such manner as may be prescribed, any advisory panel in respect of any film for which an application for a certificate has been made.

(4) It shall be the duty of every such advisory panel, whether acting as a body or in committees as may be provided in the rules made in this behalf, to examine the film and to make such recommendations to the Board as it thinks fit.

(5) The members of the advisory panel shall not be entitled to any salary but shall receive such fees or allowances as may be prescribed.

5-A. Certification of films.—(1) If, after examining a film or having it examined in the prescribed manner, the Board considers that—

(a) the film is suitable for unrestricted public exhibition, or as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (i) of sub-section (1) of section 4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate; or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, as the case may be, a "S" certificate, and cause the film to be so marked in the prescribed manner:

Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).

(2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout India for a period of ten years.

5-B. Principles for guidance in certifying films.—(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

5-C. Appeals.—(1) Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board—

- (a) refusing to grant a certificate; or
- (b) granting only an "A" certificate; or
- (c) granting only a "S" certificate; or
- (d) granting only a "UA" certificate; or
- (e) directing the applicant to carry out any excisions or modifications,

may, within thirty days from the date of such order, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, allow such appeal to be admitted within a further period of thirty days.

(2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fees, not exceeding rupees one thousand, as may be prescribed.

5-D. Constitution of Appellate Tribunal.—(1) For the purpose of hearing appeals against any order of the Board under section 5-C, the Central Government shall, by notification in the Official Gazette, constitute an Appellate Tribunal.

(2) The head office of the Tribunal shall be at New Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.

(3) Such Tribunal shall consist of a Chairman and not more than four other members appointed by the Central Government.

(4) A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is a retired Judge of a High Court, or is a person who is qualified to be a Judge of a High Court.

(5) The Central Government may appoint such persons who, in its opinion, are qualified to judge the effect of films on the public, to be members of the Tribunal.

(6) The Chairman of the Tribunal shall receive such salary and allowances as may be determined by the Central Government and the members shall receive such allowances or fees as may be prescribed.

(7) Subject to such rules as may be made in this behalf, the Central Government may appoint a Secretary and such other employees as it may think necessary for the efficient performance of the functions of the Tribunal under this Act.

(8) The Secretary to, and other employees of, the Tribunal shall exercise such powers and perform such duties as may be prescribed after consultation with the Chairman of the Tribunal.

(9) The other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, the Tribunal shall be such as may be prescribed.

(10) Subject to the provisions of this Act, the Tribunal may regulate its own procedure.

(11) The Tribunal may, after making such inquiry into the matter as it considers necessary, and after giving the appellant and the Board an opportunity of being heard in the matter, make such order in relation to a film as it thinks fit and the Board shall dispose of the matter in conformity with such order.

5-E. Suspension and revocation of certificate.—(1) Notwithstanding anything contained in sub-section (2) of section 6, the Central Government may, by notification in the Official Gazette, suspend a certificate granted under this Part, for such period as it thinks fit or may revoke such certificate if it is satisfied that—

(i) the film in respect of which the certificate was granted, was being exhibited in a form other than the one in which it was certified; or

(ii) the film or any part thereof is being exhibited in contravention of the provisions of this Part or the rules made hereunder.

(2) Where a notification under sub-section (1) has been published, the Central Government may require the applicant for certificate or any other person to whom the rights in the film have passed, or both, to deliver up to the certificate and all duplicate certificates, if any, granted in respect of the film to the Board or to any person or authority specified in the said notification.

(3) No action under this section shall be taken except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a certificate remains suspended under this section, the film shall be deemed to be an uncertified film.

5-F. Review of orders by Central Government.—(1) Where an applicant for a certificate or any other person to whom the rights in the film have passed, is aggrieved by any order of the Central Government under section 5-E, he may, within sixty days of the date of publication of the notification in the Official Gazette, make an application to the Central Government for review of the order, setting out in such application the grounds on which he considers such review to be necessary:

Provided that the Central Government may, if it is satisfied that the applicant for a certificate or that other person was prevented by sufficient cause from filing an application for review within the aforesaid period of sixty days, allow such application to be filed within a further period of sixty days.

(2) On receipt of the application under sub-section (1), the Central Government may, after giving the aggrieved person a reasonable opportunity of being heard, and after making such further inquiry, as it may consider necessary, pass such order as it thinks fit, confirming, modifying or reversing its decision and the Board shall dispose of the matter in conformity with such order.

6. Revisional powers of the Central Government.—(1) Notwithstanding anything contained in this Part, the Central Government may, of its own motion, at any stage, call for the record of any proceeding in relation to any film which is pending before, or has been decided by, the Board, or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal) and after such inquiry into the matter as it considers necessary, make such order in relation thereto as it thinks fit, and the Board shall dispose of the matter in conformity with such order:

Provided that no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted, as the case may be, except after giving him an opportunity for representing his views in the matter:

Provided further that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against public interest to disclose.

(2) Without prejudice to the powers conferred on it under sub-section (1), the Central Government may, by notification in the Official Gazette, direct that—

(a) a film which has been granted a certificate shall be deemed to be an uncertified film in the whole or any part of India; or

(b) a film which has been granted a "U" certificate or a "UA" certificate or a "S" certificate shall be deemed to be a film in respect of which an "A" certificate has been granted; or

(c) the exhibition of any film be suspended for such period as may be specified in the direction:

Provided that no direction issued under clause (c) shall remain in force for more than two months from the date of the notification.

(3) No action shall be taken under clause (a) or clause (b) of sub-section (2) except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a film remains suspended under clause (c) of sub-section (2), the film shall be deemed to be an uncertified film.

6-A. Information and documents to be given to distributors and exhibitors with respect to certified films.—Any person who delivers any certified film to any distributor or exhibitor shall, in such manner as may be prescribed, notify to the distributor or exhibitor, as the case may be, the title, the length of the film, the number and the nature of the certificate granted in respect thereof and the conditions, if any, subject to which it has been so granted, and any other particulars respecting the film which may be prescribed.

6-B. Offences to be cognizable.—*[Omitted by the Cinematograph (Amendment) Act, 1984 (56 of 1984), section 2 (w.e.f. 27-8-1984).]*

7. Penalties for contraventions of this Part.—(1) If any person—

(a) exhibits or permits to be exhibited in any place—

(i) any film other than a film which has been certified by the Board as suitable for unrestricted public exhibition or for public exhibition restricted to adults or to members of any profession or any class of persons and which, when exhibited, displays the prescribed mark of

the Board and has not been altered or tampered with in any way since such mark was affixed thereto,

(ii) any film, which has been certified by the Board as suitable for public exhibition restricted to adults, to any person who is not an adult, [*]

(ii-a) any film which has been certified by the Board as suitable for public exhibition restricted to any profession or class of persons, to a person who is not a member of such profession or who is not a member of such class, or

(b) without lawful authority (the burden of proving which shall be on him), alters or tampers with in any way any film after it has been certified, or

(c) fails to comply with the provision contained in section 6-A or with any order made by the Central Government or by the Board in the exercise of any of the powers or functions conferred on it by this Act or the rules made hereunder,

he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided that a person who exhibits or permits to be exhibited in any place a video film in contravention of the provisions of sub-clause (i) of clause (a) shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty thousand rupees, but which may extend to one lakh rupees, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided further that a Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months, or a fine of less than twenty thousand rupees:

Provided further that notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of any offence punishable under this Part:

Provided also that no distributor or exhibitor or owner or employee of a cinema house shall be liable to punishment for contravention of any condition of endorsement of caution on a film certified as "UA" under this Part.

(2) If any person is convicted of an offence punishable under this section committed by him in respect of any film, the convicting Court may further direct that the film shall be forfeited to the Government.

(3) The exhibition of a film in respect of which an "A" certificate or a "S" certificate or a "UA" certificate has been granted, to children below the age of three years accompanying their parents or guardians shall not be deemed to be an offence within the meaning of this section.

7-A. Power of seizure.—(1) Where a film in respect of which no certificate has been granted under this Act is exhibited, or a film certified as suitable for public exhibition restricted to adults is exhibited to any person who is not an adult or a film is exhibited in contravention of any of the other provisions contained in this Act or of any order made by the Central Government, the Tribunal or the Board in the exercise of any of the powers conferred on it, any police officer may, [* * *] enter any place in which he has reason to believe that the film has been or is being or is likely to be exhibited, search it and seize the film.

(2) All searches under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches.

7-B. Delegation of powers by Board.—(1) The Central Government may, by general or special order, direct that any power, authority or jurisdiction exercisable by the Board under this Act shall, in relation to the certification of the films under this Part and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Chairman or any other member of the Board, and anything done or action taken by the Chairman or other member specified in the order shall be deemed to be a thing done or action taken by the Board.

(2) The Central Government may, by order and subject to such conditions and restrictions as may be prescribed, authorize the regional officers to issue provisional certificates.

7-C. Power to direct exhibition of films for examination.—For the purpose of exercising any of the powers conferred on it by this Act, the Central Government, the Tribunal or the Board may require any film to be exhibited before it or, before any person or authority specified by it in this behalf.

7-D. Vacancies, etc., not to invalidate proceeding.—No act or proceeding of the Tribunal, the Board or of any advisory panel shall be deemed to be invalid by reason only of a vacancy in, or any defect in, the constitution of the Tribunal, the Board or panel, as the case may be.

7-E. Members of the Board and advisory panels, to be public servants.—All members of the Tribunal, the Board and of any advisory panel shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

7-F. Bar of legal proceedings.—No suit or other legal proceeding shall lie against the Central Government, the Tribunal, the Board, advisory panel or any officer or member of the Central Government, the Tribunal, the Board or advisory panel, as the case may be, in respect of anything which is in good faith done or intended to be done under this Act.

8. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

- (a) the allowances or fees payable to the members of the Board;
- (b) the terms and conditions of service of the members of the Board;
- (c) the manner of making an application to the Board for a certificate and the manner in which a film has to be examined by the Board and the fees to be levied therefore;
- (d) the association of regional officers in the examination of films, the conditions and restrictions subject to which regional officers may be authorised under section 7-B to issue provisional certificates and the period of validity of such certificates;
- (e) the manner in which the Board may consult any advisory panel in respect of any film;
- (f) the allowances or fees payable to the members of advisory panel;
- (g) the marking of the films;
- (h) the allowances or fees payable to the members of the Tribunal ;
- (i) the powers and duties of the Secretary to, and other employees of, the Tribunal;
- (j) the other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, the Tribunal;
- (k) the fees payable by the appellant to the Tribunal in respect of an appeal;
- (l) the conditions (including conditions relating to the length of films in general or any class of films, in particular) subject to which any certificate may be granted, or the circumstances in which any certificate shall be refused;
- (m) any other matter which is required to be or may be prescribed.

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

9. Power to exempt.—The Central Government may, by order in writing exempt, subject to such conditions and restrictions, if any, as it may impose, the exhibition of any film or class of films from any of the provisions of this Part or of any rules made hereunder.

PART III

REGULATION OF EXHIBITIONS BY MEANS OF CINEMATOGRAPHS

10. Cinematograph exhibitions to be licensed.—Save as otherwise provided in this Part, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Part or otherwise than in compliance with any conditions and restrictions imposed by such license.

11. Licensing authority.—The authority having power to grant licenses under this Part (hereinafter referred to as the licensing authority) shall be the District Magistrate:

Provided that the State Government may, by notification in the Official Gazette, constitute, for the whole or any part of a Union territory, such other authority as it may specify in the notification to be the licensing authority for the purposes of this Part.

12. Restrictions on powers of licensing authority.—(1) The licensing authority shall not grant a license under this Part, unless it is satisfied that—

- (a) the rules made under this Part have been substantially complied with, and
- (b) adequate precautions have been taken in the place, in respect of which the license is to be given, to provide for the safety of persons attending exhibitions therein.

(2) Subject to the foregoing provisions of this section and to the control of the State Government, the licensing authority may grant licenses under this Part to such persons as that authority thinks fit and on such terms and conditions and subject to such restrictions as it may determine.

(3) Any person aggrieved by the decision of a licensing authority refusing to grant a license under this Part may, within such time as may be prescribed, appeal to the State Government or to such officer as the State Government may specify in this behalf and the State Government or the officer, as the case may be, may make such order in the case as it or he thinks fit.

(4) The Central Government may, from time to time, issue directions to licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure an adequate opportunity of being exhibited, and where any such directions have been issued those directions shall be deemed to be additional conditions and restrictions subject to which the license has been granted.

13. Power of Central Government or local authority to suspend exhibition of films in certain cases.—(1) The Lieutenant Governor or, as the case may be, the Chief Commissioner, in respect of the whole or any Part of a Union territory and the District Magistrate in respect of the district within his jurisdiction, may, if he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film and during such suspension the film shall be deemed to be an uncertified film in the State, part or district, as the case may be.

(2) Where an order under sub-section (1) has been issued by the Chief Commissioner or a District Magistrate, as the case may be, a copy thereof, together with a statement of reasons therefore, shall forthwith be forwarded by the person making the same to the Central Government, and the Central Government may either confirm or discharge the order.

(3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Central Government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.

14. Penalties for contravention of this Part.—If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used in contravention of the provisions of this Part or of the rules made hereunder, or of the conditions and restrictions upon or subject to which any license has been granted under this Part, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

15. Power to revoke license.—Where the holder of a license has been convicted of an offence under section 7 or section 14, the license may be revoked by the licensing authority.

16. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules—

(a) prescribing the terms, conditions and restrictions, if any, subject to which licenses may be granted under this Part;

(b) providing for the regulation of cinematograph exhibitions for securing the public safety;

(c) prescribing the time within which and the conditions subject to which an appeal under sub-section (3) of section 12 may be preferred.

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

17. Power to exempt.—The Central Government may, by order in writing exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Part or of any rules made hereunder.

PART IV

REPEAL

18. Repeal.—The Cinematograph Act, 1918 (2 of 1918) is hereby repealed: Provided that in relation to Part A States and Part B States the repeal shall have effect only in so far as the said Act relates to the sanctioning of cinematograph films for exhibition.

THE CITIZENSHIP ACT, 1955

30/12/1955

1. Short title.—This Act may be called THE CITIZENSHIP ACT, 1955.

2. Interpretation.—(1) In this Act, unless the context otherwise requires,—

(a) “a Government in India” means the Central Government or a State Government;

(b) “illegal migrant” means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;

(d) “Indian consulate” means the office of any consular officer of the Government of India where a register of births is kept, or where there is no such office, such office as may be prescribed;

(e) “minor” means a person who has not attained the age of eighteen years;

(ee) “overseas citizen of India” means a person registered as an overseas citizen of India by the Central Government under section 7-A;

(f) “person” does not include any company or association or body of individuals, whether incorporated or not;

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

[* * *]

(h) “undivided India” means India as defined in the Government of India Act, 1935, as originally enacted.

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Act to the status or description of the father of a person at the time of that person’s birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father’s

death; and where that death occurred before, and the birth occurs after, the commencement of this Act, the status or description which would have been applicable to the father had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of his death.

(4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor and of full capacity if he is not of unsound mind.

ACQUISITION OF CITIZENSHIP

3. Citizenship by birth.—(1) Except as provided in sub-section (2), every person born in India—

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where—

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,
shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.

4. Citizenship by descent.—(1) A person born outside India shall be a citizen of India by descent,—

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or

(ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1-A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration.—(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration.

(g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption..

6. Citizenship by naturalisation.—(1) Where an application is made in the prescribed manner by any person of full age and capacity not being an illegal migrant for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted.

6-A. Special provisions as to citizenship of persons covered by the Assam Accord.—(1) For the purposes of this section—

(a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946), and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;

(c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(d) a person shall be deemed to be of Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;

(e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner,

shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted there from.

Explanation.—In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,—

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8,—

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation.—Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person—

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.

7. Citizenship by incorporation of territory.—If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

OVERSEAS CITIZENSHIP

7-A. Registration of overseas citizens of India.—The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India—

(a) any person of full age and capacity,—

(i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a):

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India.

7-B. Renunciation of overseas citizenship.—(1) If any overseas citizen of India of full age and capacity makes in the prescribed manner a declaration renouncing his overseas

citizenship of India, the declaration shall be registered by the Central Government, and upon such registration, that person shall cease to be an overseas citizen of India.

(2) Where a person ceases to be an overseas citizen of India under sub-section (1), every minor child of that person registered as an overseas citizen of India, shall thereupon cease to be an overseas citizen of India.

7-C. Cancellation of registration as overseas citizen of India.—The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7-A if it is satisfied that—

(a) the registration as an overseas citizen of India was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the overseas citizen of India has shown disaffection towards the Constitution of India as by law established; or

(c) the overseas citizen of India has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the overseas citizen of India has, within five years after registration under sub-section (1) of section 7-A, has been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.

TERMINATION OF CITIZENSHIP

8. Renunciation of citizenship.—(1) If any citizen of India of full age and capacity, [* * *] makes in the prescribed manner a declaration renouncing his Indian citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where a person ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration in the prescribed form and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

[* * *]

13. Certificate of citizenship in case of doubt.—The Central Government may, in such cases as it thinks fit, certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

17. Offences.—Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both.

18. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

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

(a) the registration of anything required or authorised under this Act to be registered, and the conditions and restrictions in regard to such registration;

(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;

(b) the forms to be used and the registers to be maintained under this Act;

(c) the administration and taking of oaths of allegiance under this Act and the time within which and the manner in which, such oaths shall be taken and recorded;

(d) the giving of any notice required or authorised to be given by any person under this Act;

(e) the cancellation of the registration of, and the cancellation and amendment of certificate of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;

(ee) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (6) of section 6-A shall be submitted and other matters connected with such declarations;

(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;

(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;

(h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;

(i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of Civil Courts;

(ia) the procedure to be followed in compulsory registration of the citizens of India under sub-section (5) of section 14-A;

(j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and

(k) any other matter which is to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees:

Provided that any rule made in respect of a matter specified in clause (ia) of sub-section (2) may provide that a breach thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

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

THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974

13/12/1974

1. Short title, extent and commencement.—(1) This Act may be called THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974.

(2) It extends to the whole of India.

(3) It shall come into force on such date (being a date not later than the twentieth day of December, 1974), as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) “appropriate Government” means, as respects a detention order made by the Central Government or by an officer of the Central

Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or a person detained under such order, the State Government;

(b) "detention order" means an order made under section 3;

(c) "foreigner" has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(d) "Indian customs waters" has the same meaning as in clause (28) of section 2 of the Customs Act, 1962 (52 of 1962);

(e) "smuggling" has the same meaning as in clause (39) of section 2 of the Customs Act, 1962 (52 of 1962), and all its grammatical variations and cognate expressions shall be construed accordingly;

(f) "State Government", in relation to a Union territory, means the administrator thereof;

(g) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

3. Power to make orders detaining certain persons.—(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from—

(i) smuggling goods, or

(ii) abetting the smuggling of goods, or

(iii) engaging in transporting or

concealing or keeping smuggled goods, or

(iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

it is necessary so to do, make an order directing that such person be detained:

Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (J. & K. Ordinance 1 of 1988).

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions including conditions as to maintenance, interviews or communication

with others, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

5-A. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason

whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

6. Detention order not to be invalid or inoperative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

(a) that the person to be detained hereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention, or

(b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.—(1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognisable.

8. Advisory Board.—For the purposes of sub-clause (a) of clause (4), and sub-clause (c) of clause (7), of article 22 of the Constitution,—

(a) the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of a Chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of article 22 of the Constitution;

(b) save as otherwise provided in section 9, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of article 22 of the Constitution;

(c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

(d) when there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board;

(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

9. Cases in which and circumstances under which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Board.—

(1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the 31st day of July, 1999, may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purpose of this section by that Government, is satisfied that such person—

(a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or

(b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or

(c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling,

and makes a declaration to that effect within five weeks of the detention of such person.

Explanation 1.—In this sub-section, “area highly vulnerable to smuggling” means,—

(i) the Indian customs waters, contiguous to the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Daman and Diu and Pondicherry;

(ii) the inland area fifty kilometres in width from the coast of India falling within the territories of the States of Goa, Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Daman and Diu and Pondicherry;

(iii) the inland area fifty kilometres in width from the India-Pakistan border in the States of Gujarat, Jammu and Kashmir, Punjab and Rajasthan;

(iv) the customs airport of Delhi; and

(v) such further or other Indian customs waters, or inland area not exceeding one hundred kilometres in width from any other coast or border of India, or such other customs station, as the Central Government may, having regard to the vulnerability of such waters, area or customs station, as the case may be, to smuggling, by notification in the Official Gazette, specify in this behalf.

Explanation 2.—For the purposes of *Explanation 1*, “customs airport” and “customs station” shall have the same meaning as in clauses (10) and (13) of section 2 of the Customs Act, 1962 (52 of 1962), respectively.

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, section 8 shall have effect subject to the following modifications, namely:—

(i) in clause (b), for the words “shall, within five weeks”, the words “shall, within four months and two weeks” shall be substituted;

(ii) in clause (c),—

(1) for the words “the detention of the person concerned”, the words “the continued detention of the person concerned” shall be substituted;

(2) for the words “eleven weeks”, the words “five months and three weeks” shall be substituted;

(iii) in clause (f), for the words “for the detention”, at both the places where they occur, the words “for the continued detention” shall be substituted.

10. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 do not apply and which has been confirmed under clause (f) of section 8 shall be a period of one year from the date of detention or the specified period, whichever period expires later, and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 apply and which has been confirmed under clause (f) of section 8 read with sub-section (2) of section 9 shall be a period of two years from the date of detention or the specified period, whichever period expires later:

Provided that nothing contained in this section shall affect the power of the appropriate Government in either case to revoke or modify the detention order at any earlier time.

Explanation.—In this section and in section 10-A, “specified period” means the period during which the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971 and the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, are both in operation.

10-A. Extension of period of detention.—(1) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (f) of section 8 before the commencement of the

Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement shall, unless his detention has been continued by the appropriate Government under the said clause for a period shorter than one year from the date of his detention, continue until the expiry of a period of one year from the date of his detention under such order or until the expiry of the specified period, whichever period expires later:

Provided that nothing contained in this sub-section shall affect the power of the appropriate Government to revoke or modify such detention order at any earlier time.

(2) Notwithstanding anything contained in any other provision of this Act, the detention of every person detained under a detention order which has been confirmed under clause (f) of section 8 read with sub-section (2) of section 9 before the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1976, and which is in force immediately before such commencement, shall, unless his detention has been continued by the appropriate Government under the said clause (f) read with the said sub-section (2), for a period shorter than two years from the date of his detention, continue until the expiry of a period of two years from the date of his detention under such order or until the expiry of the specified period, whichever period expires later:

Provided that nothing contained in this sub-section shall affect the power of the appropriate Government to revoke or modify such detention order at any earlier time.

11. Revocation of detention orders.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified—

(a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order under section 3 against the same person.

12. Temporary release of persons detained.—(1) The Central Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or an officer subordinate to that Government or by a State Government or by an officer subordinate to a State Government, may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(1-A) A State Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or by an officer subordinate to that Government may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1) or sub-section (1-A), the Government directing the release may require him to enter into a bond with sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) or sub-section (1-A) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) or sub-section (1-A) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

(6) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.

12-A. Special provisions for dealing with emergency.—(1) Notwithstanding anything contained in this Act or any rules of natural justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of twenty-four months from the 25th day of June, 1975, whichever period is the shortest.

(2) When making an order of detention under this Act against any person after the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975, the Central Government or the State Government or, as the case may be, the officer making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the proclamations referred to in sub-section (1) have been issued (hereafter in this section referred to as the emergency) and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned:

Provided that where such declaration is made by an officer, it shall be reviewed by the appropriate Government within fifteen days from the date of making of the declaration and such declaration shall cease to have effect unless it is confirmed by that Government, after such review, within the said period of fifteen days.

(3) The question whether the detention of any person in respect of whom a declaration has been made under sub-section (2) continues to be necessary for effectively dealing with the emergency shall be reconsidered by the appropriate Government within four months from the date of such declaration and thereafter at intervals not exceeding four months, and if, on such reconsideration, it appears to the appropriate Government that the detention of the person is no longer necessary for effectively dealing with the emergency, the Government may revoke the declaration.

(4) In making any consideration, review or reconsideration under sub-section (2) or (3), the appropriate Government or officer may, if such Government or officer considers it to be against the public interest to do otherwise, act on the basis of the information and materials in its or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned.

(5) It shall not be necessary to disclose to any person detained under a detention order to which the provisions of sub-section (2) apply, the grounds on which the order has been made during the period the declaration made in respect of such person under that sub-section is in force, and accordingly, such period shall not be taken into account for the purposes of sub-section (3) of section 3.

(6) In the case of every person detained under a detention order to which the provisions of sub-section (2) apply, being a person in respect of whom a declaration has been made hereunder, the period during which such declaration is in force shall not be taken into account for the purpose of computing—

(i) the periods specified in clauses (b) and (c) of section 8;

(ii) the periods of “one year” and “five weeks” specified in sub-section (1), the period of “one year” specified in sub-section (2)(i), and the period of “six months” specified in sub-section (3), of section 9.

13. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceedings shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

14. Repeal.—The Maintenance of Internal Security (Amendment) Ordinance, 1974 (11 of 1974) shall, on the commencement of this Act, stand repealed and accordingly the

amendments made in the Maintenance of Internal Security Act, 1971 (20 of 1971) by the said Ordinance shall, on such commencement, cease to have effect.

THE CONTEMPT OF COURTS ACT, 1971

1. Short title and extent.—(1) This Act may be called THE CONTEMPT OF COURTS ACT, 1971.

(2) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.

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

(a) "contempt of Court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

(d) "High Court" means the High Court for a State or a Union territory, and includes the Court of the Judicial Commissioner in any Union territory.

3. Innocent publication and distribution of matter not contempt.—(1) A person shall not be guilty of contempt of Court on the ground that he has published (whether by words, spoken or written or by signs or by visible representations or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of Court.

(3) A person shall not be guilty of contempt of Court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub-section shall not apply in respect of the distribution of—

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.

Explanation.—For the purposes of this section, a judicial proceeding—

(a) is said to be pending—

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law—

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the Court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the Court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

4. Fair and accurate report of judicial proceeding not contempt.—Subject to the provisions contained in section 7, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

5. Fair criticism of judicial act not contempt.—A person shall not be guilty of contempt of Court for publishing any fair comment on the merits of any case which has been heard and finally decided.

6. Complaint against presiding officers of subordinate Courts when not contempt.—A person shall not be guilty of contempt of Court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate Court to—

(a) any other subordinate Court, or

(b) the High Court,

to which it is subordinate.

Explanation.—In this section, “subordinate Court” means any Court subordinate to a High Court.

7. Publication of information relating to proceedings in chambers or in camera not contempt except in certain cases.—(1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceeding before any Court sitting in chambers or in camera except in the following cases, that is to say,—

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

(b) where the Court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;

(c) where the Court sits in chambers or in camera for reasons connected with public order or the security of the State, the publication of information relating to those proceedings;

(d) where the information relates to a secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of Court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a Court sitting in chambers or in camera, unless the Court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

8. Other defences not affected.—Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of Court has ceased to be available merely by reason of the provisions of this Act.

9. Act not to imply enlargement of scope of contempt.—Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of Court which would not be so punishable apart from this Act.

10. Power of High Court to punish contempts of subordinate Courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

11. Power of High Court to try offences committed or offenders found outside jurisdiction.—A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any Court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

12. Punishment for contempt of Court.—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*.

(2) Notwithstanding anything contained in any other law for the time being in force, no Court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a Court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of Court in respect of any undertaking given to a Court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the Court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of Court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the Court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (4) and (5),—

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

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

13. Contempts not punishable in certain cases.—Notwithstanding anything contained in any law for the time being in force,—

(a) no Court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the Court may permit, in any proceeding for contempt of Court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*.

14. Procedure where contempt is in the face of the Supreme Court or a High Court.—(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court:

Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

15. Cognizance of criminal contempt in other cases.—(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General, or

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression “Advocate-General” means—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

16. Contempt by Judge, Magistrate or other person acting judicially.—(1) Subject to the provisions of any law for the time being in force, a Judge, Magistrate or other person acting judicially shall also be liable for contempt of his own Court or of any other Court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

(2) Nothing in this section shall apply to any observations or remarks made by a Judge, Magistrate or other person acting judicially, regarding a subordinate Court in an appeal or revision pending before such Judge, Magistrate or other person against the order or judgment of the subordinate Court.

17. Procedure after cognizance.—(1) Notice of every proceeding under section 15 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied,—

(a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

(b) in case of proceedings commenced on a reference by a subordinate Court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

18. Hearing of cases of criminal contempt to be by Benches.—(1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two Judges.

(2) Sub-section (1) shall not apply to the Court of a Judicial Commissioner.

19. Appeals.—(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days,

from the date of the order appealed against.

20. Limitation for actions for contempt.—No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

21. Act not to apply to Nyaya Panchayats or other village Courts.—Nothing contained in this Act shall apply in relation to contempt of *Nyaya Panchayats* or other village Courts, by whatever name known, for the administration of justice, established under any law.

22. Act to be in addition to, and not in derogation of, other laws relating to contempt.—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law relating to contempt of Courts.

23. Power of Supreme Court and High Courts to make rules.—The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

24. Repeal.—The Contempt of Courts Act, 1952 (32 of 1952), is hereby repealed.

THE COPYRIGHT ACT, 1957
04/06/1957

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE COPYRIGHT ACT, 1957.

(2) It extends to the whole of India.

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

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

(a) “adaptation” means,—

(i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;

(ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

(iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; [* * *]

(iv) in relation to a musical work, any arrangement or transcription of the work; and

(v) in relation to any work, any use of such work involving its re-arrangement or alteration;

(b) “work of architecture” means any building or structure having an artistic character or design, or any model for such building or structure;

(c) “artistic work” means,—

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

(ii) an work of architecture; and

(iii) any other work of artistic craftsmanship;

(d) “author” means,—

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;

(dd) “broadcast” means communication to the public—

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire,

and includes a re-broadcast;

(e) “calendar year” means the year commencing on the 1st day of January;

(f) “cinematograph film” means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films;

(ff) “communication to the public” means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

(ffa) “composer”, in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(ffb) “computer” includes any electronic or similar device having information processing capabilities;

(ffc) “computer programme” means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result;

(ffd) “copyright society” means a society registered under sub-section (3) of section 33;

(g) “delivery ”, in relation to a lecture, includes delivery by means of any mechanical instrument or by broadcast;

(h) “dramatic work” includes any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film;

(hh) “duplicating equipment” means any mechanical contrivance or device used or intended to be used for making copies of any work;

(i) “engravings” include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs;

(j) “exclusive licence” means a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright), any right comprised in the copyright in a work, and “exclusive licensee” shall be construed accordingly;

(k) “Government work” means a work which is made or published by or under the direction or control of—

(i) the Government or any department of the Government;

(ii) any Legislature in India;

(iii) any Court, Tribunal or other judicial authority in India;

(l) “Indian work” means a literary, dramatic or musical work,—

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work, is, at the time of the making of the work, a citizen of India;

(m) “infringing copy” means,—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematograph film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer’s right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

(n) “lecture” includes address, speech and sermon;

(o) “literary work” includes computer programmes, tables and compilations including computer databases;

(p) “musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;

(q) “performance”, in relation to performer’s right, means any visual or acoustic presentation made live by one or more performers;

(qq) "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;

[***]

(s) "photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;

(t) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, duplicating equipment or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which sound recording for the acoustic presentation of the work are or are intended to be made;

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

(uu) "producer", in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;

[***]

[***]

(x) "reprography" means the making of copies of a work, by photocopying or similar means;

(xx) "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;

(y) "work" means any of the following works, namely:—

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a sound recording;

(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

(z-a) "work of sculpture" includes casts and models.

CHAPTER XI

INFRINGEMENT OF COPYRIGHT

51. When copyright infringed.—Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports [* * *] into India,

any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation.—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

52. Certain acts not to be infringement of copyright.—(1) The following acts shall not constitute an infringement of copyright, namely:—

(a) a fair dealing with a literary, dramatic, musical or artistic work not being a computer programme, for the purposes of—

(i) private use, including research;

(ii) criticism or review, whether of that work or of any other work;

(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy—

(i) in order to utilise the computer programme for the purpose for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;

(ab) the doing of any act necessary to obtain information essential for operating interoperability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;

(b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events—

(i) in a newspaper, magazine or similar periodical, or

(ii) by broadcast or in a cinematograph film or by means of photographs.

Explanation.—The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause;

(c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(d) the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;

(e) the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;

(f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;

(g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.—In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(h) the reproduction of a literary, dramatic, musical or artistic work—

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions;

(i) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a

cinematograph film or a sound recording, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;

(j) the making of sound recording in respect of any literary, dramatic or musical work, if—

(i) sound recording of that work have been made by or with the licence or consent of the owner of the right in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that—

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie* satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

(k) the causing of a recording to be heard in public by utilising it,—

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

(n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India;

(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work

of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of—

(i) any matter which has been published in any Official Gazette except an Act of a Legislature;

(ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

(iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;

(iv) any judgment or order of a Court, Tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the Court, the Tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made hereunder—

(i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or

(ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

(s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2, if such work is permanently situate in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of—

(i) any artistic work permanently situate in a public place or any premises to which the public has access; or

(ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;

(v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work:

Provided that he does not thereby repeat or imitate the main design of the work;

[* * *]

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(y) in relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein:

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment—

(i) identifying the work by its title or other description; and

(ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made, also identifying the author;

(z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony of an official ceremony held by the Central Government or the State Government or any local authority.

Explanation.—For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

52-A. Particulars to be included in sound recording and video films.—(1) No person shall publish a sound recording in respect of any work unless the following particulars are displayed on the sound recording and on any container thereof, namely:—

- (a) the name and address of the person who has made the sound recording;
- (b) the name and address of the owner of the copyright in such work; and
- (c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:—

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board of Film Certification under section 5-A of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and

(c) the name and address of the owner of the copyright in such work.

52-B. Accounts and audit.—(1) Every copyright society appointed under section 34-A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

53. Importation of infringing copies.—(1) The Registrar of Copyrights, on application by the owner of the copyright in any work or by his duly authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported.

(2) Subject to any rules made under this Act, the Registrar of Copyrights or any person authorised by him in this behalf may enter any ship, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.

(3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the import has been prohibited or restricted under section 11 of the Customs Act, 1962 (51 of 1962), and all the provisions of that Act shall have effect accordingly:

Provided that all such copies confiscated under the provisions of the said Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

53-A. Resale share right in original copies.—(1) In the case of resale for a price exceeding ten thousand rupees, to the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub-section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final:

Provided that the Copyright Board may fix different shares for different classes of work:

Provided further that in no case shall the share exceed ten per cent. of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.

CHAPTER XIII

OFFENCES

63. Offence of infringement of copyright or other rights conferred by this Act.—Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act except the right conferred by section 53-A,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

63-A. Enhanced penalty on second and subsequent convictions.—Whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984 (68 of 1984).

63-B. Knowing use of infringing copy of computer programme to be an offence.—Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the Court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.

64. Power of police to seize infringing copies.—(1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of

the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.

(2) Any person having an interest in any copies of a work or plates seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

65. Possession of plates for purpose of making infringing copies.—Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

66. Disposal of infringing copies or plates for purpose of making infringing copies.—The Court trying any offence under this Act may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be delivered up to the owner of the copyright.

67. Penalty for making false entries in register, etc., for producing or tendering false entries.—Any person who,—

(a) makes or causes to be made a false entry in the Register of Copyrights kept under this Act, or

(b) makes or causes to be made a writing falsely purporting to be a copy of any entry in such register, or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false,

shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.—Any person who,—

(a) with a view to deceiving any authority or officer in the execution of the provisions of this Act, or

(b) with a view to procuring or influencing the doing or omission of anything in relation to this Act or any matter hereunder,

makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

68-A. Penalty for contravention of section 52-A.—Any person who publishes a sound recording or a video film in contravention of the provisions of section 52-A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.

69. Offences by companies.—(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.—For the purposes of this section—

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

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

70. Cognizance of offences.—No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

CHAPTER XIV

APPEALS

71. Appeals against certain orders of Magistrate.—Any person aggrieved by an order made under sub-section (2) of section 64 or section 66 may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie, and such appellate Court may direct that execution of the order be stayed pending disposal of the appeal.

72. Appeals against orders of Registrar of Copyrights and Copyright Board.—
(1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board.

(2) Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in an appeal under sub-section (1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain:

Provided that no such appeal shall lie against a decision of the Copyright Board under section 6.

(3) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

73. Procedure for appeals.—The High Court may make rules consistent with this Act as to the procedure to be followed in respect of appeals made to it under section 72.

THE CUSTOMS ACT, 1962

13/12/1962

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE CUSTOMS ACT, 1962.

(2) It extends to the whole of India.

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

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

(1) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal;

(1-A) "aircraft" has the same meaning as in the Aircraft Act, 1934 (22 of 1934);

(1-B) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129;

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(4) "bill of entry" means a bill of entry referred to in section 46;

(5) "bill of export" means a bill of export referred to in section 50;

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

(7) "coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another;

(7-A) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Customs (Appeals) under sub-section (1) of section 4;

(8) "Commissioner of Customs", except for the purposes of Chapter XV, includes an Additional Commissioner of Customs;

(9) "conveyance" includes a vessel, an aircraft and a vehicle;

(10) "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport;

(11) "customs area" means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

(12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot;

(13) "customs station" means any customs port, customs airport or land customs station;

(14) "dutyable goods" means any goods which are chargeable to duty and on which duty has not been paid;

(15) "duty" means a duty of customs leviable under this Act;

(16) "entry", in relation to goods, means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84;

(17) "examination", in relation to any goods, includes measurement and weighment thereof;

(18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(19) "export goods" means any goods which are to be taken out of India to a place outside India;

(20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter;

(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes—

(i) any naval vessel of a foreign Government taking part in any naval exercises;

(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

(21-A) "Fund" means the Consumer Welfare Fund established under section 12-C of the Central Excises and Salt Act, 1944 (1 of 1944)*;

(22) "goods" includes—

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property;

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(24) "import manifest" or "import report" means the manifest or report required to be delivered under section 30;

(25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;

(27) "India" includes the territorial waters of India;

(28) "Indian customs waters" means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river;

(29) "land customs station" means any place appointed under clause (b) of section 7 to be a land customs station;

(30) "market price", in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;

(30-A) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005;

(31) "person-in-charge" means,—

(a) in relation to a vessel, the master of the vessel;

(b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;

(32) "prescribed" means prescribed by regulations made under this Act;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;

(35) "regulations" means the regulations made by the Board under any provision of this Act;

(36) "rules" means the rules made by the Central Government under any provision of this Act;

(37) "shipping bill" means a shipping bill referred to in section 50;

(38) "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

(40) "tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;

(42) "vehicle" means conveyance of any kind used on land and includes a railway vehicle;

(43) "warehouse" means a public warehouse appointed under section 57 or a private warehouse licensed under section 58;

(44) "warehoused goods" means goods deposited in a warehouse;

(45) "warehousing station" means a place declared as a warehousing station under section 9.

CHAPTER IV

PROHIBITIONS ON IMPORTATION AND EXPORTATION OF GOODS

11. Power to prohibit importation or exportation of goods.—(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:—

(a) the maintenance of the security of India;

- (b) the maintenance of public order and standards of decency or morality;
- (c) the prevention of smuggling;
- (d) the prevention of shortage of goods of any description;
- (e) the conservation of foreign exchange and the safeguarding of balance of payments;
- (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- (g) the prevention of surplus of any agricultural product or the product of fisheries;
- (h) the maintenance of standards for the classification, grading or marketing of goods in international trade;
- (i) the establishment of any industry;
- (j) the prevention of serious injury to domestic production of goods of any description;
- (k) the protection of human, animal or plant life or health;
- (l) the protection of national treasures of artistic, historic or archaeological value;
- (m) the conservation of exhaustible natural resources;
- (n) the protection of patents, trade marks and copyrights;
- (o) the prevention of deceptive practices;
- (p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;
- (q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
- (r) the implementation of any treaty, agreement or convention with any country;
- (s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;
- (t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;
- (u) the prevention of the contravention of any law for the time being in force; and
- (v) any other purpose conducive to the interests of the general public.

CHAPTER IV-A

DETECTION OF ILLEGALLY IMPORTED GOODS AND PREVENTION OF THE DISPOSAL THEREOF

11-A. Definitions.—In this Chapter, unless the context otherwise requires,—

- (a) “illegal import” means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;
- (b) “intimated place” means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11-C;
- (c) “notified date”, in relation to goods of any description, means the date on which the notification in relation to such goods is issued under section 11-B;
- (d) “notified goods” means goods specified in the notification issued under section 11-B.

11-B. Power of Central Government to notify goods.—If, having regard to the magnitude of the illegal import of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal import, circulation or disposal of such goods, or facilitating the detection of such goods, it may, by notification in the Official Gazette, specify goods of such class or description.

11-C. Persons possessing notified goods to intimate the place of storage, etc.—(1) Every person who owns, possesses or controls, on the notified date, any notified goods, shall, within seven days from that date, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) in relation to the notified goods owned, possessed or controlled by him and the place where such goods are kept or stored.

(2) Every person who acquires, after the notified date, any notified goods, shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition and shall, immediately on such acquisition, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) in relation to the notified goods acquired by him:

Provided that a person who has delivered a statement, whether under sub-section (1) or sub-section (2), in relation to any notified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further statement in relation to any notified goods acquired by him, after the date of delivery of the said statement, so long as the notified goods so acquired are kept or stored at the intimated place.

(3) If any person intends to shift any notified goods to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(4) No person shall, after the expiry of seven days from the notified date, keep or store any notified goods at any place other than the intimated place.

(5) Where any notified goods have been sold or transferred, such goods shall not be taken from one place to another unless they are accompanied by the voucher referred to in section 11-F.

(6) No notified goods (other than those which have been sold or transferred) shall be taken from one place to another unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by rules made in this behalf) prepared by the persons owning, possessing or controlling such goods.

11-D. Precautions to be taken by persons acquiring notified goods.—No person shall acquire (except by gift or succession, from any other individual in India), after the notified date, any notified goods—

(i) unless such goods are accompanied by,—

(a) the voucher referred to in section 11-F or the memorandum referred to in sub-section (2) of section 11-G, as the case may be, or

(b) in the case of a person who has himself imported any goods, any evidence showing clearance of such goods by the Customs Authorities; and

(ii) unless he has taken, before acquiring such goods from a person other than a dealer having a fixed place of business, such reasonable steps as may be specified by rules made in this behalf, to ensure that the goods so acquired by him are not goods which have been illegally imported.

11-E. Persons possessing notified goods to maintain accounts.—(1) Every person who, on or after the notified date, owns, possesses, controls or acquires any notified goods shall maintain (in such form and in such manner as may be specified by rules made in this behalf) a true and complete account of such goods and shall, as often as he acquires or parts with any notified goods, make an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the person from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the notified goods to which such accounts relate:

Provided that it shall not be necessary to maintain separately accounts in the form and manner specified by rules made in this behalf in the case of a person who is already maintaining accounts which contain the particulars specified by the said rules.

(2) Every person who owns, possesses or controls any notified goods and who uses any such goods for the manufacture of any other goods, shall maintain (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) a true and complete account of the notified goods so used by him and shall keep such account at the intimated place.

11-F. Sale, etc., of notified goods to be evidenced by vouchers.—On and from the notified date, no person shall sell or otherwise transfer any notified goods, unless every

transaction in relation to the sale or transfer of such goods is evidenced by a voucher in such form and containing such particulars as may be specified by rules made in this behalf.

11-G. Sections 11-C, 11-E and 11-F not to apply to goods in personal use.—

(1) Nothing in sections, 11-C, 11-E and 11-F shall apply to any notified goods which are—

- (a) in personal use of the person by whom they are owned, possessed or controlled, or
- (b) kept in the residential premises of a person for his personal use.

(2) If any person, who is in possession of any notified goods referred to in sub-section (1), sells, or otherwise transfers for a valuable consideration, any such goods, he shall issue to the purchaser or transferee, as the case may be, a memorandum containing such particulars as may be specified by rules made in this behalf and no such goods shall be taken from one place to another unless they are accompanied by the said memorandum.

CHAPTER IV-B

PREVENTION OR DETECTION OF ILLEGAL EXPORT OF GOODS

11-H. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “illegal export” means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;

(b) “intimated place” means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11-J;

(c) “specified area” includes the Indian customs waters, and such inland area, not exceeding one hundred kilometres in width from any coast or other border of India, as the Central Government may, having regard to the vulnerability of that area to smuggling, by notification in the Official Gazette, specify in this behalf:

Provided that where a part of any village, town or city falls within a specified area, the whole of such village, town or city shall, notwithstanding that the whole of it is not within one hundred kilometres from any coast or other border of India, be deemed to be included in such specified area;

(d) “specified date”, in relation to specified goods, means the date on which any notification is issued under section 11-I in relation to those goods in any specified area;

(e) “specified goods” means goods of any description specified in the notification issued under section 11-I in relation to a specified area.

11-I. Power of Central Government to specify goods.—If, having regard to the magnitude of the illegal export of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal export or facilitating the detection of goods which are likely to be illegally exported, it may, by notification in the Official Gazette, specify goods of such class or description.

11-J. Persons possessing specified goods to intimate the place of storage, etc.—

(1) Every person who owns, possesses or controls, on the specified date, any specified goods, the market price of which exceeds fifteen thousand rupees shall, within seven days from that date, deliver to the proper officer an intimation containing the particulars of the place where such goods are kept or stored within the specified area.

(2) Every person who acquires (within the specified area), after the specified date, any specified goods,—

(i) the market price of which, or

(ii) the market price of which together with the market price of any specified goods of the same class or description, if any, owned, possessed or controlled by him on the date of such acquisition,

exceeds fifteen thousand rupees, shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition:

Provided that a person who has delivered an intimation, whether under sub-section (1) or sub-section (2), in relation to any specified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further intimation so long as the specified goods are kept or stored at the intimated place.

(3) If any person intends to shift any specified goods to which sub-section (1) or sub-section (2) applies, to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(4) No person shall, after the expiry of seven days from the specified date, keep or store any specified goods to which sub-section (1) or sub-section (2) applies, at any place other than the intimated place.

11-K. Transport of specified goods to be covered by vouchers.—(1) No specified goods shall be transported from, into or within any specified area or loaded on any animal or conveyance in such area, unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by rules made in this behalf) prepared by the person owning, possessing, controlling or selling such goods:

Provided that no transport voucher shall be necessary for the transport, within a village, town or city, of any specified goods the market price of which, on the date of transport, does not exceed one thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), where the Central Government, after considering the nature of any specified goods, the time, mode, route and the market price of the goods intended to be transported, the purpose of the transportation and the vulnerability of the specified area with regard to the illegal export of such goods, is satisfied that it is expedient in the public interest so to do, it may,—

(i) by notification in the Official Gazette, specify goods of such class or description and of a market price exceeding such sum as that Government may notify; and different sums in relation to the specified goods of the same class or description, or different classes or descriptions, may be notified for the same specified area or for different specified areas, and

(ii) direct that no person shall transport any goods so specified unless the transport voucher in relation to them has been countersigned by the proper officer.

11-L. Persons possessing specified goods to maintain accounts.—(1) Every person who, on or after the specified date, owns, possesses or controls, within a specified area, any specified goods of a market price exceeding fifteen thousand rupees, shall maintain (in such form and in such manner as may be specified by rules made in this behalf) a true and complete account of such goods and shall, as often as he acquires or parts with any specified goods, make an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the person from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the specified goods to which such accounts relate:

Provided that it shall not be necessary to maintain separately accounts in the form and manner specified by rules made in this behalf in the case of a person who is already maintaining accounts which contain the particulars specified by the said rules.

(2) Every person who owns, possesses or controls any specified goods to which the provisions of sub-section (1) apply, and who uses any such goods for the manufacture of any other goods, shall maintain (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) a true and complete account of the specified goods so used by him and shall keep such account at the intimated place.

(3) If at any time, on a verification made by a proper officer, it is found that any specified goods owned, possessed or controlled by a person are lesser in quantity than the stock of such goods as shown, at the time of such verification, in the accounts referred to in sub-section (1), read with the accounts referred to in sub-section (2), it shall be presumed, unless the contrary is proved, that such goods, to the extent that they are lesser than the stock shown in the said accounts, have been illegally exported and that the person owning, possessing or controlling such goods has been concerned with the illegal export thereof.

11-M. Steps to be taken by persons selling or transferring any specified goods.— Except where he receives payment by cheque drawn by the purchaser, every person who sells or otherwise transfers within any specified area, any specified goods, shall obtain, on his copy of the sale or transfer voucher, the signature and full postal address of the person to whom such sale or transfer is made and shall also take such other reasonable steps as may be specified by rules made in this behalf to satisfy himself as to the identity of the purchaser or

the transferee, as the case may be, and if after an inquiry made by a proper officer, it is found that the purchaser or the transferee, as the case may be, is not either readily traceable or is a fictitious person, it shall be presumed, unless the contrary is proved, that such goods have been illegally exported and the person who had sold or otherwise transferred such goods had been concerned in such illegal export:

Provided that nothing in this section shall apply to petty sales of any specified goods if the aggregate market price obtained by such petty sales, made in the course of a day, does not exceed two thousand and five hundred rupees.

Explanation.—In this section “petty sale” means a sale at a price which does not exceed one thousand rupees.

CHAPTER XIII SEARCHES, SEIZURE AND ARREST

100. Power to search suspected persons entering or leaving India, etc.—(1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

(2) This section applies to the following persons, namely:—

(a) any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;

(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

(c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area.

101. Power to search suspected persons in certain other cases.—(1) Without prejudice to the provisions of section 100, if an officer of customs empowered in this behalf by general or special order of the Commissioner of Customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

(2) The goods referred to in sub-section (1) are the following:—

(a) gold;

(b) diamonds;

(c) manufactures of gold or diamonds;

(d) watches;

(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

102. Persons to be searched may require to be taken before Gazetted Officer of customs or magistrate.—(1) When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of customs or magistrate.

(2) If such requisition is made, the officer of customs may detain the person making it until he can bring him before the Gazetted Officer of customs or the magistrate.

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

(4) Before making a search under the provisions of section 100 or section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.

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

103. Power to screen or X-ray bodies of suspected persons for detecting secreted goods.—(1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate.

(2) A magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

(3) Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

(4) Where a magistrate has made any order under sub-section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.

(5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay.

(6) Where on receipt of a report from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction:

Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

(7) Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

(8) Nothing in this section shall apply to any person referred to in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

Explanation.—For the purposes of this section, the expression “registered medical practitioner” means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956).

104. Power to arrest.—(1) If an officer of Customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135-A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act shall not be cognizable.

105. Power to search premises.—(1) If the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any

place, he may authorize any officer of customs to search or may himself search for such goods, documents or things.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words Commissioner of Customs were substituted.

106. Power to stop and search conveyances.—(1) Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and—

- (a) rummage and search any part of the aircraft, vehicle or vessel;
- (b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- (c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

(2) Where for the purposes of sub-section (1)—

(a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;

(b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

106-A. Power to inspect.—Any proper officer authorised in this behalf by the Commissioner of Customs may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IV-A or Chapter IV-B, as the case may be, and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for his inspection the accounts maintained under the said Chapter IV-A or Chapter IV-B, as the case may be, and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported.

107. Power to examine persons.—Any officer of customs empowered in this behalf by general or special order of the Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods,—

- (a) require any person to produce or deliver any document or thing relevant to the enquiry;
- (b) examine any person acquainted with the facts and circumstances of the case.

108. Power to summon persons to give evidence and produce documents.—(1) Any Gazetted Officer of Customs [* * *] shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.

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

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

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

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

109. Power to require production of order permitting clearance of goods imported by land.—Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods:

Provided that nothing in this section shall apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

110. Seizure of goods, documents and things.—(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(1-A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1-B) Where any goods, being goods specified under sub-section (1-A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1-C) Where an application is made under sub-section (1-B), the Magistrate shall, as soon as may be, allow the application.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts there from in the presence of an officer of customs.

110-A. Provisional release of goods, documents and things seized pending adjudication.—Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.

CHAPTER XIV

CONFISCATION OF GOODS AND CONVEYANCES AND IMPOSITION OF PENALTIES

111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p) any notified goods in relation to which any provisions of Chapter IV-A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

112. Penalty for improper importation of goods, etc.—Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereinafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

113. Confiscation of goods attempted to be improperly exported, etc.—The following export goods shall be liable to confiscation:—

(a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;

(b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods;

(c) any [* * *] goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any [* * *] goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any [* * *] goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any [* * *] goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

(h) any [* * *] goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

(ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;

(j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;

(k) any goods cleared for exportation [* * *] which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;

(l) any specified goods in relation to which any provisions of Chapter IV-B or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

114. Penalty for attempt to export goods improperly, etc.—Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

114-A. Penalty for short-levy or non-levy of duty in certain cases.—Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28-AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28-AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation.—For the removal of doubts, it is hereby declared that—

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

114-AA. Penalty for use of false and incorrect material.—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

115. Confiscation of conveyances.—(1) The following conveyances shall be liable to confiscation:—

(a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;

(b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause;

(d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal [* * *]:

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market-price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

Explanation.—In this section, “market-price” means market-price at the date when the goods are seized.

116. Penalty for not accounting for goods.—If any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable,—

(a) in the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act, to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;

(b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

117. Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

118. Confiscation of packages and their contents.—(a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.

(b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.

119. Confiscation of goods used for concealing smuggled goods.—Any goods used for concealing smuggled goods shall also be liable to confiscation.

Explanation.—In this section, “goods” does not include a conveyance used as a means of transport.

120. Confiscation of smuggled goods notwithstanding any change in form, etc.—(1) Smuggled goods may be confiscated notwithstanding any change in their form.

(2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation:

Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation.

121. Confiscation of sale-proceeds of smuggled goods.—Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

122. Adjudication of confiscations and penalties.—In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged,—

(a) without limit, by a Commissioner of Customs or a Deputy Commissioner of Customs;

(b) where the value of the goods liable to confiscation does not exceed two lakh rupees, by an Assistant Commissioner of Customs or Deputy Commissioner of Customs;

(c) where the value of the goods liable to confiscation does not exceed ten thousand rupees, by a Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs.

122-A. Adjudication procedure.—(1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.

123. Burden of proof in certain cases.—(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—

(a) in a case where such seizure is made from the possession of any person,—

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of a Deputy Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.

126. On confiscation, property to vest in Central Government.—(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.

127. Award of confiscation or penalty by customs officers not to interfere with other punishments.—The award of any confiscation or penalty under this Act by an officer of customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI of this Act or under any other law.

CHAPTER XV

APPEALS AND REVISION

128. Appeals to Commissioner (Appeals).—(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1-A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

128-A. Procedure in appeal.—(1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard if he so desires.

(2) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against:

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Commissioner (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 28 to show cause against the proposed order.

(4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(4-A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.

(5) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority, the Chief Commissioner of Customs and the Commissioner of Customs.

129. Appellate Tribunal.—(1) The Central Government shall constitute an Appellate Tribunal to be called the 'Customs, Excise and Service Tax' Appellate Tribunal consisting of as

many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

Explanations.—For the purposes of this sub-section,—

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2-A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

(3) The Central Government shall appoint—

(a) a person who is or has been a Judge of a High Court; or

(b) one of the members of the Appellate Tribunal,

to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.

[* * *]

(5) A Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

(6) On ceasing to hold office, the President, Vice-President or other Member shall not be entitled to appear, act or plead before the Appellate Tribunal.

129-A. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under section 128-A;

(c) an order passed by the Board or the Appellate Commissioner of Customs under section 128, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under section 130, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made hereunder:

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

(ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of

assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty determined by such order, does not exceed fifty thousand rupees.

(1-A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 40 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central Government shall deal with such appeal or matter under section 129-DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(1-B)(i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Act.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Customs or two Commissioners of Customs, as the case may be.

(2) The Committee of Commissioners of Customs may, if it is of opinion that an order passed by the Appellate Commissioner of Customs under section 128, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under section 128-A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

Explanation.—For the purposes of this sub-section, “jurisdictional Chief Commissioner” means the Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Customs, or as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than five lakh rupees, but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,
shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Customs under this sub-section.

129-B. Orders of Appellate Tribunal.—(1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(1-A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(2-A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 129-A, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Customs and the other party to the appeal.

(4) Save as otherwise provided in section 130 or section 130-E, orders passed by the Appellate Tribunal on appeal shall be final.

129-C. Procedure of Appellate Tribunal.—(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in sub-section (4), a Bench shall consist of one judicial member and one technical member.

[* * *]

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where—

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine or penalty involved,
does not exceed ten lakh rupees.

(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its power or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath ;
- (c) compelling the production of books of accounts and other documents; and
- (d) issuing commissions.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

129-D. Powers of Committee of Chief Commissioners of Customs or Commissioner of Customs to pass certain orders.—(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

Provided that where the Committee of Chief Commissioners of Customs differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Customs, it shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the decision or order passed by the Commissioner of Customs, if it is of the opinion that the decision or order passed by the Commissioner of Customs is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.

(2) The Commissioner of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any officer of Customs subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.

(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Commissioner of Customs, makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 129-A shall, so far as may be, apply to such application.

(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation.—For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question—

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 (51 of 1975), or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.

129-DA. Powers of revision of Board or Commissioner of Customs in certain cases.—(1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Commissioner of Customs has passed any decision or order [not being a decision or order passed under sub-section (2) of this section of the nature referred to in sub-section (5) of section 129-D for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

(2) The Commissioner of Customs may, of his own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of section 129-D for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3)(a) No decision or order under this section shall be made so as to pre-judicially affect any person unless such person is given a reasonable opportunity of making representation and if, he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Commissioner of Customs is of the opinion that any duty has not been levied or has been short-levied or short-paid or erroneously refunded, no order requiring the affected person to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed under this section unless such person is given notice within the time limit specified in section 28 to show cause against the proposed order.

(4) No proceedings shall be initiated under sub-section (1) or sub-section (2) in respect of any decision or order after the expiry of a period of six months from the date of communication of such decision or order:

Provided that in respect of any decision or order passed before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1988, the provisions of this sub-section shall have effect as if for the words “six months”, the words “one year” were substituted.

(5) Any person aggrieved by any decision or order passed under sub-section (1) or sub-section (2) may appeal to the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986), against such decision or order.

129-DD. Revision by Central Government.—(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128-A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129-A, annul or modify such order:

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

Explanation.—For the purposes of this sub-section, “order passed under section 128-A” includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1-A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128-A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of,—

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees:

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1-A).

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,—

(a) in any case in which an order passed under section 128-A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28.

129-E. Deposit, pending appeal, of duty and interest demanded or penalty levied.—Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or the penalty levied:

Provided that where in any particular case, the Commissioner (Appeals), or the Appellate Tribunal is of opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first

proviso, the Commissioner (Appeals) shall, where it is possible to do so decide such application within thirty days from the date of its filing.

129-EE. Interest on delayed refund of amount deposited under the proviso to section 129-E.—Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as appellate authority), under the first proviso to section 129-E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior Court or tribunal, there shall be paid to the appellant interest at the rate specified in section 27-A after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

130. Appeal to High Court.—*[Omitted by the National Tax Tribunal Act, 2005 (49 of 2005), section 30 and Schedule, Part VI (w.e.f. 28-12-2005).]*

130-A. Application to High Court.—*[Omitted by the National Tax Tribunal Act, 2005 (49 of 2005), section 30 and Schedule, Part VI (w.e.f. 28-12-2005).]*

130-B. Power of High Court or Supreme Court to require statement to be amended.—*[Omitted by the National Tax Tribunal Act, 2005 (49 of 2005), section 30 and Schedule, Part VI (w.e.f. 28-12-2005).]*

130-C. Case before High Court to be heard by not less than two judges.—*[Omitted by the National Tax Tribunal Act, 2005 (49 of 2005), section 30 and Schedule, Part VI (w.e.f. 28-12-2005).]*

130-D. Decision of High Court or Supreme Court on the case stated.—*[Omitted by the National Tax Tribunal Act, 2005 (49 of 2005), section 30 and Schedule, Part VI (w.e.f. 28-12-2005).]*

130-E. Appeal to Supreme Court.—An appeal shall lie to the Supreme Court from—

- (a) any judgment of the High Court delivered—
 - (i) in an appeal made under section 130; or
 - (ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;
 - (iii) on a reference made under section 130-A,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.

130-F. Hearing before Supreme Court.—(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 130-E as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 130-D or section 131.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 130-D in the case of a judgment of the High Court.

131. Sums due to be paid notwithstanding reference, etc.—Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005 (49 of 2005) sums due to the Government as a result of an order passed under sub-section (1) of section 129-B shall be payable in accordance with the order so passed.

131-A. Exclusion of time taken for copy.—In computing the period of limitation specified for an appeal or application under this Chapter, the day on which the order

complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

131-B. Transfer of certain pending proceedings and transitional provisions.—

(1) Every appeal which is pending immediately before the appointed day before the Board under section 128, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

(2) Every proceeding which is pending immediately before the appointed day before the Central Government under section 131, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it:

Provided that if any such proceeding or matter relates to an order where—

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 131 had not been substituted:

Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Customs under section 130, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Customs, as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in section 146-A, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

131-C. Definitions.—In this Chapter—

(a) “appointed day” means the date of coming into force of the amendments to this Act specified in Part I of the Fifth Schedule to the Finance (No. 2) Act, 1980 (44 of 1980);

[* * *]

(c) “President” means the President of the Appellate Tribunal.

CHAPTER XVI

OFFENCES AND PROSECUTIONS

132. False declaration, false documents, etc.—Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

133. Obstruction of officer of customs.—If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

134. Refusal to be X-rayed.—If any person—

(a) resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a Magistrate under section 103, or

(b) resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in section 103,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

135. Evasion of duty or prohibitions.—(1) Without prejudice to any action that may be taken under this Act, if any person—

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods, he shall be punishable, —

(i) in the case of an offence relating to,—

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds thirty lakh of rupees,

with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for less than one year.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.

135-A. Preparation.—If a person makes preparation to export any goods in contravention of the provisions of this Act, and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

135-B. Power of Court to publish name, place of business, etc., of persons convicted under the Act.—(1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspaper or in such manner as the Court may direct.

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

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

136. Offences by officers of customs.—(1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing, whereby any fraudulent export is effected or any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any officer of customs,—

(a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or document secreted about his person; or

(b) arrests any person without having reason to believe that he has been guilty of an offence punishable under section 135; or

(c) searches or authorizes any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in section 105 are secreted in that place,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

137. Cognizance of offences.—(1) No Court shall take cognizance of any offence under section 132, section 133, section 134 or section 135 or section 135-A, except with the previous sanction of the Commissioner of Customs.

(2) No Court shall take cognizance of any offence under section 136,—

(a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs, except with the previous sanction of the Central Government;

(b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant Commissioner of Customs, except with the previous sanction of the Commissioner of Customs.

(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be specified by rules:

Provided that nothing contained in this sub-section shall apply to—

(a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135-A;

(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:—

(i) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(ii) the Chemical Weapons Convention Act, 2000 (34 of 2000);

(iii) the Arms Act, 1959 (54 of 1959);

(iv) the Wild Life (Protection) Act, 1972 (53 of 1972);

(c) a person involved in smuggling of goods falling under any of the following, namely:—

(i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(e) a person who has been convicted under this Act on or after the 30th day of December, 2005.

138. Offences to be tried summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Chapter other than an offence punishable under clause (i) of sub-section (1) of section 135 or under sub-section (2) of that section may be tried summarily by a Magistrate.

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

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

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

138-B. Relevancy of statements under certain circumstances.—(1) A statement made and signed by a person before any Gazetted Officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

138-C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.—(1) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a “computer print out”), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made hereunder and shall be admissible in any proceedings hereunder, without further proof or

production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made hereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section,—

(a) "computer" means any device that receives, stores, and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

139. Presumption as to documents in certain cases.—Where any document—

(i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act, and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

Explanation.—For the purposes of this section, "document" includes inventories, photographs and lists certified by a Magistrate under sub-section (1-C) of section 110.

140. Offences by companies.—(1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter 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 negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

140-A. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.—(1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 135.

CHAPTER XVII

MISCELLANEOUS

141. Conveyances and goods in a customs area subject to control of officers of customs.—(1) All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.

(2) The imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.

142. Recovery of sums due to Government.—(1) Where any sum payable by any person under this Act including the amount required to be paid to the credit of the Central Government under section 28-B is not paid,—

(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or

(b) the Assistant Commissioner of Customs or Deputy Commissioner of Customs may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Commissioner of Customs or Deputy Commissioner of Customs or such other officer of customs; or

(c) if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b)—

(i) the Assistant Commissioner of Customs or Deputy Commissioner of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified hereunder as if it were an arrear of land revenue; or

(ii) the proper officer may, on an authorization by Commissioner of Customs and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus, if any, to such person.

Provided that where the person (hereinafter referred to as predecessor), by whom any sum payable under this Act including the amount required to be paid to the credit of the Central Government under section 28-B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the Commissioner of Customs, for the purposes of recovering the amount so payable by such predecessor at the time of such transfer, or otherwise disposal or change.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made hereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

143. Power to allow import or export on execution of bonds in certain cases.—

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

143-A. Duty deferment.—(1) When any material is imported under an import licence belonging to the category of Advance Licence granted under the Imports and Exports (Control) Act, 1947 (18 of 1947), subject to an obligation to export the goods as are specified in the said Licence within the period specified therein, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act, permit clearance of such material without payment of duty leviable thereon.

(2) The permission for clearance without payment of duty under sub-section (1) shall be subject to the following conditions, that is to say—

(a) the duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act or under any other law for the time being in force on the export of goods specified in the said Advance Licence; and

(b) where the duty is not so adjusted either for the reason that the goods are not exported within the period specified in the said Advance Licence, or within such extended period not exceeding six months as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, on sufficient cause being shown, allow, or for any other sufficient reason, the importer shall, notwithstanding anything contained in section 28, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent. per annum from the date the said permission for clearance is given to the date of payment.

(3) While permitting clearance under sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may require the importer to execute a bond with such surety or security as he thinks fit for complying with the conditions specified in sub-section (2).

144. Power to take samples.—(1) The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

(2) After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within three months of the date on which the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.

THE DANGEROUS MACHINES (REGULATION) ACT, 1983

14/12/1983

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE DANGEROUS MACHINES (REGULATION) ACT, 1983.

(2) It extends to the whole of India.

(3) This section and clause (c) of section 3 shall come into force at once in all the States and the remaining provisions of this Act shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act; and any reference in any provision of this Act to the commencement of this Act shall in relation to any State be construed as a reference to the commencement of that provision in that State.

2. Declaration as to expediency of control by Union.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries engaged in the manufacture or production of power threshers or any other machines which are intended to be used in the agricultural or rural sector and which are of such nature that any accident in the course of operation thereof may cause its operator death, dismemberment of any limb or other bodily injury.

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

(a) “child” means a person who has not completed his fourteenth year of age;

(b) “Controller” means the person appointed by the State Government to give effect to the provisions of this Act, and includes every Additional, Deputy or Assistant Controller who may be authorised by the Controller under sub-section (3) of section 5 to exercise any power under this Act;

(c) “dangerous machine” means a power thresher, and includes any such machine intended to be used in the agricultural or rural sector as the Central Government, being of opinion that it is of such a nature that any accident in the course of operation thereof is likely to cause to its operator death, dismemberment of any limb or other bodily injury, may, by notification in the Official Gazette, specify as dangerous machine;

(d) “day” means a period of twenty-four hours beginning at midnight;

(e) “dealer”, in relation to any dangerous machine or any part thereof, means a person who, or a firm or a Hindu undivided family which, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any dangerous machine or any part thereof, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes—

(i) a commission agent who carries on such business on behalf of any principal;

(ii) an importer who sells, supplies, distributes or otherwise delivers any dangerous machine to any user, manufacturer, repairer, consumer or any other person,

but does not include a manufacturer who sells, supplies, distributes or otherwise delivers any dangerous machine or any part thereof to any person or category of persons referred to in this clause.

Explanation.—For the removal of doubts, it is hereby declared that a manufacturer who sells, supplies, distributes, or otherwise delivers any dangerous machine or any part thereof to any person other than a dealer, shall be deemed to be a dealer, and shall in addition to his liability to comply with the provisions of this Act relating to manufacturers, also be liable to comply with the provisions of this Act relating to dealers;

(f) “employer”, in relation to the operator of any dangerous machine, means the person by whom such operator has been employed, whether for any remuneration or otherwise, for operating such machine;

(g) “family”, in relation to an operator, means his wife and dependent children and includes his dependent parents;

(h) “Inspector”, means an Inspector appointed under this Act;

(i) “machine”, includes prime movers, transmission machinery and all other appliances whereby power is generated, transferred, transmitted or applied to a dangerous machine;

(j) “manufacturer”, in relation to any dangerous machine or any part thereof, means a person who, or a firm or a Hindu undivided family which,—

(i) makes or manufactures such dangerous machine or part thereof;

(ii) makes or manufactures one or more parts, and acquires the other parts of such dangerous machine and, after assembling those parts, claims the end product to be a product manufactured by himself, or itself, as the case may be;

(iii) does not make or manufacture any part of such dangerous machine but assembles parts thereof made or manufactured by others and claims the end product to be a product manufactured by himself, or itself, as the case may be;

(iv) puts, or causes to be put, his or its own mark on any complete dangerous machine made or manufactured by any other person and claims such product to be a product made or manufactured by himself, or itself, as the case may be;

(k) "operator" means a person employed directly or by or through any agency (including a contractor), whether as a regular worker or as a casual worker, with or without the knowledge of the principal employer, whether for remuneration or not, in the operation or cleaning of any dangerous machine or any part thereof or in any other kind of work incidental to, or connected with, the operation or cleaning of any dangerous machine or any part thereof;

(l) "power" means electrical or mechanical energy, or any other form of energy which is mechanically transmitted into a dangerous machine;

(m) "power thresher" means a machine, operated with the aid of power for threshing one or more kinds of agricultural produce;

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

(o) "prime mover" means an engine, motor or other appliance which generates or otherwise provides power to a dangerous machine;

(p) "transmission machinery" means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to, or received by, any dangerous machine.

4. Act to override all other enactments.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any decree or order of any Court, tribunal or authority.

CHAPTER II

ADMINISTRATION OF THE ACT

5. Appointment and functions of Controllers.—(1) The State Government shall, by notification in the Official Gazette, appoint a Controller for carrying out the provisions of this Act, any may also by the same or subsequent notification appoint such number of Additional, Deputy or Assistant Controllers as it may deem fit.

(2) The Controller shall discharge his functions under this Act subject to the general control and directions of the State Government.

(3) The Controller may authorize such persons as he thinks fit also to exercise all or any of the powers exercisable by him under this Act other than the powers under sub-section (5) and different persons may be authorised to exercise different powers.

(4) Subject to any general or special direction given or imposed by the Controller, any person authorised by the Controller to exercise any powers may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorization.

(5) The Controller may also,—

(a) perform all or any of the functions of, and

(b) exercise all or any of the powers conferred by this Act or any rule or order made hereunder on, any officer lower in rank than himself.

6. Power of Controller to issue orders.—(1) The Controller may, if he thinks fit, make orders, not inconsistent with the provisions of this Act, for carrying out the provisions of this Act.

7. Appointment of Inspectors.—(1) The State Government may, by notification in the Official Gazette, appoint as many Inspectors as it deems fit to carry out the provisions of this Act relating to inspection, search, seizure of dangerous machines and examination of the records of manufacturers, dealers and users relating to such machines.

(2) Every Inspector shall discharge his functions subject to the general direction and control of the Controller.

8. Controller, etc., to be public servants.—The Controller, and any person authorised by the State Government or the Controller to perform any functions under this Act, and every Inspector, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

CHAPTER III

ISSUE, RENEWAL AND CANCELLATION OF LICENCES TO MANUFACTURERS AND DEALERS

9. Licensing of manufacturers and dealers.—(1) Save as otherwise provided in this section, no person shall manufacture, or commence or carry on business as a manufacturer or dealer of, any dangerous machine unless he holds a valid licence issued in this behalf by the Controller:

Provided that a person engaged in the manufacture of, or carrying on business as a manufacturer or dealer of, any dangerous machine of any class immediately before the appointed day in relation to dangerous machines of such class may continue to manufacture such machines or carry on such business without such a licence for a period of one month from that date, and if he makes an application for such licence under this section within the said period of one month, till the communication to him of the order of the Controller disposing of such application.

Explanation.—For the purposes of this proviso, “appointed day” means,—

(i) in relation to the class of dangerous machines being power threshers, the date of commencement of this Act;

(ii) in relation to any other class of dangerous machines, the date with effect from which such machines have been specified to be dangerous machines by the Central Government by notification under clause (c) of section 3, or in the case of a State in which this section has come into force with effect from a later date, such later date.

(2) A licence issued under this section,—

(a) shall be valid for a period of five years;

(b) may be renewed from time to time, for a like period; and

(c) shall be in such form, and shall be subject to such conditions, as may be prescribed by the Central Government.

(3) A person who intends to commence the manufacture, or carry on business as manufacturer or dealer, of any dangerous machine shall make an application in such form and on payment of such fees, not exceeding five hundred rupees, as may be prescribed, for the issue of a licence.

(4) No application for the issue of a licence to commence the manufacture, or to carry on business as a manufacturer or dealer, of any dangerous machine shall be granted unless the Controller, after making such inquiry as he thinks fit, is satisfied—

(a) in the case of a manufacturer carrying on business at the commencement of this Act, of manufacturing any dangerous machine, that such machine complies with the standards prescribed under section 13; and

(b) in the case of a person who intends to commence business after such commencement, as a manufacturer of a dangerous machine, that the applicant has declared that he would manufacture such machine in accordance with the standards laid down by or under this Act.

(5) An application for the renewal of a licence issued under this section shall be made not less than forty-five days before the date of expiry of the period of validity thereof and shall be accompanied by such fees, not exceeding two hundred rupees, as may be prescribed.

(6) No application for the renewal of a licence for the manufacture, or for the carrying on the business as a manufacturer, of a dangerous machine shall be rejected unless—

(a) the holder of such licence has been given a reasonable opportunity of presenting his case; and

(b) the Controller is satisfied that—

(i) the application for such renewal has been made after the expiry of the period specified therefore:

Provided that an application for the renewal of a licence made after the expiry of the specified period may be entertained on payment of such late fees, not exceeding one hundred rupees, as may be prescribed;

(ii) any statement made by the applicant at the time of the issue or renewal of the licence was incorrect or false in material particulars;

(iii) the applicant has omitted or failed to manufacture any dangerous machine in accordance with the prescribed standards; or

(iv) the applicant has contravened any term or condition of the licence or any provision of this Act, or any rule or order made hereunder or of any law for the time being in

force in so far as such law prohibits the bringing into or taking out of India, any dangerous machine.

(7) Every person to whom a licence has been issued or renewed under this section shall comply with the terms and conditions specified in the licence and the provisions of this Act and the rules and orders made hereunder.

(8) Every person to whom a licence has been granted or renewed under this section shall ensure that every person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or order made hereunder.

(9) Every order granting or rejecting any application for the issue or renewal of a licence under this section shall be made in writing.

(10) Every licensed dealer and every licensed manufacturer shall display his license at a conspicuous place of the premises in which he carries on business as such licensed dealer or manufacturer.

10. Suspension and cancellation of licences.—(1) The Controller may, if he has any reasonable cause to believe that the holder of a licence granted under section 9 has made a statement in, or in relation to, any application for the issue or renewal of a licence, which is incorrect or false in material particulars, or has contravened any provision of this Act or any rule or order made hereunder or of any other law for the time being in force which regulates the bringing into or taking out of India any dangerous machine, suspend such licence pending the completion of any inquiry or trial against the holder of such licence, for making such incorrect or false statement or for such contravention, as the case may be:

Provided that no such licence shall be suspended for a period exceeding ten days unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(2) The Controller may, if he is satisfied after making such inquiry as he may think fit, that the holder of any licence issued or renewed under this Act has made such incorrect or false statement as is referred to in sub-section (1), or has omitted or failed to manufacture any dangerous machine in accordance with the prescribed standards or has contravened the provisions of such law, rule or order, as is referred to in that sub-section, cancel such licence:

Provided that no licence shall be cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(3) Every person whose licence has been suspended or cancelled shall, immediately after such suspension or cancellation, stop functioning as such licensee and shall not resume business as such licensee until the order of such suspension or cancellation has been vacated.

(4) Every person who holds a licence which is suspended or cancelled shall, immediately after such suspension or cancellation, surrender such licence to the Controller.

11. Cancellation of licence on application by manufacturer or dealer.—A person licensed to manufacture or carry on business as a manufacturer or dealer of any dangerous machines who discontinues such manufacture or business or who intends to discontinue such manufacture or business, may make an application to the Controller for the cancellation of his licence, and thereupon, the Controller may cancel such licence.

12. Licence to a firm to be invalid on the change of partnership.—Where any firm has been licensed under this Act to manufacture or carry on business as a dealer or manufacturer of a dangerous machine, such licence shall, notwithstanding anything contained in this Act, become invalid on and from the date on which there is a change in the partnership of such firm, unless such change in the partnership of the firm has been approved by the Controller.

CHAPTER IV

DUTIES AND RESPONSIBILITIES OF THE MANUFACTURER OR DEALER OF A DANGEROUS MACHINE

13. Manufacturer to ensure that every part of a dangerous machine conforms to prescribed standards.—(1) Every manufacturer of a dangerous machine shall ensure that such machine and every part thereof complies with such standards, conforming to the standards laid down therefore by the Indian Standards Institution, as may be prescribed by the Central Government.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the manufacturer of a dangerous machine shall ensure that the following parts are secured by safeguards of substantial construction, namely:—

- (a) the prime mover and every part thereof,
- (b) the transmissions machinery and every part thereof,
- (c) every other dangerous part, such as, rollers, blowers, sieves, elevator and the like.

(3) Every manufacturer of a dangerous machine shall also clearly and legibly provide such machine with danger signals indicating the point beyond which no limb shall be inserted for the purpose of feeding the machine or for any other purpose.

14. Particulars to be specified on every dangerous machine.—The manufacturer shall ensure that the following particulars are legibly and conspicuously marked or inscribed on every dangerous machine by such method as would make it indelible, namely:—

- (a) the direction of the rotation and the number of rotations per minute;
- (b) its power requirement; and
- (c) the name and correct address of the manufacturer, the year of its manufacture, and the date, number and other particulars of the licence of the manufacturer.

15. Duties of the manufacturer to supply operator's manual with each dangerous machine.—Every manufacturer shall supply along with each dangerous machine a manual containing general instructions regarding the operation of such machine, and shall also include therein such cautions, as may be prescribed.

16. Certificate and guarantee by manufacturers and dealers.—Before transferring the possession of any dangerous machine, whether by sale, lease, hire or otherwise, every manufacturer and every dealer shall deliver, to the person acquiring the possession of such machine, a declaration to the effect that the machine conforms to the standards laid down by or under this Act and also complies with in all respects, the provisions of this Act and the rules and orders made hereunder.

17. Liability of the manufacturer for reimbursement.—Whenever any person operating a dangerous machine suffers death or dismemberment of any limb or any other bodily injury—

(i) by reason of any manufacturing defect in the machine whereby such death, dismemberment or injury was caused, or

(ii) by reason of the omission of the manufacturer to comply with the provisions of this Act and the rules and orders made hereunder,

such manufacturer shall be liable to reimburse the person by whom compensation had to be paid under this Act to the members of the family of the person whose death was caused by such machine or, as the case may be, to the person by whom such dismemberment or bodily injury was suffered.

18. Manufacturers and dealers to maintain records.—Every manufacturer and every dealer shall maintain such registers, records and accounts as may be prescribed.

CHAPTER V

DUTIES AND OBLIGATIONS OF USERS OF DANGEROUS MACHINES

19. User to get each dangerous machine registered.—(1) Every person who owns a dangerous machine or acquires control over such machine, whether as a lessee or hirer or otherwise (in this Act referred to as the user) shall make, before beginning to operate such machine, an application to the Controller, on payment of such fees, not exceeding five rupees, as may be prescribed, for the registration of such machine.

(2) On receipt of an application made under sub-section (1), the Controller shall, if he is satisfied that the machine complies with, in all respects, the provisions of this Act and the rules and orders made hereunder, register the same and grant to the applicant a certificate showing such registration.

(3) The Controller shall maintain a register containing the particulars of the dangerous machines registered by him and the names and addresses and other particulars of the persons on whose application such registration has been made.

(4) No dangerous machine shall be operated until it has been registered in accordance with the provisions of this section.

20. Matters to be ensured by users.—Every user of a dangerous machine shall ensure that—

(a) such machine conforms to the standards laid down by or under this Act and also complies with, in all respects, the provisions of this Act and the rules and orders made hereunder;

(b) no child is employed for the operation of such machine; and

(c) adequate arrangements exist for rendering first aid to any person who may suffer any injury while operating any such machine.

21. Modification of existing dangerous machine.—(1) Every person who has, immediately before the commencement of this Act, in his custody or control, and dangerous machine which does not comply with, in all respects, the provisions of this Act and the rules and orders made hereunder, shall, within such time, not being less than one hundred and eighty days from such commencement, as the State Government may, by notification in the Official Gazette, specify, get the same modified in accordance with such rules as may be made by the Central Government in this behalf.

(2) No such machine shall be used or operated, after the expiry of the period specified under sub-section (1), unless the modifications referred to in sub-section (1) have been made.

22. Employer's liability for compensation.—(1) If, during his employment as an operator of a dangerous machine, death or dismemberment of any limb or any other bodily injury is caused to such operator, his employer shall be liable to pay compensation,—

(a) in the case of death of the operator, to his family, and

(b) in any other case, to the operator:

Provided that where the operator does not have a family, the compensation shall be paid to the person or persons nominated in this behalf by the operator in writing and notified to the Controller:

Provided further that the employer shall not be so liable—

(i) in respect of any injury which does not result in the total or partial disablement of the operator for a period exceeding three days; or

(ii) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to,—

(a) the operator having been at the time thereof under the influence of any intoxicant or drug, or

(b) the wilful removal by the worker of any safety guard or other device which he knew to have been provided in the machine for the purpose of securing the safety of the operator.

(2) The amount of the compensation payable under sub-section (1) shall be determined and paid in accordance with the provisions of the Workmen's Compensation Act, 1923 (8 of 1923) as if the operator were a workman within the meaning of that Act, and, for this purpose, the provisions of the said Act shall apply to him as they apply to a workman within the meaning of that Act.

23. Notice of accident.—(1) Where the death or dismemberment of any limb or any other bodily injury has been caused to an operator, during the course of his employment, notice of such death, dismemberment or injury shall be given to the employer within three days from the date on which such death, dismemberment or injury was caused.

(2) Such notice shall be given by the operator, if he is alive or by any member of his family or any other person interested in him.

(3) Omission to give the notice referred to in sub-section (2) shall not disentitle the operator or the members of his family, as the case may be, to receive the compensation payable under this Act.

24. Duty of employer to take out insurance policies.—(1) Every employer shall take out, as soon as may be practicable after the commencement of this Act, one or more insurance policies providing for contracts of insurance whereby he is insured against any liability arising out of sub-section (1) of section 22 to make payment of compensation to any operator of a dangerous machine and such contract of insurance may provide for the payment

of annuities to the operator, or in case of his death, to the members of his family or to his nominee, if he does not have a family.

(2) Every employer shall get the insurance policy referred to in sub-section (1) renewed from time to time before the expiry of the period of validity, thereof so that the policy of insurance may remain in force throughout the period during which any person is employed by him to operate any dangerous machine.

25. Omission or failure of the employer to take out insurance policies.—(1) In the event of the omission or failure of the employer to take out an insurance policy referred to in section 24 or in the event of the omission, failure or inability of the employer to keep such insurance policy in force or to obtain, from the insurer, any amount required to be paid as compensation to an operator, or to the members of his family or nominee, as the case may be, the employer shall make payment of compensation from his own funds, to the operator, or to the members of his family or his nominee, as the case may be, as soon as possible after the date on which the operator suffers death or dismemberment of limb or other bodily injury but not later than thirty days from such date and on such payment the employer's liability for payment of compensation to the operator or to the members of his family shall stand fully discharged.

(2) The discharge of the liability referred to in sub-section (1) shall not take away or abridge the right of, the employer to receive, from the insurer, such payment as may be due to him under the policy of insurance taken out or renewed by him.

CHAPTER VI

INSPECTION, SEARCH AND SEIZURE

26. Examination of machine causing death or injury.—(1) As soon as the employer comes to know, whether on receipt of a notice under section 23 or otherwise, that the operator has suffered death, dismemberment of any limb or other bodily injury during the operation of any dangerous machine, he shall forthwith give notice of such death or injury to the Inspector.

(2) Whenever an Inspector comes to know about any death or injury, whether on receipt of a notice referred to under sub-section (1) or otherwise, he shall, as soon as practicable, enter into the premises where the dangerous machine whereby such death, dismemberment of limb or other bodily injury has been caused, is located and examine the machine with a view to finding out whether the machine conforms to the standards laid down by or under this Act and contains all the prescribed safety devices, and, where, after such examination, he is of the opinion that the machine is unsafe, he shall, by an order, prohibit the use of such machine until it is certified by him to be safe.

(3) No machine shall be operated during the period of operation of the prohibitory order made under sub-section (2).

27. Inspection of records, etc.—Every register, record and accounts maintained under this Act and every licence issued or renewed under this Act shall be open to the inspection of the Inspector.

28. Power to enter and search.—An Inspector authorised in this behalf by the Controller may, if he has any reason to suspect that any provision of this Act has been, or is being, or is about to be, contravened, enter and search, at any reasonable time of the day, any premises in which any dangerous machine is operated.

29. Power of seizure.—Whenever the Inspector is satisfied that any dangerous machine, which does not comply with, in all respects, the provisions of this Act or the rules or orders made hereunder, is being operated in contravention of the provisions of this Act, he may seize such dangerous machine and the records and registers connected therewith.

30. Search and seizure to be made in accordance with the Code of Criminal Procedure, 1973.—Every search and seizure made under this Act shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

CHAPTER VII

OFFENCES AND THEIR TRIAL

31. Punishment for contravention of the provisions of the Act.—Whoever, in contravention of the provisions of this Act, or any rule or order made hereunder,—

(a) manufactures, or carries on business as a manufacturer or dealer of, any dangerous machine without being in possession of a valid licence issued or renewed under this Act;

(b) employs a child in the operation of any dangerous machine;

(c) causes any person to operate a dangerous machine which does not conform to the standards specified by or under this Act;

(d) causes any person to operate any dangerous machine referred to in section 21, without carrying out the prescribed modifications;

(e) omits to take out or renew an insurance policy as required by section 24;

(f) sells or otherwise transfers any dangerous machine which does not conform to the provisions of this Act or the rules made hereunder;

(g) operates or causes any person to operate any dangerous machine during the period of operation of a prohibitory order made under sub-section (2) of section 26; or

(h) contravenes any other provisions of this Act, or rule or order made hereunder,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and in the case of a second or subsequent offence, shall be punishable with imprisonment for a term which shall not be less than three months and also with fine which shall not be less than five hundred rupees but not more than one thousand rupees.

32. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

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

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

33. Cognizance and trial of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no Court shall take cognizance of an offence punishable under this Act except on a complaint in writing made by the Controller or any person authorised by him in this behalf.

(2) Every offence under this Act may be tried summarily by a Magistrate.

CHAPTER VIII MISCELLANEOUS

34. Appeals.—(1) Any person aggrieved by any order granting or refusing to issue or renew a licence under this Act or refusing to register a dangerous machine, may prefer an appeal against the order to the State Government.

(2) Every such appeal shall be filed within thirty days from the date of the order:

Provided that the State Government may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

35. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the State Government, the Controller, any Inspector or any other person authorised by the Controller for exercising any powers or discharging any functions under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made hereunder.

36. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of sub-section (2) of section 9, and the provisions of sections 13 and 21.

(2) Every notification made by the Central Government under clause (c) of section 3, and every rule made by it under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

37. Power of State Government to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act other than those specified in sub-section (1) of section 36.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) all matters specified in section 9 except those specified in sub-section (2) thereof;
- (b) the fees (including late fees), within the limits specified in section 9, for the issue and renewal of licences under that section and for the registration of dealers, as provided in section 19;
- (c) the cautions to be specified in the manual of instructions as required by section 15;
- (d) the registers, records and accounts which are required to be maintained under section 18;
- (e) the arrangement required to be made under section 20 for rendering first aid to any injured operator of a dangerous machine; and
- (f) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

38. Power to give directions.—The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or order made hereunder.

THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

19/11/1946

1. Short title and extent.—(1) This Act may be called THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946.

(2) It extends to the whole of India.

1-A. Interpretation section.—Words and expressions used herein and not defined but defined in the Central Vigilance Commission Act, 2003 (45 of 2003), shall have the meanings, respectively, assigned to them in that Act.

2. Constitution and powers of special police establishment.—(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union Territory of offences notified under section 3.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout any Union Territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union Territory have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise any Union Territory or any of the powers of the officer-in-charge, of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any

such order as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

3. Offences to be investigated by special police establishment.—The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.

4. Superintendence and administration of special police establishment.—(1) The superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

4-A. Committee for appointment of Director.—(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) The Central Vigilance Commissioner	—	Chairperson;
(b) Vigilance Commissioners	—	Members;
(c) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government	—	Member;
(d) The Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the Delhi Special Police Establishment	—	Member.

(2) While making any recommendation under sub-section (1), the Committee shall take into consideration the views of the outgoing Director.

(3) The Committee shall recommend a panel of officers—

- (a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and
- (b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951 (61 of 1951), for being considered for appointment as the Director.

4-B. Terms and conditions of service of Director.—(1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4-A.

4-C. Appointment for posts of Superintendent of Police and above, extension and curtailment of their tenure, etc.—(1) The Committee referred to in section 4-A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Superintendent of Police and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.

5. Extension of powers and jurisdiction of special police establishment to other areas.—(1) The Central Government may by order extend to any area (including Railway areas), in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions

of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of the area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2) any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory of Railway, area, without the consent of the Government of that State.

6-A. Approval of Central Government to conduct inquiry or investigation.—(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to—

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the *Explanation* to section 7 of the Prevention of Corruption Act, 1988 (49 of 1988).

7. Repeal of Ordinance 22 of 1946.—[*Repealed by the Repealing and Amending Act, 1950 (35 of 1950), section 2 and Schedule I.*]

THE DOWRY PROHIBITION ACT, 1961

20/05/1961

1. Short title, extent and commencement.—(1) This Act may be called THE DOWRY PROHIBITION ACT, 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

2. Definition of "dowry".—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

[* * *]

Explanation II.—The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

3. Penalty for giving or taking dowry.—(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

4-A. Ban on advertisement.—If any person,—

(a) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative;

(b) prints or publishes or circulates any advertisement referred to clause (a), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.

5. Agreement for giving or taking dowry to be void.—Any agreement for the giving or taking of dowry shall be void.

6. Dowry to be for the benefit of the wife or her heirs.—(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

(a) if the dowry was received before marriage, within three months after the date of marriage; or

(b) If the dowry was received at the time of or after the marriage, within three months after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore, or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or sub-section (3) has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, her heirs, parents or children, the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, her heirs, parents or children within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, her heirs, parents or children.

(4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

7. Cognizance of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no Court shall take cognizance of an offence under this Act except upon—

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organisation;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

Explanation.—For the purposes of this sub-section, “recognized welfare institution or organisation” means a social welfare institution or organisation recognized in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.

(3) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.

8. Offences to be cognizable for certain purposes and to be non-bailable and non-compoundable.—(1) The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences—

(a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than—

(i) matters referred to in section 42 of that Code; and

(ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be non-bailable and non-compoundable.

8-A. Burden of proof in certain cases.—Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under these sections shall be on him.

8-B. Dowry Prohibition Officers.—(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:—

(a) to see that the provisions of this Act are complied with;

(b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;

(c) to collect such evidence as may be necessary for the prosecution of persons committing offences under this Act; and

(d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).

9. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

(a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of section 3 shall be maintained and all other matters connected therewith; and

(b) the better co-ordination of policy and action with respect to the administration of this Act.

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

10. Power of State Government to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the additional functions to be performed by the Dowry Prohibition Officers under sub-section (2) of section 8-B;

(b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of section 8-B.

(3) Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.

THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985

1. Short title and commencement.—(1) These rules may be called THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985.

(2) They shall come into force on the 2nd day of October, 1985 being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).

2. Rules in accordance with which lists of presents are to be maintained.—(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of presents referred to in sub-rule (1) or sub-rule (2)—

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage,

(b) shall be in writing,

- (c) shall contain,—
- (i) a brief description of each present;
 - (ii) the approximate value of the present;
 - (iii) the name of the person who has given the present; and
 - (iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship;
- (d) shall be signed by both the bride and the bridegroom.

Explanation 1.—Where the bride is unable to sign, she may affix her thumb-impression in lieu of her signature after having the list read out to her and obtaining the signature, on the list, of the person who has so read out the particulars contained in the list.

Explanation 2.—Where the bridegroom is unable to sign, he may fix his thumb-impression in lieu of his signature after having the list read out to him and obtaining the signature, on the list of the person who has so read out the particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so desires, obtain on either or both of the lists referred to in sub-rule (1) or sub-rule (2) the signature or signatures of any other person or persons present at the time of the marriage.

THE DRUGS (CONTROL) ACT, 1950

17/04/1950

1. Short title and extent.—(1) This Act may be called THE DRUGS (CONTROL) ACT, 1950.

(2) It extends to the territories which, immediately before the 1st November, 1956 were comprised in Part C States.

2. Interpretation.—(1) In this Act, unless the context otherwise requires,—

(a) “dealer” means a person carrying on, either personally or through any other person, the business of selling any drugs, whether wholesale or retail;

(b) “drug” means any drug as defined in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940) in respect of which a declaration has been made under section 3;

(c) “offer for sale” includes a reference to an intimation by a person of the price proposed by him for a sale of any drug, made by the publication of a price list, by exposing the drug for sale in association with a mark indicating price, by the furnishing of a quotation or otherwise howsoever;

(d) “producer” includes a manufacturer.

(1-A) As from the 1st November, 1956, any reference in this Act to the Central Government or the Chief Commissioner shall, in relation to the territories which, immediately before the 1st November, 1956, were comprised in the Part C State of Ajmer or Bhopal and Vindhya Pradesh or Coorg or Kutch, be construed as a reference to the State Government of Rajasthan or Madhya Pradesh or Mysore or Bombay, as the case may be.

(2) A drug shall be deemed to be in the possession of a person—

(i) when it is held on behalf of that person by another person or when held by that person behalf of another person;

(ii) notwithstanding that it is mortgaged to another person.

3. Drugs to which this Act applies.—The Central Government may, by notification in the Official Gazette, declare any drug to be a drug to which this Act applies.

4. Fixing of maximum prices and maximum quantities which may be held or sold.—

(1) The Chief Commissioner may, by notification in the Official Gazette, fix in respect of any drug—

(a) the maximum price or rate which may be charged by a dealer or producer;

(b) the maximum quantity which may at any one time be possessed by a dealer or producer;

(c) the maximum quantity which may in any one transaction be sold to any person.

(2) The prices or rates and the quantities fixed in respect of any drug under this section may be different in different localities or for different classes of dealers or producers.

5. Restrictions on sale, etc., where maximum is fixed under section 4.—No dealer or producer shall—

(a) sell, agree to sell, offer for sale or otherwise dispose of, to any person any drug for a price or at a rate exceeding the maximum fixed by notification under clause (a) of sub-section (1) of section 4;

(b) have in his possession at any one time a quantity of any drug exceeding the maximum fixed by notification under clause (b) of sub-section (1) of section 4; or

(c) sell, agree to sell or offer for sale to any person in any one transaction a quantity of any drug exceeding the maximum fixed by notification under clause (c) of sub-section (1) of section 4.

6. General limitation on quantity which may be possessed at any one time.—(1) No person shall have in his possession at any one time a greater quantity of any drug to which this section applies than the quantity necessary for his reasonable needs.

(2) This section shall apply only to such drugs as the Chief Commissioner may, by order published in the Official Gazette, specify for the purpose:

Provided that nothing contained in this section shall apply to a dealer or producer in respect of any drug sold or produced by him.

7. Duty to declare possession of excess stocks.—Any person having in his possession a quantity of any drug exceeding that permitted by or under this Act shall forthwith report the fact to the Chief Commissioner or other Officer empowered in this behalf by the Chief Commissioner, and shall take such action as to the storage, distribution or disposal of the excess quantity as the Chief Commissioner may direct.

8. Refusal to sell.—No dealer or producer shall, unless previously authorised to do so by the Chief Commissioner, without sufficient cause refuse to sell to any person any drug within the limits as to quantity, if any, imposed by this Act.

Explanation.—The possibility or expectation of obtaining a higher price for a drug at a later date shall not be deemed to be a sufficient cause for the purpose of this section.

9. Cash memorandum to be given of certain sales.—(1) Every dealer or producer when selling any drug for cash shall, if the amount of the purchase is five rupees or more, in all cases, and, if the amount of the purchase is less than five rupees, when so requested by the purchaser, give to the purchaser a cash memorandum containing particulars of the transaction.

(2) The Chief Commissioner may, by notification in the Official Gazette, prescribe the particulars to be contained in any such cash memorandum.

(3) The Chief Commissioner may, by notification in the Official Gazette, exempt specified areas, classes of dealers or producers, or classes of drugs from the operation of this section.

10. Marking of prices and exhibiting list of prices and stocks.—(1) The Chief Commissioner may direct dealers or producers in general, or any dealer or producer in particular, to mark any drug exposed or intended for sale with the sale prices or to exhibit on the premises a price list of drugs held for sale and the quantities of such drugs in his possession, and may further give directions as to the manner in which any such direction as aforesaid is to be carried out.

(2) No dealer shall destroy, efface or alter or cause to be destroyed, effaced or altered any label or mark affixed to a drug and indicating the price marked by a producer.

11. Obligation to state price separately on composite offer.—Where a dealer or producer makes an offer to enter into a transaction for a consideration to be given as a whole in respect both of a sale of any drug and of some other matter, the dealer or producer making the offer shall state in writing the price which he assigns to that drug, if he is required to do so by any person to whom the offer is made, and the offer shall be deemed for the purposes of the Act to be an offer to sell that drug at the price so stated.

12. Prohibition or regulation of the disposal of drugs.—If in the opinion of the Chief Commissioner it is necessary or expedient so to do, he may, by order in writing—

(a) prohibit the disposal of any drug except in such circumstances and under such conditions as may be specified in the order;

(b) direct the sale of any drug to any such dealer or class of dealers and in such quantities as may be specified in the order;

and make such further orders as appear to him to be necessary or expedient in connection with any order issued under this section.

13. Penalties.—(1) Whoever contravenes any of the provisions of this Act or fails to comply with any direction made under authority conferred by this Act shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) A Court convicting any person of an offence punishable under this Act may order that the whole or any part of the stock of drugs in respect of which the offence was committed shall be forfeited to the Government.

(3) It shall be defence for a person charged with a contravention of any of the provisions of this section to prove that, in relation to the matter in respect of which he is charged, he acted in the course of his employment as a servant or agent of another person on the instructions of his employer or of some other specified person.

14. Offences by corporations.—Where a person committing an offence punishable under this Act is a company or an association or a body of persons, whether incorporated or not, every director, manager, secretary, agent or other officer or person concerned with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

15. Procedure.—(1) No person other than a police officer of or above the rank of an Inspector of Police or an officer not below the rank of an Inspector of Police authorised in this behalf by the Central Government by notification in the Official Gazette, shall investigate any offence under this Act.

(2) No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the District Magistrate.

16. Powers of search and seizure.—Any person competent to investigate any offence under this Act may search any place in which he has reason to believe that an offence under this Act has been, or is being committed, and take possession of any stock of drugs in respect of which the offence has been or is being committed and the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of that Code.

17. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely:—

(a) the maintenance by dealers and producers generally, or by any dealer or producer in particular, of records of all sale and purchase transactions made by them;

(b) the furnishing of any such information as may be required with respect to the business carried on by any dealer or producer;

(c) the inspection of any books of account or other document belonging to or under the control of any dealer or producer.

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

18. Protection of action in good faith.—No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

19. Saving of other laws.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force regulating any of the matters dealt with in this Act.

20. Repeal of Ordinance 26 of 1949.—[*Repealed by the Repealing and Amending Act, 1957 (36 of 1957), section 2 and Schedule I.*]

THE ELECTRICITY ACT, 2003

26/05/2003

PART I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE ELECTRICITY ACT, 2003.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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

(1) "Appellate Tribunal" means the Appellate Tribunal for Electricity established under section 110;

(2) "appointed date" means such date as the Central Government may, by notification, appoint;

(3) "area of supply" means the area within which a distribution licensee is authorised by his licence to supply electricity;

(4) "Appropriate Commission" means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be;

(5) "Appropriate Government" means,—

(a) the Central Government,—

(i) in respect of a generating company wholly or partly owned by it;

(ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;

(iii) in respect of the National Load Despatch Centre and Regional Load Despatch Centre;

(iv) in relation to any works or electric installation belonging to it or under its control;

(b) in any other case, the State Government having jurisdiction under this Act;

(6) "Authority" means the Central Electricity Authority referred to in sub-section (1) of section 70;

(7) "Board" means a State Electricity Board, constituted before the commencement of this Act, under sub-section (1) of section 5 of the Electricity (Supply) Act, 1948 (54 of 1948);

(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association;

(9) "Central Commission" means the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76;

(10) "Central Transmission Utility" means any Government company which the Central Government may notify under sub-section (1) of section 38;

(11) "Chairperson" means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal, as the case may be;

(12) "Cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity);

(13) "company" means a company formed and registered under the Companies Act, 1956 (1 of 1956) and includes any body corporate under a Central, State or Provincial Act;

(14) "conservation" means any reduction in consumption of electricity as a result of increase in the efficiency in supply and use of electricity;

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

(16) "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;

(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

(18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;

(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

(20) "electric line" means any line which is used for carrying electricity for any purpose and includes—

(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and

(b) any apparatus connected to any such line for the purpose of carrying electricity;

(21) "Electrical Inspector" means a person appointed as such by the Appropriate Government under sub-section (1) of section 162 and also includes Chief Electrical Inspector;

(22) "electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include—

(a) an electric line; or

(b) a meter used for ascertaining the quantity of electricity supplied to any premises;

or

(c) an electrical equipment, apparatus or appliance under the control of a consumer;

(23) "electricity" means electrical energy—

(a) generated, transmitted, supplied or traded for any purpose; or

(b) used for any purpose except the transmission of a message;

(24) "Electricity Supply Code" means the Electricity Supply Code specified under section 50;

(25) "electricity system" means a system under the control of a generating company or licensee, as the case may be, having one or more—

(a) generating stations; or

(b) transmission lines; or

(c) electric lines and sub-stations,

and when used in the context of a State or the Union, the entire electricity system within the territories thereof;

(26) "electricity trader" means a person who has been granted a licence to undertake trading in electricity under section 12;

(27) "franchisee" means a person authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;

(28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;

(29) "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;

(31) "Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956 (1 of 1956);

(32) "grid" means the high voltage backbone system of inter-connected transmission lines, sub-station and generating plants;

(33) "Grid Code" means the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of section 79;

(34) "Grid Standards" means the Grid Standards specified under clause (d) of section 73 by the Authority;

(35) "high voltage line" means an electric line or cable of a nominal voltage as may be specified by the Authority from time to time;

(36) "inter-State transmission system" includes—

(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;

(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;

(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility;

(37) "intra-State transmission system" means any system for transmission of electricity other than an inter-State transmission system;

(38) "licence" means a licence granted under section 14;

(39) "licensee" means a person who has been granted a licence under section 14;

(40) "line" means any wire, cable, tube, pipe, insulator, conductor or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity and includes any line which surrounds or supports, or is surrounded or supported by or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

(41) "local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, Panchayat constituted at the village, intermediate and district levels, body of port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;

(42) "main" means any electric supply-line through which electricity is, or is intended to be, supplied;

(43) "Member" means the Member of the Appropriate Commission or Authority or Joint Commission, or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or Authority or Appellate Tribunal;

(44) "National Electricity Plan" means the National Electricity Plan notified under sub-section (4) of section 3;

(45) "National Load Despatch Centre" means the Centre established under sub-section (1) of section 26;

(46) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or

consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

(48) "overhead line" means an electric line which is placed above the ground and in the open air but does not include live rails of a traction system;

(49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

(50) "power system" means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following, namely:—

- (a) generating stations;
- (b) transmission or main transmission lines;
- (c) sub-stations;
- (d) tie-lines;
- (e) load despatch activities;
- (f) mains or distribution mains;
- (g) electric supply-lines;
- (h) overhead lines;
- (i) service lines;
- (j) works;

(51) "premises" includes any land, building or structure;

(52) "prescribed" means prescribed by rules made by the Appropriate Government under this Act;

(53) "public lamp" means an electric lamp used for the lighting of any street;

(54) "real time operation" means action to be taken at a given time at which information about the electricity system is made available to the concerned Load Despatch Centre;

(55) "Regional Power Committee" means a committee established by resolution by the Central Government for a specified region for facilitating the integrated operation of the power systems in that region;

(56) "Regional Load Despatch Centre" means the Centre established under sub-section (1) of section 27;

(57) "regulations" means regulations made under this Act;

(58) "repealed laws" means the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) repealed by section 185;

(59) "rules" means rules made under this Act;

(60) "Schedule" means the Schedule to this Act;

(61) "service-line" means any electric supply-line through which electricity is, or is intended to be, supplied—

(a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or

(b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;

(62) "specified" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act;

(63) "stand alone system" means the electricity system set-up to generate power and distribute electricity in a specified area without connection to the grid;

(64) "State Commission" means the State Electricity Regulatory Commission constituted under sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83;

(65) "State Grid Code" means the State Grid Code specified under clause (h) of sub-section (1) of section 86;

(66) "State Load Despatch Centre" means the centre established under sub-section (1) of section 31;

(67) "State Transmission Utility" means the Board or the Government company specified as such by the State Government under sub-section (1) of section 39;

(68) "street" includes any way, road, lane, square, Court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way and also the roadway and footway over any public bridge or causeway;

(69) "sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

(70) "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

(71) "trading" means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;

(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switchgear and other works;

(73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;

(74) "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;

(75) "utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;

(76) "wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;

(77) "works" includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force.

PART XIV

OFFENCES AND PENALTIES

135. Theft of electricity.—(1) Whoever, dishonestly,—

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use—

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may—

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being used unauthorized;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts there from in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

136. Theft of electric lines and materials.—(1) Whoever, dishonestly—

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located,

including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain, is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

137. Punishment for receiving stolen property.—Whoever, dishonestly receives any stolen electric line or material knowing or having reasons to believe the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

138. Interference with meters or works of licensee.—Whoever,—

(a) unauthorized connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorized reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

139. Negligently breaking or damaging works.—Whoever, negligently breaks, injures, throws down or damages any material connected with the supply of electricity, shall be punishable with fine which may extend to ten thousand rupees.

140. Penalty for intentionally injuring works.—Whoever, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may extend to ten thousand rupees.

141. Extinguishing public lamps.—Whoever, maliciously extinguishes any public lamp shall be punishable with fine which may extend to two thousand rupees.

142. Punishment for non-compliance of directions by Appropriate Commission.—In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made hereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed

one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

143. Power to adjudicate.—(1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

144. Factors to be taken into account by adjudicating officer.—While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the repetitive nature of the default.

145. Civil Court not to have jurisdiction.—No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

146. Punishment for non-compliance of orders or directions.—Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made hereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.

147. Penalties not to affect other liabilities.—The penalties imposed under this Act shall be in addition to, and not in derogation of, any liability in respect of payment of compensation or, in the case of a licensee, the revocation of his licence which the offender may have incurred.

148. Penalty where works belong to Government.—The provisions of this Act shall, so far as they are applicable, be deemed to apply also when the acts made punishable hereunder are committed in the case of electricity supplied by or of works belonging to the Appropriate Government.

149. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such 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 in the firm.

150. Abetment.—(1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code (45 of 1860), be punished with the punishment provided for the offence.

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other law for the time being in force, if any officer or other employee of the Board or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of electricity is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Notwithstanding anything contained in sub-section (1) of section 135, sub-section (1) of section 136, section 137 and section 138, the license or certificate of competency or permit or such other authorization issued under the rules made or deemed to have been made under this Act to any person who acting as an electrical contractor, supervisor or worker abets the commission of an offence punishable under sub-section (1) of section 135, sub-section (1) of section 136, section 137, or section 138, on his conviction for such abetment, may also be cancelled by the licensing authority:

Provided that no order of such cancellation shall be made without giving such person an opportunity of being heard.

Explanation.—For the purposes of this sub-section, “licensing authority” means the officer who for the time being in force is issuing or renewing such license or certificate of competency or permit or such other authorization.

151. Cognizance of offences.—No Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

Provided that the Court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided further that a Special Court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

151-A. Power of police to investigate.—For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974).

151-B. Certain offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.

152. Compounding of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any Criminal Court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

THE ESSENTIAL COMMODITIES ACT, 1955

01/04/1955

1. Short title and extent.—(1) This Act may be called THE ESSENTIAL COMMODITIES ACT, 1955.

(2) It extends to the whole of India [* * *].

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

(ii-a) "Collector" includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under this Act;

[* * *]

(b) "food-crops" include crops of sugarcane;

(c) "notified order" means an order notified in the Official Gazette;

(cc) "order" includes a direction issued hereunder;

(d) "State Government", in relation to a Union territory, means the administrator thereof;

(e) "sugar" means—

(i) any form of sugar containing more than ninety per cent., of sucrose, including sugar candy;

(ii) khandsari sugar or *bura* sugar or crushed sugar or any sugar in crystalline or powdered form; or

(iii) sugar-in-process in vacuum pan sugar factory or raw sugar produced therein;

[* * *]

2-A. Essential commodities declaration, etc.—(1) For the purposes of this Act, "essential commodity" means a commodity specified in the Schedule.

(2) Subject to the provisions of sub-section (4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to—

(a) add a commodity to the said Schedule;

(b) remove any commodity from the said Schedule,

in consultation with the State Governments.

(3) Any notification issued under sub-section (2) may also direct that an entry shall be made against such commodity in the said Schedule declaring that such commodity shall be deemed to be an essential commodity for such period not exceeding six months to be specified in the notification:

Provided that the Central Government may, in the public interest and for reasons to be specified, by notification in the Official Gazette, extend such period beyond the said six months.

(4) The Central Government may exercise its powers under sub-section (2) in respect of the commodity to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.

(5) Every notification issued under sub-section (2) shall be laid, as soon as may be after it is issued, before both Houses of Parliament.

3. Powers to control production, supply, distribution, etc., of essential commodities.—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for

the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made hereunder may provide,—

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(c) for controlling the price at which essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,—

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him,

to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1.—An order made under this clause in relation to foodgrains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area, of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2.—For the purposes of this clause, “production” with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs [* * *] which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be detrimental to the public interest;

(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(ii) for the grant or issue of licences, permits or other documents, the charging of fees therefore, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;

(j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination,—

(i) of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be, committed and any packages, coverings or receptacles in which such articles are found;

(ii) of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

(iii) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts there from in the presence of an officer having the custody of such books of accounts or documents.

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefore as hereinafter provided,—

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(3-A)(i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the foodstuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefore—

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any Court.

(3-B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3-A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to—

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(b) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and

(d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.

(3-C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) whether a notification was issued under sub-section (3-A) or otherwise, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to—

(a) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;
 (b) the manufacturing cost of sugar;
 (c) the duty or tax, if any, paid or payable thereon; and
 (d) a reasonable return on the capital employed in the business of manufacturing of sugar: Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar: Provided further that where any provisional determination of price of levy sugar has been done in respect of sugar produced up to the sugar season 2008-2009, the final determination of price may be undertaken in accordance with the provisions of this sub-section as it stood immediately before the 1st day of October, 2009.

Explanation.— For the purposes of this sub-section,—
 (a) "fair and remunerative price" means the price of sugarcane determined by the Central Government under this section;
 (b) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to the factory gate, to the extent it is borne by the producer;
 (c) "producer" means a person carrying on the business of manufacturing sugar;
 (d) "reasonable return on the capital employed" means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section

Explanation I.— For the purposes of this sub-section, "producer" means a person carrying on the business of manufacturing sugar.

Explanation II.— For the removal of doubts, it is hereby declared that the expressions "minimum price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d) exclude the additional price of sugarcane paid or payable under clause 5-A of the Sugarcane (Control) Order, 1966 and any price paid or payable under any order or enactment of any State Government and any price agreed to between the producer and the grower of sugarcane or a sugarcane growers' co-operative society.

(3-D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of, or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside, or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3-E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

Explanation.— For the purposes of sub-section (3-D) and this sub-section,—

(a) "producer" means a person carrying on the business of manufacturing sugar;
 (b) "recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar;

(c) "sugar" includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may by order, authorize any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,—

(a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in-charge of the management of the undertaking, except insofar as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this section shall,—

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual—

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

4. Imposition of duties on State Governments, etc.—An order made under section 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

5. Delegation of powers.—The Central Government may, by notified order, direct that the power to make orders or issue notifications under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government,

as may be specified in the direction.

6. Effect of orders inconsistent with other enactments.—Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

6-A. Confiscation of essential commodity.—(1) Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of—

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—

(i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

[* * *]

(3) Where any essential commodity is sold as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale, or auction or other incidental expenses relating thereto, shall—

(a) where no order of confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6-C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted,

be paid to the owner or the person from whom it is seized.

6-B. Issue of show cause notice before confiscation of essential commodity.—

(1) No order confiscating any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance shall be made under section 6-A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6-A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(3) No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under clause (a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.

6-C. Appeal.—(1) Any person aggrieved by an order of confiscation under section 6-A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 6-A is modified or annulled by such judicial authority, or where in a prosecution instituted for the contravention of the order in respect of which an

order of confiscation has been made under section 6-A, the person concerned is acquitted, and in either case it is not possible for any reason to return the essential commodity seized, such persons shall, except as provided by sub-section (3) of section 6-A, be paid the price therefore as if the essential commodity, had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined—

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3-B) of section 3;

(ii) in the case of sugar, in accordance with the provisions of sub-section (3-C) of section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3.

6-D. Award of confiscation not to interfere with other punishments.—The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

6-E. Bar of jurisdiction in certain cases.—Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6-A, the Collector, or, as the case may be, the judicial authority appointed under section 6-C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, Tribunal or authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle animal, vehicle, vessel or other conveyance.

7. Penalties.—(1) If any person contravenes any order made under section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term not less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the Court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term not less than three months.

(2-A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2-B) For the purposes of sub-sections (1), (2) and (2-A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months as the case may be.

(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the Court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the Court in the order.

7-A. Power of Central Government to recover certain amounts as arrears of land revenue.—(1) Where any person, liable to—

(a) pay any amount in pursuance of any order made under section 3, or

(b) deposit any amount to the credit of any Account or Fund constituted by or in pursuance of any order made under that section,

makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made shall [whether such order was made before or after the commencement of the Essential Commodities (Amendment) Act, 1984 (34 of 1984), and whether the liability of such person to pay or deposit such amount arose before or after such commencement be recoverable by Government together with simple interest due thereon computed at the rate of fifteen per cent. per annum from the date of such default to the date of recovery of such amount, as an arrear of land revenue or as a public demand.

(2) The amount recovered under sub-section (1) shall be dealt with in accordance with the order under which the liability to pay or deposit such amount arose.

(3) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, no Court, tribunal or other authority shall grant any injunction or make any order prohibiting or restraining any Government from recovering any amount as an arrear of land revenue or as a public demand in pursuance of the provisions of sub-section (1).

(4) If any order, in pursuance of which any amount has been recovered by Government as an arrear of land revenue or as a public demand under sub-section (1) is declared by a competent Court, after giving to the Government a reasonable opportunity of being heard, to be invalid, the Government shall refund the amount so recovered by it to the person from whom it was recovered, together with simple interest due thereon, computed at the rate of fifteen per cent. per annum, from the date of recovery of such amount to the date on which such refund is made.

Explanation.—For the purposes of this section, “Government” means the Government by which the concerned order under section 3 was made or where such order was made by an officer or authority subordinate to any Government, that Government.

8. Attempts and abetment.—Any person who attempts to contravene, or abets a contravention of any order made under section 3 shall be deemed to have contravened that order:

[* * *]

9. False statement.—If any person,—

(i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

10. Offences by companies.—(1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

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

Explanation.—For the purposes of this section,—

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

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

10-A. Offences to be cognizable [* * *].—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence punishable under this Act shall be cognizable [* * *].

[* * *]

10-B. Power of Court to publish name, place of business, etc., of companies convicted under the Act.—(1) Where any company is convicted under this Act, it shall be competent for the Court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the Court may direct.

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

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

Explanation.—For the purposes of this section, “company” has the meaning assigned to it in clause (a) of the *Explanation* to section 10.

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

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

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

11. Cognizance of offences.—No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860) or any person aggrieved or any recognised consumer association whether such person is a member of that association or not.

Explanation.—For the purposes of this section and section 12-AA, “recognised consumer association” means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.

12. Special provision regarding fine.—Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3.

12-A. Power to try summarily.—(1) If the Central Government is of opinion that a situation has arisen where, in the interests of production supply or distribution of any essential commodity not being an essential commodity referred to in clause (a) of sub-section (2) or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order made under section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official

Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament:

Provided that—

(a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 1971, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;

(b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences relating to—

(a) the contravention of an order made under section 3 with respect to—

[* * *]

(ii) foodstuffs, including edible oilseeds and oils; or

(iii) drugs; and

(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(3) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order of forfeiture of property or an order under section 452 of the said Code is made in addition to such sentences, but an appeal shall lie where any sentence [* * *] in excess of the aforesaid limits is passed by the Magistrate.

(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.

[* * *]

12-B. Grant of injunction, etc., by Civil Courts.—No Civil Court shall grant injunction or make any order for any other relief, against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Government, or

such officer in his official capacity, under this Act or any order made hereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer.

13. Presumption as to orders.—Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872 (1 of 1872).

14. Burden of proof in certain cases.—Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

15. Protection of action taken under Act.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

15-A. Prosecution of public servants.—Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no Court shall take cognizance of such offence except with the previous sanction—

(a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;

(b) of the State Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State.

16. Repeals and savings.—(1) The following laws are hereby repealed—

(a) the Essential Commodities Ordinance, 1955 (1 of 1955);

(b) any other law in force in any State immediately before the commencement of this Act insofar as such law controls or authorizes the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

(2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act shall, insofar as such order may be made under this Act, be deemed to be made under this Act and continue in force, and accordingly any appointment made, licence or permit granted or direction issued under any such order and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction issued under this Act.

(3) The provision of sub-section (2) shall be without prejudice to the provision contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.

THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ACT, 1981

26/09/1981

1. Short title, commencement and duration.—(1) This Act may be called THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ACT, 1981.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

(3) It shall cease to have effect on the expiry of fifteen years from the date of commencement of this Act except as respects things done or omitted to be done before such cesser of operation of this Act, and section 6 of the General Clauses Act, 1897 (10 of 1897),

shall apply upon such cesser of operation of this Act as if it had then been repealed by a Central Act.

(4) References in this Act to the commencement of this Act and to the continuance in force of this Act shall be construed in relation to each State as references, respectively, to the coming into force of this Act in that State and to the continuance in force of this Act in that State.

2. Act 10 of 1955 to have effect subject to certain special provisions for a temporary period.—During the continuance in force of this Act, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 11:

Provided that the amendments specified in sections 7 to 11 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Act and the provisions of the principal Act shall apply to, and in relation to, such offence as if those amendments had not been made.

3. Amendment of section 2.—In section 2 of the principal Act,—

(a) clause (ia) shall be renumbered as clause (iia), and before clause (iia) as so renumbered, the following clause shall be inserted, namely:—

“(ia) “Code” means the Code of Criminal Procedure, 1973 (2 of 1974); and’;

(b) after clause (e), the following clause shall be inserted, namely:—

“(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code.”

4. Amendment of section 6-A.—In section 6-A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:—

“Provided that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price so fixed.”

5. Amendment of section 6-C.—In section 6-C of the principal Act,—

(a) in sub-section (1), for the words “any judicial authority appointed by the State Government concerned and the judicial authority”, the words “the State Government concerned and the State Government” shall be substituted;

(b) in sub-section (2), for the words “such judicial authority”, the words “the State Government” shall be substituted.

6. Amendment of section 6-E.—In section 6-E of the principal Act,—

(a) for the words, figure and letter “the judicial authority appointed under section 6-C” the words, figure and letter “the State Government concerned under section 6-C” shall be substituted;

(b) for the words “any other Court, tribunal or authority”, the words “any Court, tribunal or other authority” shall be substituted.

7. Amendment of section 7.—In section 7 of the principal Act,—

(a) in sub-section (1), the proviso to sub-clause (ii) of clause (a) shall be omitted;

(b) the proviso to sub-section (2) shall be omitted;

(c) the proviso to sub-section (2-A) shall be omitted;

(d) sub-section (2-B) shall be omitted.

8. Amendment of section 8.—To section 8 of the principal Act, the following proviso shall be added, namely:—

“Provided that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature mentioned in sub-clause (iva) or sub-clause (v) of clause (a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the Court may, notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgment, impose a sentence of fine only.”

9. Amendment of section 10-A.—In section 10-A of the principal Act, after the word “cognizable” the words “and non-bailable” shall be inserted.

9-A. Insertion of new section 10-AA in Act 10 of 1955.—In the Essential Commodities Act, 1955 (10 of 1955), after section 10-A, the following section shall be inserted, namely:—

“10-AA. *Power to arrest.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no officer below the rank of an officer incharge of a police station or any police officer authorised by him in this behalf in writing shall arrest any person accused of committing an offence punishable under this Act.”

10. Omission of section 12.—Section 12 of the principal Act shall be omitted.

11. Substitution of new sections for section 12-A.—For section 12-A of the principal Act, the following sections shall be substituted, namely:—

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

(2) A Special Court shall consist of a single Judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word “appoint” shall have the meaning given to it in the *Explanation* to section 9 of the Code.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless—

(a) he is qualified for appointment as a Judge of a High Court, or

(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12-AA. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code,—

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

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

Provided that where such Magistrate considers—

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

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which is Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any Court other than a Special Court or the High Court:

Provided that a Special Court shall not release any such person on bail—

(i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and

(ii) where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned:

Provided further that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an Officer of the Central Government or a State Government authorised in this behalf by the Government concerned or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not, take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

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

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 12-A.

12-AB. Appeal and revision.—The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12-AC. Application of Code to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor."

THE EXPLOSIVE SUBSTANCES ACT, 1908

08/06/1908

1. Short title, extent and application.—(1) This Act may be called THE EXPLOSIVE SUBSTANCES ACT, 1908.

(2) It extends to the whole of India [* * *], and applies also to citizens of India outside India.

2. Definitions.—In this Act,—

(a) the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement;

(b) the expression "special category explosive substance" shall be deemed to include research development explosive (RDX), penta erythritol tetra nitrate (PETN), high melting explosive (HMX), tri nitro toluene (TNT), low temperature plastic explosive (LTPE), composition exploding (CE) (2, 4, 6 phenyl methyl nitramine or tetryl), OCTOL (mixture of high melting explosive and tri nitro toluene), plastic explosive kirkee-1 (PEK-1) and RDX/TNT compounds and other similar type of explosives and a combination thereof and remote control devices causing explosion and any other substance and a combination thereof which the Central Government may, by notification in the Official Gazette, specify for the purposes of this Act.

3. Punishment for causing explosion likely to endanger life or property.—Any person who unlawfully and maliciously causes by—

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.—Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India, shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,—

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

5. Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

6. Punishment of abettors.—Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

7. Restriction on trial of offences.—No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate.

THE EXPLOSIVES ACT, 1884

26/02/1984

1. Short title.—(1) This Act may be called THE [* * *] EXPLOSIVES ACT, 1884; and

(2) **Local extent.**—It extends to the whole of India [* * *].

2. Commencement.—(1) This Act shall come into force on such date as the Central Government, by notification in the Official Gazette, appoint.

[* * *]

3. Repeal of portions of Act 12 of 1875.—*[Repealed by the Indian Ports Act, 1889 (10 of 1889), section 2 and Schedule II.]*

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

(a) “aircraft” means any machine which can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth’s surface, and includes balloons, whether fixed or free, airships, kites, gliders and flying machines;

(b) “carriage” includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, in whatever manner the same may be propelled;

(c) “District Magistrate”, in relation to any area for which a Commissioner of Police has been appointed, means the Commissioner of Police thereof and includes—

(a) any such Deputy Commissioner of Police, exercising jurisdiction over the whole or any part of such area, as may be specified by the State Government in this behalf in relation to such area or part; and

(b) an Additional District Magistrate;

(d) “explosive” means gunpowder, nitroglycerine, nitroglycol, gun-cotton, di-nitro-toluene, tri-nitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-tri-methylene-tri-nitramine, penta-erythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphnate, fulminate of mercury or any other metal diazo-di-nitro-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;

(e) “export” means taking out of India to a place outside India by land, sea or air;

(f) “import” means to bring into India from a place outside India by land, sea or air;

(g) “master”,—

(a) in relation to any vessel or aircraft means any person, other than a pilot, harbour master, assistant harbour master or berthing master, having for the time being the charge or control of such vessel or aircraft, as the case may be; and

(b) in relation to any boat belonging to a ship, means the master of that ship;

(h) “manufacture” in relation to an explosive includes the process of—

(1) dividing the explosive into its component parts or otherwise breaking up or unmaking the explosive, or making fit for use any damaged explosive; and

(2) re-making, altering or repairing the explosive;

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

(j) “vessel” includes any ship, boat, sailing vessel, or other description of vessel used in navigation whether propelled by oars or otherwise and anything made for the conveyance, mainly by water, of human beings or of goods and a caisson.

5. Power to make rules as to licensing of the manufacture, possession, use, sale, transport, import and export of explosives.—(1) The Central Government may, for any part of India [* * *] make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a licence granted as provided by those rules, the manufacture, possession, use, sale, transport, import and export of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

(a) the authority by which licences may be granted;

(b) the fees to be charged for licences, and the other sums (if any) to be paid for expenses by applicants for licences;

(c) the manner in which applications for licences must be made, and the matters to be specified in such applications;

(d) the form in which, and the conditions on and subject to which, licences must be granted;

(e) the period for which licences are to remain in force; [*]

(ee) the authority to which appeals may be preferred under section 6-F, the procedure to be followed by such authority and the period within which appeals shall be preferred, the fees to be paid in respect of such appeals and the circumstances under which such fees may be refunded;

(eea) the total quantity of explosives that a licensee can purchase in a given period of time;

(eeb) the fees to be charged by the Chief Controller of Explosives or any officer authorised by him in this behalf, for services rendered in connection with the manufacture, transport, import or export of explosives;

(f) the exemption absolutely or subject to conditions of any explosives or any person or class of persons from the operation of the rules.

[* * *]

5-A. Persons already in business in respect of certain explosives to carry on such business without licence for a certain period.—Notwithstanding anything in section 5 or in the rules made hereunder where, immediately before the commencement of the Indian Explosives (Amendment) Act, 1978 (32 of 1978), any person was carrying on the business of manufacture, sale, transport, import or export of any explosive [for which no licence was required under this Act before its amendment by the Indian Explosives (Amendment) Act, 1978, then, such person shall be entitled to continue to carry on such business without licence in respect of such explosive—

(a) for a period of three months from the date of such commencement; or

(b) if before the expiry of the said period of three months, such person has made an application for grant of licence under this Act for such business in such explosive, until the final disposal of his application, whichever is later.

6. Power for Central Government to prohibit the manufacture, possession or importation of specially dangerous explosives.—(1) Notwithstanding anything in the rules under the last foregoing section, the Central Government may, from time to time, by notification in the Official Gazette,—

(a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Central Government, it is expedient for the public safety to issue the notification; [*]

[* * *]

(2) The Customs Act, 1962 (52 of 1962), shall have effect in relation to any explosive with regard to the importation of which a notification has been issued under this section and the vessel, carriage or aircraft containing such explosive as that Act has in relation to any article the importation of which is prohibited or regulated hereunder and the vessel, carriage or aircraft containing such article.

[* * *]

6-A. Prohibition of manufacture, possession, sale or transport of explosives by young persons and certain other persons.—Notwithstanding anything in the foregoing provisions of this Act,—

(a) no person,—

(i) who has not completed the age of eighteen years, or

(ii) who has been sentenced on conviction of any offence involving violence or moral turpitude for a term of not less than six months, at any time during a period of five years after the expiration of the sentence, or

(iii) who has been ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping the peace or for good behaviour, at any time during the term of the bond, or

(iv) whose licence under this Act has been cancelled, whether before or after the commencement of the Indian Explosives (Amendment) Act, 1978 (32 of 1978), for contravention of the provisions of this Act or of the rules made hereunder, at any time during a period of five years from the date of cancellation of such licence, shall,—

(1) manufacture, sell, transport, import or export any explosive, or

(2) possess any such explosive as the Central Government may, having regard to the nature thereof, by notification in the Official Gazette, specify,

(b) no person shall sell, deliver or despatch any explosive to a person whom he knows or has reason to believe at the time of such sale, delivery or despatch,—

(i) to be prohibited under clause (a) to manufacture, sell, transport, import, export or possess such explosive, or

(ii) to be of unsound mind.

6-B. Grant of licences.—(1) Where a person makes an application for licence under section 5, the authority prescribed in the rules made under that section for grant of licences (hereinafter referred to in this Act as the licensing authority), after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing either grant the licence or refuse to grant the same.

(2) The licensing authority shall grant a licence—

(a) where it is required for the purpose of manufacture of explosives if the licensing authority is satisfied that the person by whom licence is required—

(i) possesses technical know-how and experience in the manufacture of explosives; or

(ii) has in his employment or undertakes to employ a person or persons possessing such technical know-how and experience; or

(b) where it is required for any other purpose, if the licensing authority is satisfied that the person by whom licence is required has a good reason for obtaining the same.

6-C. Refusal of licences.—(1) Notwithstanding anything contained in section 6-B, the licensing authority shall refuse to grant a licence—

(a) where such licence is required in respect of any prohibited explosives; or

(b) where such licence is required by a person whom the licensing authority has reason to believe—

(i) to be prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive, or

(ii) to be of unsound mind, or

(iii) to be for any reason unfit for a licence under this Act; or

(c) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of opinion that it will not be in the public interest to furnish such statement.

6-D. Licensing authority competent to impose conditions in addition to prescribed conditions.—A licence granted under section 6-B may contain in addition to prescribed conditions such other conditions as may be considered necessary by the licensing authority in any particular case.

6-E. Variation, suspension and revocation of licences.—(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the holder of licence by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may, by order in writing, suspend a licence for such period as it thinks fit or revoke a licence,—

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for the licence; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying the conditions of a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefore and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) A Court convicting the holder of a licence of any offence under this Act or the rules made hereunder may also suspend or revoke a licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(7) An order of suspension or revocation under sub-section (6) may also be made by an appellate Court or by the High Court when exercising its powers of revision.

(8) The Central Government may, by order in the Official Gazette, suspend or revoke, or direct any licensing authority to suspend or revoke, all or any licences granted under this Act throughout India or any part thereof.

(9) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

6-F. Appeals.—(1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority suspending or revoking a licence may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against an order made by, or under the direction of the Central Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefore:

Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Limitation Act, 1963 (36 of 1963), with respect to the computation of periods of limitation hereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fee as may be prescribed.

(5) In disposing of an appeal the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(6) The order appealed against shall, unless the appellate authority conditionally or unconditionally directs otherwise, be in force pending the disposal of the appeal against such order.

(7) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

7. Power to make rules conferring powers of inspection, search, seizure, detention and removal.—(1) The Central Government [* * *] may make rules consistent with this Act authorizing any officer, either by name or in virtue of his office—

(a) to enter, inspect and examine any place, aircraft, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported, imported or exported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported, imported or exported in contravention of this Act or of the rules made under this Act;

(b) to search for explosives therein;

(c) to take samples of any explosive found therein on payment of the value thereof; and

(d) to seize, detain and remove any explosive or ingredient thereof found therein and, if necessary, also destroy such explosive or ingredient.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorised by rules under this section.

8. Notice of accidents.—(1) Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any aircraft, carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the aircraft or vessel, or the person in charge of the carriage, as the case may be, shall within such time and in such manner as may be by rule prescribed give notice thereof and of the attendant loss of human life or personal injury, if any, to the Chief Controller of Explosives and to the officer-in-charge of the nearest police station.

[* * *]

9. Inquiry into accidents.—(1) Where any accident such as is referred to in section 8 occurs in or about or in connection with any place, aircraft, carriage or vessel under the control of any of Armed Forces of the Union, an inquiry into the causes of the accident shall be held by the naval, military, or air force authority concerned, and where any such accident occurs in any other circumstances, the District Magistrate [* * *] shall, in cases attended by loss of human life, or may, in any other case, hold or direct a Magistrate subordinate to him to hold, such an inquiry.

(2) Any person holding an inquiry under this section shall have all the powers of a Magistrate in holding an inquiry into an offence under the Code of Criminal Procedure, 1973 (2 of 1974), and may exercise such of the powers conferred on any officer by rules under section 7 as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(3) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances.

(4) The Central Government may make rules—

(a) to regulate the procedure at inquiries under this section;

(b) to enable the Chief Controller of Explosives to be present or represented at any such inquiry;

(c) to permit the Chief Controller of Explosives or his representative to examine any witnesses at the inquiry;

(d) to provide that where the Chief Controller of Explosives is not present or represented at any such inquiry, a report of the proceedings thereof shall be sent to him;

(e) to prescribe the manner in which and the time within which notices referred to in section 8 shall be given.

9-A. Inquiry into more serious accidents.—(1) The Central Government may, where it is of opinion, whether or not it has received the report of an inquiry under section 9, that an inquiry of more formal character should be held into the causes of an accident such as is referred to in section 8, appoint the Chief Controller of Explosives or any other competent person to hold such inquiry, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) Where the Central Government orders an inquiry under this section, it may also direct that any inquiry under section 9 pending at the time shall be discontinued.

(3) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (45 of 1860).

(4) Any person holding an inquiry under this section may exercise such of the powers conferred on any officer by rules under section 7 as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(5) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make; and the Central Government shall cause every report so made to be published at such time and in such manner as it may think fit.

(6) The Central Government may make rules for regulating the procedure at inquiries under this section.

9-B. Punishment of certain offences.—(1) Whoever, in contravention of rules made under section 5 or of the conditions of a licence granted under the said rules—

(a) manufactures, imports or exports any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both; and

(c) in any other case, with fine which may extend to one thousand rupees.

(2) Whoever in contravention of a notification issued under section 6 manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever,—

(a) manufactures, sells, transports, imports, exports or possesses any explosive in contravention of the provisions of clause (a) of section 6-A; or

(b) sells, delivers or despatches any explosive in contravention of the provisions of clause (b) of that section, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or

(c) in contravention of the provisions of section 8 fails to give notice of any accident shall be punishable,—

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or with fine or with both.

9-C. Offences by companies.—(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

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

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

10. Forfeiture of explosives.—When a person is convicted of an offence punishable under this Act, or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

11. Distress of aircraft or vessel.—Where the owner or master of any aircraft or vessel is adjudged under this Act to pay a fine for any offence committed with, or in relation to, that aircraft or vessel, the Court may, in addition to any power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of,—

(a) the aircraft and its furniture or so much of the furniture, or

(b) the vessel and the tackle, apparel and furniture of such vessel or so much of the tackle, apparel and furniture thereof,
as is necessary for the payment of the fine.

12. Abetment and attempts.—Whoever abets, within the meaning of the Indian Penal Code (45 of 1860), the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

13. Power to arrest without warrant persons committing dangerous offences.—Whoever is found committing any act for which he is punishable under this Act, or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, aircraft or vessel, may be apprehended without a warrant by a police officer, or by the occupier of, or the agent or servant of, or other person authorised by the occupier of, that place, or by any agent or servant of, or other person authorised by the railway administration or conservator of the port or officer in charge of the airport, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

14. Saving and power to exempt.—(1) Nothing in this Act, except sections 8, 9 and 9-A shall apply to the manufacture, possession, use, transport or importation of any explosive—

(a) by any of the Armed Forces of the Union, and Ordnance Factories or other establishments of such Forces in accordance with rules or regulations made by [* * *] the Central Government;

(b) by any person employed under the Central Government or under a State Government in execution of this Act.

(2) The Central Government may by notification in the Official Gazette exempt, absolutely or subject to any such conditions as it may think fit to impose, any explosive and any person or class of persons from all or any of the provisions of this Act or the rules made hereunder.

15. Saving of Arms Act, 1959.—Nothing in this Act shall affect the provisions of the Arms Act, 1959 (54 of 1959):

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the licence is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said [* * *] Arms Act.

16. Saving as to liability under other law.—Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Provided that a person shall not be punished twice for the same offence.

17. Extension of definition of “explosive” to other explosive substances.—The Central Government may, from time to time, by notification in the Official Gazette, declare that any substance which appears to the Central Government to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term “explosive” in this Act.

17-A. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that any power to function which may be exercised or performed by it under this Act other than the power under sections 5, 6, 6-A, 14 and 17 may, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed also by—

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to the State Government.

18. Procedure for making, publication and confirmation of rules.—(1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Central Government, from time to time, by notification in the Official Gazette prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect [* * *] until it has been published in the Official Gazette, [* * *].

(6) The publication in the Official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and , if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

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

THE GENERAL CLAUSES ACT, 1897

11/03/1997

PRELIMINARY

1. Short title.—(1) This Act may be called THE GENERAL CLAUSES ACT, 1897; [*]

[* * * *]

2. Repeal.—*[Repealed by the Repealing and Amending Act, 1903 (1 of 1903), section 4 and Schedule III.]*

GENERAL DEFINITIONS

3. Definitions.—In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

(1) “abet”, with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860);

(2) “act”, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;

(3) “affidavit” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(4) “barrister” shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

(5) “British India” shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty’s dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or Officer subordinate to the Governor-General of India, and as respects any period after that date and before the date of establishment of the Dominion of India means all territories for the time being comprised within the Governors’ Provinces and the Chief Commissioners’ Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar;

(6) “British possession” shall mean any part of Her Majesty’s dominions, exclusive of the United Kingdom, and where parts of those dominions are under both a Central and a Local Legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one British possession;

(7) “Central Act” shall mean an Act of Parliament, and shall include—

(a) an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution, and

(b) an Act made before such commencement by the Governor-General in Council or the Governor-General, acting in a legislative capacity;

(8) “Central Government” shall,—

(a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General in Council, as the case may be; and shall include,—

(i) in relation to functions entrusted under sub-section (1) of section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of a Chief Commissioner’s Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and

(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,—

(i) in relation to functions entrusted under clause (1) of article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause; [*]

(ii) in relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the

scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and

(iii) in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;

(9) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs;

(10) "Chief Controlling Revenue Authority" or "Chief Revenue Authority" shall mean—

(a) in a State where there is a Board of Revenue, that Board;

(b) in a State where there is a Revenue Commissioner, that Commissioner;

(c) in Punjab, the Financial Commissioner; and

(d) elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Constitution, the Central Government, and in relation to other matters, the State Government, may by notification in the Official Gazette, appoint;

(11) "Collector" shall mean, in a Presidency town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer-in-charge of the revenue-administration of a district;

(12) "Colony"—

(a) in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, shall mean any part of His Majesty's dominions exclusive of the British Islands, the Dominions of India and Pakistan (and before the establishment of those Dominions, British India), any Dominions as defined in the Statute of Westminster, 1931, any Province or State forming part of any of the said Dominions, and British Burma; and

(b) in any Central Act passed before the commencement of Part III of the said Act, mean any part of His Majesty's dominions exclusive of the British Islands and of British India, and in either case where parts of those dominions are under both a Central and Local Legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one colony;

(13) "commencement", used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force;

(14) "Commissioner" shall mean the chief officer-in-charge of the revenue administration of a division;

(15) "Constitution" shall mean the Constitution of India;

(16) "Consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent;

(17) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

(18) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose or recording that matter;

(19) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

(20) "father", in the case of any one whose personal law permits adoption, shall include an adoptive father;

(21) "financial year" shall mean the year commencing on the first day of April;

(22) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

(23) "Government" or "the Government" shall include both the Central Government and any State Government;

(24) "Government securities" shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B State;

(25) "High Court", used with reference to civil proceedings, shall mean the highest Civil Court of appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates;

(26) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

(27) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860);

(28) "India" shall mean,—

(a) as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, and the tribal areas;

(b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and

(c) as respects any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India;

(29) "Indian law" shall mean any Act, Ordinance, Regulation, Rule, order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any Province of India or part thereof, and thereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, Rule or other instrument made under such Act;

(30) "Indian State" shall mean any territory which the Central Government recognised as such a State before the commencement of the Constitution, whether described as a State, an Estate, a Jagir or otherwise;

(31) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(32) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

(33) "master", used with reference to a ship, shall mean, any person (except a pilot or harbour-master) having for the time being control or charge of the ship;

(34) "merged territories" shall mean the territories which by virtue of an order made under section 290-A of the Government of India Act, 1935, were immediately before the commencement of the Constitution being administered as if they formed part of a Governor's Province or as if they were a Chief Commissioner's Province;

(35) "month" shall mean a month reckoned according to the British calendar;

(36) "movable property" shall mean property of every description, except immovable property;

(37) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(38) "Offence" shall mean any act or omission made punishable by any law for the time being in force;

(39) "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State;

(40) "Part" shall mean a Part of the Act or Regulation in which the word occurs;

(41) "Part A State" shall mean a State for the time being specified in Part A of the First Schedule to the Constitution, as in force before the Constitution (Seventh Amendment) Act, 1956, "Part B State" shall mean a State for the time being specified in Part B of that Schedule and "Part C State" shall mean a State for the time being specified in Part C of that Schedule or a territory for the time being administered by the President under the provisions of article 243 of the Constitution;

(42) "person" shall include any company or association or body of individuals, whether incorporated or not;

(43) "Political Agent" shall mean,—

(a) in relation to any territory outside India, the Principal Officer, by whatever name called, representing the Central Government in such territory; and

(b) in relation to any territory within India to which the Act or Regulation containing the expression does not extend, any officer appointed by the Central Government to exercise all or any of the powers of a Political Agent under that Act or Regulation;

(44) "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be;

(45) "Province" shall mean a Presidency, a Governor's Province, a Lieutenant-Governor's Province or a Chief Commissioner's Province;

(46) "Provincial Act" shall mean an Act made by the Governor in Council, Lieutenant-Governor in Council or Chief Commissioner in Council of a Province under any of the Indian Councils Acts or the Government of India Act, 1915, or an Act made by the Local Legislature or the Governor of a Province under the Government of India Act, or an Act made by the Provincial Legislature or Governor of a Province or the Coorg Legislative Council under the Government of India Act, 1935;

(47) "Provincial Government" shall mean, as respects anything done before the commencement of the Constitution, the authority or person authorised at the relevant date to administer executive Government in the Province in question;

(48) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;

(49) "registered", used with reference to a document, shall mean registered in India under the law for the time being in force for the registration of documents;

(50) "Regulation" shall mean a Regulation made by the President under article 240 of the Constitution and shall include a Regulation made by the President under article 243 thereof and a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935;

(51) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;

(52) "Schedule" shall mean a Schedule to the Act or Regulation in which the word occurs;

(53) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled District Act, 1874;

(54) "section" shall mean a section of the Act or Regulation in which the word occurs;

(55) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars;

(56) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions;

(57) "son", in the case of any one whose personal law permits adoption, shall include an adopted son;

(58) "State"—

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State; and

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory;

(59) "State Act" shall mean an Act passed by the Legislature of a State established or continued by the Constitution;

(60) "State Government",—

(a) as respects anything done before the commencement of the Constitution, shall mean, in a Part A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorised at the relevant date to exercise executive Government in the corresponding Acceding State, and in a Part C State, the Central Government, [*];

(b) as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a Part A State, the Governor, in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;

(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government;

and shall, in relation to functions entrusted under article 258-A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article;

(61) "sub-section" shall mean a sub-section of the section in which the word occurs;

(62) "swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

(62-A) "Union territory" shall mean any Union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule;

(63) "vessel" shall include any ship or boat or any other description of vessel used in navigation;

(64) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property;

(65) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

(66) "year" shall mean a year reckoned according to the British calendar.

4. Application of foregoing definitions to previous enactments.—(1) The definitions in section 3 of the following words and expressions, that is to say, "affidavit", "barrister", [* * *] "District Judge", "father", [* * *] [* * *] [* * *] "immovable property", "imprisonment," [* * *] "Magistrate", "month", "movable property", "oath", "person", "section", "son", "swear", "will" and "year" apply also, unless there is anything repugnant in the subject or context, to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet", "Chapter", "commencement", "financial year", "local authority", "master", "offence", "part", "public nuisance", "registered", "schedule", "ship", "sign", "sub-section", and "writing" apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

4-A. Application of certain definitions to Indian laws.—(1) The definitions in section 3 of the expressions "British India", "Central Act", "Central Government", "Chief Controlling Revenue Authority", "Chief Revenue Authority", "Constitution", "Gazette", "Government", "Government securities", "High Court", "India", "Indian Law", "Indian State", "merged territories", "Official Gazette", "Part A State", "Part B State", "Part C State", "Provincial Government", "State" and "State Government" shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

(2) In any Indian law, references, by whatever form of words, to revenues of the Central Government or to any State Government shall, on and from the first day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.

GENERAL RULES OF CONSTRUCTION

5. Coming into operation of enactments.—(1) Where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent,—

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of Parliament, of the President.

[* * * *]

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

5-A. Coming into operation of Governor-General's Act.—*[Repealed by the India (Adaptation of Existing Indian Laws) Order, 1947, article 11 and Schedule.]*

6. Effect of repeal.—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered hereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6-A. Repeal of Act making textual amendment in Act or Regulation.—Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

7. Revival of repealed enactments.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

8. Construction of references to repealed enactments.—(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted with or without modification, any provision of a former enactment, then references in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

9. Commencement and termination of time.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. Computation of time.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877) applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

11. Measurement of distances.—In the measurement of any distance, for the purpose of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

12. Duty to be taken *pro rata* in enactments.—Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable

on any given quantity, by weight, measure, or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

13. Gender and number.—In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

13-A. References to the Sovereign.—[*Repealed by A.O. 1950.*]

POWERS AND FUNCTIONARIES

14. Powers conferred to be exercisable from time to time.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred [* * *], then unless a different intention appears that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

15. Power to appoint to include power to appoint *ex officio*.—Where, by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

16. Power to appoint to include power to suspend or dismiss.—Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

17. Substitution of functionaries.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

18. Successors.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

19. Official chiefs and subordinates.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS

20. Construction of notifications, etc., issued under enactments.—Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.—Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.—Where, by any Central Act or Regulation which is not to

come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer hereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

23. Provisions applicable to making of rules or bye-laws after previous publication.—Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the conditions of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

24. Continuation of orders, etc., issued under enactments repealed and re-enacted.—Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5-A of the Scheduled Districts Act, 1874 (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

MISCELLANEOUS

25. Recovery of fines.—Sections 63 to 70 of the Indian Penal Code (45 of 1860) and the provisions of the Code of Criminal Procedure (5 of 1898) for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains any express provision to the contrary.

26. Provision as to offences punishable under two or more enactments.—Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

28. Citation of enactments.—(1) In any Central Act or Regulation, and in any rule, bye-law, instrument, or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

29. Saving for previous enactments, rules and bye-laws.—The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

30. Application of Act to Ordinances.—In this Act the expression Central Act, wherever it occurs, except in section 5 and the word “Act” in clauses (9), (13), (25), (40), (43), (52) and (54) of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor-General under section 23 of the Indian Councils Act, 1861, or section 72 of the Government of India Act, 1915, or section 42 [* * *] of the Government of India Act, 1935 and an Ordinance promulgated by the President under article 123 of the Constitution.

30-A. Application of Act to Acts made by the Governor-General.—*[Repealed by A.O. 1937.]*

31. Construction of references to Local Government of a Province.—*[Repealed by A.O. 1937.]*

THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

1. Short title, extent and commencement.—(1) This Act may be called THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956.

(2) It extends to the whole of India.

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) “brothel” includes any house, room, conveyance or place or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes;

(aa) “child” means a person who has not completed the age of sixteen years;

(b) “corrective institution” means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which persons, who are in need of correction, may be detained under this Act, and includes a shelter where under trials may be kept in pursuance of this Act;

[* * *]

(c) “Magistrate” means a Magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule;

(ca) “major” means a person who has completed the age of eighteen years;

(cb) “minor” means a person who has completed the age of sixteen years but has not completed the age of eighteen years;

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

[* * *]

(f) "prostitution" means the sexual exploitation or abuse of persons for commercial purpose, and the expression "prostitute" shall be construed accordingly;

(g) "protective home" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which persons, who are in need of care and protection, may be kept under this Act and where appropriate technically qualified persons, equipment and other facilities have been provided, but does not include—

(i) a shelter where undertrials may be kept in pursuance of this Act, or

(ii) a corrective institution;

(h) "public place" means any place intended for use by, or accessible to, the public and includes any public conveyance;

(i) "special police officer" means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act;

(j) "trafficking police officer" means a police officer appointed by the Central Government under sub-section (4) of section 13.

2-A. Rule of construction regarding enactments not extending to Jammu and Kashmir.—Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

3. Punishment for keeping a brothel or allowing premises to be used as a brothel.—(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which may extend to two years; and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

4. Punishment for living on the earnings of prostitution.—(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both and

where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

(2) Where any person over the age of eighteen years is proved—

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling his prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

5. Procuring, inducing or taking person for the sake of prostitution.—(1) Any person who—

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,—

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

[* * *]

(3) An offence under this section shall be triable—

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

6. Detaining a person in premises where prostitution is carried on.—(1) Any person who detains any other person, whether with or without his consent,—

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2-A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

(3) A person shall be presumed to detain a woman a girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,—

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

7. Prostitution in or in the vicinity of public places.—(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend to three months.

(1-A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, is or is wilfully a party to such use,

shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

Explanation.—For the purposes of this sub-section, “hotel” shall have the meaning as in clause (6) of section 2 of the Hotel Receipts Tax Act, 1980 (54 of 1980).

(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.

8. Seducing or soliciting for purpose of prostitution.—Whoever, in any public place or within sight of and in such manner as to be seen or heard from any public place, whether from within any building or house or not—

(a) by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt or attract or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:

Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

9. Seduction of a person in custody.—[*] Any person who having the custody, charge or care of, or a position of authority over, any person, causes or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

[* * *]

10. Release on probation of good conduct or after due admonition.—[Omitted by the *Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986)*, section 13 (w.e.f. 26-1-1987).]

10-A. Detention in a corrective institution.—(1) Where—

(a) a female offender is found guilty of an offence under section 7 or section 8, [* * *]; and

(b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction, it shall be lawful for the Court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the Court thinks fit:

Provided that before passing such an order—

(i) the Court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the Court as to the suitability of the case for treatment in such an institution, as also the report of the probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958); and

(ii) the Court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.

(2) Subject to the provisions of sub-section (3), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to appeal, reference and revision, and of the Limitation Act, 1963 (36 of 1963), as to the period within which an appeal shall be filed, shall apply in relation to an order of detention under sub-section (1) as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.

(3) Subject to such rules as may be made in this behalf, the State Government or authority, authorised in this behalf may, at any time after the expiration of six months from the date of an order for detention in a corrective institution, if it is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written licence in such form as may be prescribed.

(4) The conditions on which an offender is discharged under sub-section (3), may include requirements relating to residence of the offender and supervision over the offender's activities and movements.

11. Notification of address of previously convicted offenders.—(1) When any person having been convicted—

(a) by a Court in India of an offence punishable under this Act or punishable under section 363, section 365, section 366, section 366-A, section 366-B, section 367, section 368, section 370, section 371, section 372 or section 373 of the Indian Penal Code (45 of 1860), with imprisonment for a term of two years or upwards; or

(b) by a Court or tribunal in any other country of an offence which would, if committed in India, have been punishable under this Act or under any of the aforesaid sections with imprisonment for a like term,

is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a Court, such Court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from, such residence after release be notified according to rules made under section 23 for a period not exceeding five years from the date of expiration of that sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

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

(4) Any person charged with a breach of any rule referred to in sub-section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

12. Security for good behaviour from habitual offenders.—*[Omitted by the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986), section 13 (w.e.f. 26-1-1987).*

13. Special police officer and advisory body.—(1) There shall be for such area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of an Inspector of Police.

(2-A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally:

Provided that no such power shall be conferred on—

(a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;

(b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.

(3) For the efficient discharge of his functions in relation to offences under this Act—

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and

(b) the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

14. Offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code:

Provided that, notwithstanding anything contained in that Code,—

(i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;

(ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

(iii) any police officer not below the rank of sub-inspector specially authorised by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

15. Search without warrant.—(1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer, as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be, shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do:

Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.

(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove there from all the persons found therein.

(5) The special police officer or the trafficking police officer, as the case may be, after removing the person under sub-section (4) shall forthwith produce him before the appropriate Magistrate.

(5-A) Any person who is produced before a Magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

Explanation.—In this sub-section, “registered medical practitioner” has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).

(6) The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of, the search.

(6-A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section and section 17-A, “recognised welfare institution or organisation” means such institution or organisation as may be recognised in this behalf by the State Government.

(7) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code.

16. Rescue of person.—(1) Where a Magistrate has reason to believe from information received from the police or from any other person authorised by the State Government in this behalf or otherwise, that—

any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel,

he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove there from such person and produce him before him.

(2) The police officer, after removing the person, shall forthwith produce him before the Magistrate issuing the order.

17. Intermediate custody of persons removed under section 15 or rescued under section 16.—(1) When the special police officer removing a person under sub-section (4) of section 15 or a police officer rescuing a person under sub-section (1) of section 16, is for any reason unable to produce him before the appropriate Magistrate as required by sub-section (5) of section 15, or before the Magistrate issuing the order under sub-section (2) of section 16, he shall forthwith produce him before the nearest Magistrate of any class, who shall pass such orders as he deems proper for his safer custody until he is produced before the appropriate Magistrate, or, as the case may be, the Magistrate issuing the order:

Provided that no person shall be—

(i) detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or

(ii) restored to or placed in the custody of a person who may exercise a harmful influence over him.

(2) When the person is produced before the appropriate Magistrate under sub-section (5) of section 15 or the Magistrate under sub-section (2) of section 16, he shall, after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

(3) The Magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person:

Provided that where a person rescued under section 16 is a child or minor, it shall be open to the Magistrate to place such child or minor in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children:

Provided further that, no person shall be kept in custody for the purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over him.

(4) Where the Magistrate is satisfied, after making an inquiry as required under sub-section (2),—

(a) that the information received is correct; and

(b) that he is in need of care and protection,

he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that those entrusted with the custody of the person including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the Court, which will be in force for a period not exceeding three years.

(5) In discharging his functions under sub-section (2), a Magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.

(6) An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.

17-A. Conditions to be observed before placing persons rescued under section 16 to parents or guardians.—Notwithstanding anything contained in sub-section (2) of section 17, the Magistrate making an inquiry under section 17 may, before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.

18. Closure of brothel and eviction of offenders from the premises.—(1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders—

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

(b) directing that before letting it out during the period of one year, or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate:

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A Court convicting a person of any offence under section 3 or section 7 may pass order under sub-section (1), without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the Magistrate or Court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any Court, civil or criminal and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be:

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a

brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial Court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a Magistrate passes an order under sub-section (1), or a Court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.

19. Application for being kept in a protective home or provided care and protection by Court.—(1) A person who is carrying on, or is being made to carry on, prostitution, may make an application, to the Magistrate within the local limits of whose jurisdiction he is carrying on, or is being made to carry on, prostitution, for an order that he may be—

(a) kept in a protective home, or

(b) provided care and protection by the Court in the manner specified in sub-section (3).

(2) The Magistrate may, pending inquiry under sub-section (3), direct that the person be kept in such custody as he may consider proper, having regard to the circumstances of the case.

(3) If the Magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), into the personality, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded, make an order that the applicant be kept,—

(i) in a protective home, or

(ii) in a corrective institution, or

(iii) under the supervision of a person appointed by the Magistrate,

for such period as may be specified in the order.

20. Removal of prostitute from any place.—(1) A Magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such person requiring him to appear before the Magistrate and show cause why he should not be required to remove himself from the place and be prohibited from re-entering it.

(2) Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the person against whom the notice is issued.

(3) The Magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the person an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such person is a prostitute and that it is necessary in the interests of the general public that such person should be required to remove himself there from and be prohibited from re-entering the same, the Magistrate shall, by order in writing communicated to the person in the manner specified therein, require him after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove himself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit him from re-entering the place without the permission in writing of the Magistrate having jurisdiction over such place.

(4) Whoever—

(a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting him from re-entering a place without permission is in force, re-enters the place without such permission, or

(b) knowing that any person has, under this section, been required to remove himself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the place, shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.

21. Protective homes.—(1) The State Government may in its discretion establish as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions, when established, shall be maintained in such manner as may be prescribed.

(2) No person or no authority other than the State Government shall, after the commencement of this Act, establish or maintain any protective home or corrective institution except under and in accordance with the conditions of, a licence issued under this section by the State Government.

(3) The State Government may, on application made to it in this behalf by a person or authority, issue to such person or authority a licence in the prescribed form for establishing and maintaining or as the case may be, for maintaining a protective home or corrective institution and a licence so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act:

Provided that any such condition may require that the management of the protective home or corrective institution shall, wherever practicable, be entrusted to women:

Provided further that a person or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such licence:

Provided also that a person or authority maintaining any corrective institution at the commencement of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1978 (46 of 1978), shall be allowed a period of six months from such commencement to make an application for such licence.

(4) Before issuing a licence the State Government may require such officer or authority as it may appoint for this purpose, to make a full and complete investigation in respect of the application received in this behalf and report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed.

(5) A licence, unless sooner revoked, shall remain in force for such period as may be specified in the licence and may, on application made in this behalf at least thirty days before the date of its expiration, be renewed for a like period.

(6) No licence issued or renewed under this Act shall be transferable.

(7) Where any person or authority to whom a licence has been granted under this Act or any agent or servant of such person or authority commits a breach of any of the conditions thereof or any of the provisions of this Act or of any of the rules made under this Act, or where the State Government is not satisfied with the condition, management or superintendence of any protective home or corrective institution, the State Government may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded, revoke the licence by order in writing:

Provided that no such order shall be made until an opportunity is given to the holder of the licence to show cause why the licence shall not be revoked.

(8) Where a licence in respect of a protective home or corrective institution, has been revoked under the foregoing sub-section such protective home shall cease to function from the date of such revocation.

(9) Subject to any rules that may be made in this behalf, the State Government may also vary or amend any licence issued or renewed under this Act.

(9-A) The State Government or an authority authorised by it in this behalf may, subject to any rules that may be made in this behalf, transfer an inmate of a protective home to another protective home or to a corrective institution or an inmate of a corrective institution to another corrective institution or to a protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted and other circumstances of the case:

Provided that,—

(a) no person who is transferred under this sub-section shall be required to stay in the home or institution to which he is transferred for a period longer than he was required to stay in the home or institution from which he was transferred;

(b) reasons shall be recorded for every order of transfer under this sub-section.

(10) Whoever establishes or maintains a protective home or corrective institution, except in accordance with the provisions of this section, shall be punishable in the case of a first offence with fine which may extend to one thousand rupees and in the case of second or subsequent offence with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

21-A. Production of records.—Every person or authority who is licensed under sub-section (3) of section 21 to establish or maintain, or, as the case may be, for maintaining, a protective home or corrective institution shall whenever required by a Court, produce the records and other documents maintained by such home or institution before such Court.

22. Trials.—No Court, inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under section 3, section 4, section 5, section 6, section 7 or section 8.

22-A. power to establish special Courts.—(1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrate of the first class, or, as the case may be, Metropolitan Magistrates, in such district or metropolitan area.

(2) Unless otherwise directed by the High Court, a Court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.

(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a Court established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.

(4) Subject to the foregoing provisions of this section a Court established under sub-section (1) in any district or metropolitan area shall be deemed to be a Court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure, 1973 (2 of 1974), and the provisions of the Code shall apply accordingly in relation to such Courts.

Explanation.—In this section, “High Court” has the same meaning as in clause (e) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974).

22-AA. Power of Central Government to establish special Courts.—(1) If the Central Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act and committed in more than one State, it may, by notification in the Official Gazette and after consultation with the High Court concerned, establish one or more Courts of Judicial Magistrates of the first class or Metropolitan Magistrates for the trial of such offences.

(2) The provisions of section 22-A shall, so far as may be, apply to the Courts established under sub-section (1), as they apply to Courts established under that section.

22-B. Power of Court to try cases summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, if it considers it necessary so to do, direct that offences under this Act shall be tried in a summary way by a Magistrate [including the presiding officer of a Court established under sub-section (1) of section 22-A and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness, who may have

been examined and proceed to hear or re-hear the case in the manner provided by the said Code.

23. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

- (a) the notification of any place as a public place;
- (b) the placing in custody of persons for whose safe custody orders have been passed under sub-section (1) of section 17 and their maintenance;
- (bb) the discharge of an offender under sub-section (3) of section 10-A from a corrective institution and the form of licence to be granted to such offender;
- (c) the detention and keeping in protective homes or, as the case may be, in corrective institutions of persons under this Act and their maintenance;
- (d) the carrying out of the provisions of section 11 regarding notification of residence or change of or absence from residence by released convicts;
- (e) the delegation of authority to appoint the special police officer under sub-section (1) of section 13;
- (f) the carrying into effect of the provisions of section 18;
- (g) (i) the establishment, maintenance, management and superintendence of protective homes and corrective institutions under section 21 and the appointment, powers and duties of persons employed in such homes or institutions;
- (ii) the form in which an application for a licence may be made and the particulars to be contained in such application;
- (iii) the procedure for the issue or renewal of a licence, the time within which such licence shall be issued or renewed and the procedure to be followed in making a full and complete investigation in respect of an application for a licence;
- (iv) the form of a licence and the conditions to be specified therein;
- (v) the manner in which the accounts of a protective home and a corrective institution shall be maintained and audited;
- (vi) the maintenance of registers and statements by a licensee and the form of such registers and statements;
- (vii) the care, treatment, maintenance, training, instruction, control and discipline of the inmates of protective homes and corrective institutions;
- (viii) the visits to and communication with such inmates;
- (ix) the temporary detention of persons sentenced to detention in protective homes or in corrective institutions until arrangements are made for sending them to such homes or institutions;
- (x) the transfer of an inmate from—
 - (a) one protective home to another, or to a corrective institution,
 - (b) one corrective institution to another or to a protective home,
 under sub-section (9-A) of section 21;
- (xi) the transfer in pursuance of an order of the Court from a protective home or a corrective institution to a prison of a person found to be incorrigible or exercising bad influence upon other inmates of that protective home or the corrective institution and the period of his detention in such prison;
- (xii) the transfer to a protective home or corrective institution of persons sentenced under section 7 or section 8 and the period of their detention in such home or institution;
- (xiii) the discharge of inmates from a protective home or corrective institution either absolutely or subject to conditions, and their arrest in the event of breach of such conditions;
- (xiv) the grant of permission to inmates to absent themselves for short periods;
- (xv) the inspection of protective homes and corrective institutions and other institutions in which persons may be kept, detained and maintained;
- (h) any other matter which has to be, or may be, prescribed.

(3) In making any rule under clause (d) or clause (g) of sub-section (2) the State Government may provide that a breach thereof shall be punishable with fine which may extend to two hundred and fifty rupees.

(4) All rules made under this Act shall, as soon as may be, after they are made, be laid before the State Legislature.

24. Act not to be in derogation of certain other Acts.—Nothing in this Act shall be construed to be in derogation of the provisions of the Reformatory Schools Act, 1897 (8 of 1897), or any State Act enacted in modification of the said Act or otherwise, relating to juvenile offenders.

25. Repeal and savings.—(1) As from the date of the coming into force in any State of the provisions other than section 1 of this Act, all State Acts relating to suppression of immoral traffic in persons or to the prevention of prostitution, in force in that State immediately before such date shall stand repealed.

(2) Notwithstanding the repeal by this Act of any State Act referred to in sub-section (1), anything done or any action taken (including any direction given, any register, rule or order made, any restriction imposed) under the provisions of such State Act shall in so far as such thing or action is not inconsistent with the provisions of this Act be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Explanation.—In this section the expression “State Act”, includes a “Provincial Act”.

THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

23/12/1986

1. Short title, extent and commencement.—(1) This Act may be called THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

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

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

(a) “advertisement” includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;

(b) “distribution” includes distribution by way of samples whether free or otherwise;

(c) “indecent representation of women” means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals;

(d) “label” means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;

(e) “package” includes a box, carton, tin or other container;

(f) “prescribed” means prescribed by rules made under this Act.

3. Prohibition of advertisements containing indecent representation of woman.—No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women.—No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form:

Provided that nothing in this section shall apply to—

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other object of general concern; or

(ii) which is kept or used *bona fide* for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in,—

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purposes;

(c) any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

5. Powers to enter and search.—(1) Subject to such rules as may be prescribed, any Gazetted Officer authorised by the State Government may, within the local limits of the area for which he is so authorised,—

(a) enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;

(b) seize any advertisement or any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which he has reason to believe contravenes any of the provisions of this Act;

(c) examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act:

Provided that no entry under this sub-section shall be made into a private dwelling-house without a warrant:

Provided further that the power of seizure under this sub-section may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such documents, article or thing if the advertisement cannot be separated by reason of its being embossed or otherwise from such document, article or thing without affecting the integrity, utility or saleable value thereof.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(3) Where any person seizes anything under clause (b) or clause (c) of sub-section (1), he shall, as soon as may be, inform the nearest Magistrate and take his orders as to the custody thereof.

6. Penalty.—Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

7. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been

committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

8. Offences to be cognizable and bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be bailable.

(2) An offence punishable under this Act shall be cognizable.

9. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any other officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.

10. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the manner in which the seizure of advertisements or other articles shall be made, and the manner in which the seizure list shall be prepared and delivered to the person from whose custody any advertisement or other article has been seized;

(b) any other matter which is required to be, or may be, prescribed.

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

THE INDIAN FOREST ACT, 1927

12/09/1927

CHAPTER I PRELIMINARY

1. Short title and extent.—(1) This Act may be called THE INDIAN FOREST ACT, 1927.

(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States.

(3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the States of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in the Official Gazette bring this Act into force in the whole or any specified part of that State to which this Act extends and where it is not in force.

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

(1) “cattle” includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

CHAPTER II

OF RESERVED FORESTS

3. Power to reserve forests.—The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. Notification by State Government.—(1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette—

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called “the Forest Settlement Officer”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement Officer.

(3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement Officer under this Act.

5. Bar of accrual of forest rights.—After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.

6. Proclamation by Forest Settlement Officer.—When a notification has been issued under section 4, the Forest Settlement Officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. Inquiry by Forest Settlement Officer.—The Forest Settlement Officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. Powers of Forest Settlement Officer.—For the purpose of such inquiry, the Forest Settlement Officer may exercise the following powers, that is to say:—

- (a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and
- (b) the powers of a civil Court in the trial of suits.

9. Extinction of rights.—Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

10. Treatment of claims relating to practice of shifting cultivation.—(1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement Officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the State Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement Officer may arrange for its exercise—

(a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the State Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the State Government.

11. Power to acquire land over which right is claimed.—(1) In the case of a claim to a right in or over any land, other than a right-of-way or right-of-pasture, or a right to forest-produce or a water-course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement Officer shall either—

(i) exclude such land from the limits of the proposed forest; or

(ii) come to an agreement with the owner thereof for the surrender of his rights; or

(iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(3) For the purpose of so acquiring such land—

(a) the Forest Settlement Officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894 (1 of 1894);

(b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;

(c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

12. Order on claims to rights of pasture or to forest-produce.—In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

13. Record to be made by Forest Settlement Officer.—The Forest Settlement Officer, when passing any order under section 12, shall record, so far as may be practicable,—

(a) the name, father's name, caste, residence and occupation of the person claiming the right; and

(b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

14. Record where he admits claim.—If the Forest Settlement Officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take, or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

15. Exercise of rights admitted.—(1) After making such record the Forest Settlement Officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose the Forest Settlement Officer may—

(a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

(b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient for the purposes of the claimants; or

(c) record an order, continuing to such claimants a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the State Government.

16. Commutation of rights.—In case the Forest Settlement Officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the State Government may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

17. Appeal from order passed under section 11, section 12, section 15 or section 16.—Any person who has made a claim under this Act, or any Forest Officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement Officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the State Government may, by notification in the Official Gazette, appoint to hear appeals from such orders:

Provided that the State Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the State Government, and, when the Forest Court has been so established, all such appeals shall be presented to it.

18. Appeal under section 17.—(1) Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement Officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the State Government, be final.

19. Pleadings.—The State Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement Officer, or the appellate Officer or Court, in the course of any inquiry or appeal under this Act.

20. Notification declaring forest reserved.—(1) When the following events have occurred, namely:—

(a) the period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement Officer;

(b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate Officer or Court; and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement Officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under section 16 of that Act,

the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved, from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

21. Publication of translation of such notification in neighbourhood of forest.—The Forest Officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. Power to revise arrangement made under section 15 or section 18.—The State Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

23. No right acquired over reserved forest, except as here provided.—No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued.

24. Rights not to be alienated without sanction.—(1) Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the State Government:

Provided that, when any such right is appended to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

25. Power to stop ways and water-courses in reserved forests.—The Forest Officer may, with the previous sanction of the State Government or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in a reserved forest, provided that a substitute for the way or water-course so stopped, which the State Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest Officer in lieu thereof.

26. Acts prohibited in such forests.—(1) Any person who—

(a) makes any fresh clearing prohibited by section 5; or

(b) sets fire to a reserved forest, or, in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;

or who, in a reserved forest—

(c) kindles, keeps or carries any fire except at such seasons as the Forest Officer may notify in this behalf;

(d) trespasses or pastures cattle, or permits cattle to trespass;

(e) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(f) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;

(g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(h) clears or breaks up any land for cultivation or any other purpose;

(i) in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares; or

(j) in any area in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force, kills or catches elephants in contravention of any rules so made,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit—

(a) any act done by permission in writing of the Forest Officer, or under any rule made by the State Government; or

(b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the State Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

27. Power to declare forest no longer reserved.—(1) The State Government may, [* *] by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III

OF VILLAGE-FORESTS

28. Formation of village-forests.—(1) The State Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The State Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

CHAPTER IV

OF PROTECTED FORESTS

29. Protected forests.—(1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waste-land comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste-land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

30. Power to issue notification reserving trees, etc.—The State Government may, by notification in the Official Gazette,—

(a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or

(c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

31. Publication of translation of such notification in neighbourhood.—The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

32. Power to make rules for protected forests.—The State Government may make rules to regulate the following matters, namely:—

(a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;

(b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licences by such persons;

(c) the granting of licences to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such persons;

(d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;

(f) the examination of forest-produce passing out of such forests;

(g) the clearing and breaking up of land for cultivation or other purposes in such forests;

(h) the protection from fire of timber lying in such forests and of trees reserved under section 30;

(i) the cutting of grass and pasturing of cattle in such forests;

(j) hunting, shooting, fishing, poisoning water and setting traps or snares in such forests, and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force;

(k) the protection and management of any portion of a forest closed under section 30; and

(l) the exercise of rights referred to in section 29.

33. Penalties for acts in contravention of notification under section 30 or of rules under section 32.—(1) Any person who commits any of the following offences, namely:—

(a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

(b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal or collects, subjects to any manufacturing process, or removes any forest-produce;

(c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;

(d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest;

(e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(g) permits cattle to damage any such tree;

(h) infringes any rule made under section 32;

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

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the State Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

34. Nothing in this Chapter to prohibit acts done in certain cases.—Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest Officer, or in accordance with rules made under section 32, or except as regards any portion of a forest closed under section 30, or as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

CHAPTER V

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

35. Protection of forests for special purposes.—(1) The State Government, may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation;
- (b) the pasturing of cattle; or
- (c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes:—

- (i) for protection against storms, winds, rolling stones, floods and avalanches;
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers and tanks;
- (iv) for the protection of roads, bridges, railways and other lines of communication;
- (v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

36. Power to assume management of forests.—(1) In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest Officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

37. Expropriation of forests in certain cases.—(1) In any case under this Chapter in which the State Government considers that, in lieu of placing the forest or land under the control of a Forest Officer, the same should be acquired for public purposes, the State Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the State Government shall acquire such forest or land accordingly.

38. Protection of forests at request of owners.—(1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to

at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire—

(a) that such land be managed on their behalf by the Forest Officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification in the Official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

CHAPTER VI

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

39. Power to impose duty on timber and other forest-produce.—(1) The Central Government may levy a duty in such manner, at such places and at such rates as it may declare by notification in the Official Gazette on all timber or other forest-produce—

(a) which is produced in the territories to which this Act extends, and in respect of which the Government has any right;

(b) which is brought from any place outside the territories to which this Act extends.

[* * *]

(2) In every case in which such duty is directed to be levied *ad valorem*, the Central Government may fix by like notification the value on which such duty shall be assessed.

(3) All duties on timber or other forest-produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the State Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

(4) Notwithstanding anything in this section, the State Government may, until provision to the contrary is made by Parliament, continue to levy any duty which it was lawfully levying before the commencement of the Constitution, under this section as then in force:

Provided that nothing in this sub-section authorizes the levy of any duty which as between timber or other forest-produce of the State and similar produce of the locality outside the State discriminates in favour of the former, or which, in the case of timber or other forest-produce of localities outside the State, discriminates between timber or other forest-produce of one locality and similar timber or other forest-produce of another locality.

40. Limit not to apply to purchase-money or royalty.—Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VII

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT

41. Power to make rules to regulate transit of forest-produce.—(1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

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

(a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within the State;

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees therefore;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

41-A. Powers of Central Government as to movements of timber across customs frontiers.—Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into or from the territories to which this Act extends across any customs frontier as defined by the Central Government, and any rules made under section 41 shall have effect subject to the rules made under this section.

42. Penalty for breach of rules made under section 41.—(1) The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

43. Government and Forest Officers not liable for damage to forest-produce at depot.—The Government] shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

44. All persons bound to aid in case of accident at depot.—In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest Officer or Police Officer demanding his aid in averting such danger or securing such property from damage or loss.

CHAPTER VIII

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

45. Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.—(1) All timber found adrift, breached, stranded or sunk;

all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and

in such areas as the State Government directs, all unmarked wood and timber;

shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this Chapter.

(2) Such timber may be collected by any Forest Officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to any depot which the Forest Officer may notify as a depot for the reception of drift timber.

(3) The State Government may, by notification in the Official Gazette, exempt any class of timber from the provisions of this section.

46. Notice to claimants of drift timber.—Public notice shall from time to time be given by the Forest Officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47. Procedure on claim preferred to such timber.—(1) When any such statement is presented as aforesaid, the Forest Officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest Officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may within three months from the date of such rejection institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any Forest Officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. Disposal of unclaimed timber.—If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances not created by him.

49. Government and its officers not liable for damage to such timber.—The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

50. Payments to be made by claimant before timber is delivered to him.—No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest Officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51.

51. Power to make rules and prescribe penalties.—(1) The State Government may, by notification in the Official Gazette, make rules to regulate the following matters, namely:—

- (a) the salving, collection and disposal of all timber mentioned in section 45;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for making such timber.

(1-A) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

(2) The State Government may prescribe, as penalties for the contravention of any rules made under this section imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER IX

PENALTIES AND PROCEDURE

52. Seizure of property liable to confiscation.—(1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Power to release property seized under section 52.—Any Forest Officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

54. Procedure thereupon.—Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

55. Forest-produce, tools, etc., when liable to confiscation.—(1) All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

56. Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.—When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest Officer, and, in any other case, may be disposed of in such manner as the Court may direct.

57. Procedure when offender not known, or cannot be found.—When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest Officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

58. Procedure as to perishable property seized under section 52.—The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

59. Appeal from orders under section 55, section 56 or section 57.—The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may within one month from the date of any order passed under section 55, section 56 or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

60. Property when to vest in Government.—When an order for the confiscation of any property has been passed under section 55 or section 57, as the case may be, and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such

order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

61. Saving of power to release property seized.—Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under section 52.

62. Punishment for wrongful seizure.—Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

63. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.—Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code (45 of 1860)—

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest Officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest Officer; or

(c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

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

64. Power to arrest without warrant.—(1) Any Forest Officer or Police Officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police-station.

(3) Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

65. Power to release on a bond a person arrested.—Any Forest Officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police-station.

66. Power to prevent commission of offence.—Every Forest Officer and Police Officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

67. Power to try offences summarily.—The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government may try summarily, under the Code of Criminal Procedure, 1898 (5 of 1898), any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

68. Power to compound offences.—(1) The State Government may, by notification in the Official Gazette, empower a Forest Officer—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any,

seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.

69. Presumption that forest-produce belongs to Government.—When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER X

CATTLE-TRESPASS

70. Cattle-trespass Act, 1871, to apply.—Cattle-trespassing in a reserve forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle-trespass Act, 1871 (1 of 1871), and may be seized and impounded as such by any Forest Officer or Police Officer.

71. Power to alter fines fixed under that Act.—The State Government may, by notification in the Official Gazette, direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under section 70 of this Act, such fines as it thinks fit, but not exceeding the following, that is to say:—

SEEBOOK...

CHAPTER XI

OF FOREST OFFICERS

72. State Government may invest Forest Officers with certain powers.—(1) The State Government may invest any Forest Officer with all or any of the following powers, that is to say:—

(a) power to enter upon any land and to survey, demarcate and make a map of the same;

(b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;

(c) power to issue a search-warrant under the Code of Criminal Procedure, 1898 (5 of 1898)*; and

(d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

73. Forest Officers deemed public servants.—All Forest Officers shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

74. Indemnity for acts done in good faith.—No suit shall lie against any public servant for anything done by him in good faith under this Act.

75. Forest Officers not to trade.—Except with the permission in writing of the State Government, no Forest Officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside the territories to which this Act extends.

CHAPTER XII

SUBSIDIARY RULES

76. Additional powers to make rules.—The State Government may make rules—

(a) to prescribe and limit the powers and duties of any Forest Officer under this Act;

(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

77. Penalties for breach of rules.—Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

78. Rules when to have force of law.—All rules made by the State Government under this Act shall be published in the Official Gazette, and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

CHAPTER XIII

MISCELLANEOUS

79. Persons bound to assist Forest Officers and Police Officers.—(1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest Officer or Police Officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall forth with take steps, whether so required by any Forest Officer or Police Officer or not,—

(a) to extinguish any forest fire in such forest of which he has knowledge or information;

(b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest, and shall assist any Forest Officer or Police Officer demanding his aid—

(c) in preventing the commission in such forest of any forest-offence; and

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

(a) to furnish without unnecessary delay to the nearest Forest Officer or Police Officer any information required by sub-section (1);

(b) to take steps as required by sub-section (1), to extinguish any forest fire in a reserved or protected forest;

(c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or

(d) to assist any Forest Officer or Police Officer demanding his aid in preventing the Commission in such forest of any forest-offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

80. Management of forests, the joint property of Government and other persons.—

(1) If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the State Government may either—

(a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or

(b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the State Government undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the Official

Gazette, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

81. Failure to perform service for which a share in produce of Government forest is enjoyed.—If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the State Government that such service is no longer so performed:

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the State Government.

82. Recovery of money due to Government.—All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

83. Lien of forest-produce for such money.—(1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest Officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest Officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

84. Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.—Whenever it appears to the State Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894 (1 of 1894).

85. Recovery of penalties due under bond.—When any person, in accordance with any provision of this Act, or in compliance with any rule made hereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in the case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872 (9 of 1872), be recovered from him in case of such breach as if it were an arrear of land-revenue.

85-A. Saving for rights of Central Government.—Nothing in this Act shall authorize a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.

86. Repeals.—*[Repealed by the Repealing and Amending Act, 1948 (2 of 1948), section 2 and Schedule.]*

THE INDIAN TELEGRAPH ACT, 1885

22/07/1885

PART I PRELIMINARY

1. Short title, local extent and commencement.—(1) This Act may be called THE INDIAN TELEGRAPH ACT, 1885.

(2) It extends to the whole of India [* * *].

(3) It shall come into force on the first day of October, 1885.

2. Repeal and savings.—*[Repealed by the Repealing Act, 1938 (1 of 1938), section 2 and Schedule.]*

3. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

(1) "Fund" means the Universal Service Obligation Fund established under sub-section (1) of section 9-A;

(1-A) "Universal Service Obligation" means the obligation to provide access to telegraph services to people in the rural and remote areas at affordable and reasonable prices;

(1-AA) "telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.

Explanation.—"Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide;

(2) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the Central Government or by a person licensed under this Act;

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered;

(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same;

(5) "post" means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line;

(6) "telegraph authority" means the Director-General of Posts and Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act;

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Central or any State Government with, the control or management of any municipal or local fund.

[* * *]

PART IV

PENALTIES

20. Establishing, maintaining or working unauthorized telegraph.—(1) If any person establishes, maintains or works a telegraph within India in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and, in any other case, with a fine which may extend to one thousand rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to Government.

20-A. Breach of condition of license.—If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.

21. Using unauthorized telegraphs.—If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

22. Opposing establishment of telegraphs on railway land.—If a Railway Company, or an officer of a Railway Company, neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

23. Intrusion into signal-room, trespass in telegraph office or obstruction.—If any person—

(a) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or

(b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

24. Unlawfully attempting to learn contents of messages.—If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

25. Intentionally damaging or tampering with telegraphs.—If any person, intending—

(a) to prevent or obstruct the transmission or delivery of any message, or

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief,

damages, removes, tampers with or touches any battery, machinery, telegraph lines post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

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

25-A. Injury to or interference with a telegraph line or post.—If, in any case not provided for by section 25, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees:

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19-A(1).

26. Telegraph officer or other official making away with or altering, or unlawfully intercepting or disclosing messages, or divulging purport of signals.—If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

(a) wilfully secrets, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully, and otherwise than in obedience to an order of the Central Government or of a State Government, or of an officer specially authorized by the Central or a State Government to make the order, omits to transmit or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

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

27. Telegraph officer fraudulently sending messages without payment.—If any telegraph officer transmits by telegraph any message on which the charge prescribed by the Central Government, or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the Central Government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

28. Misconduct.—If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of

any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

29. Sending fabricated message.—*[Omitted by the Indian Telegraph (Amendment) Act, 1971 (33 of 1971), section 4 (w.e.f. 10-8-1971).]*

29-A. Penalty.—If any person, without due authority,—

(a) makes or issues any document of a nature reasonably calculated to cause it to be believed that the document has been issued by, or under the authority of, the Director-General of Posts and Telegraphs, or

(b) makes on any document any mark in imitation of, or similar to, or purporting to be, any stamp or mark of any telegraph office under the Director-General of Posts and Telegraphs, or a mark of a nature, reasonably calculated to cause it to be believed that the document so marked has been issued by, or under the authority of, the Director-General of Posts and Telegraphs,

he shall be punished with fine which may extend to fifty rupees.

30. Retaining a message delivered by mistake.—If any person fraudulently retains, or wilfully secrets, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

31. Bribery.—A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code (45 of 1860); and in the definition of “legal remuneration” contained in the said section 161, the word “Government” shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

32. Attempts to commit offences.—Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

THE INDIAN WIRELESS TELEGRAPHY ACT, 1933

11/09/1933

1. Short title, extent and commencement.—(1) This Act may be called THE INDIAN WIRELESS TELEGRAPHY ACT, 1933.

(2) It extends to the whole of India [* * *].

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

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

(1) “wireless communication” means any transmission, emission or reception of signs, signals, writing, images and sounds, or intelligence of any nature by means of electricity, magnetism, or Radio waves or Hertzian waves, without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus.

Explanation.—“Radio waves” or “Hertzian waves” means electromagnetic waves of frequencies lower than 3,000 gigacycles per second propagated in space without artificial guide;

(2) “wireless telegraphy apparatus” means any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made under section 10 to be wireless telegraphy apparatus, but does not include any such apparatus, appliance, instrument or material commonly used for other electrical purposes, unless it has been specially designed or adapted for wireless communication or forms part of some apparatus, appliance, instrument or material specially so designed or adapted, nor any article determined by rule made under section 10 not to be wireless telegraphy apparatus; [*]

(2-A) “wireless transmitter” means any apparatus, appliance, instrument or material used or capable of use for transmission or emission of wireless communication;

(3) “prescribed” means prescribed by rules made under section 10.

3. Prohibition of possession of wireless telegraphy apparatus without licence.—Save as provided by section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.

4. Power of Central Government to exempt persons from provisions of the Act.—The Central Government may by rules made under this Act exempt any person or any class of persons from the provisions of this Act either generally or subject to prescribed conditions, or in respect of specified wireless telegraphy apparatus.

5. Licences.—The telegraphy authority constituted under the Indian Telegraphy Act, 1885 (13 of 1885), shall be the authority competent to issue licences to possess wireless telegraphy apparatus under this Act, and may issue licences in such manner, on such conditions and subject to such payments as may be prescribed.

6. Offence and penalty.—(1) Whoever possesses any wireless telegraphy apparatus, other than a wireless transmitter, in contravention of the provisions of section 3 shall be punished, in the case of the first offence, with fine which may extend to one hundred rupees, and, in the case of a second or subsequent offence, with fine which may extend to two hundred and fifty rupees.

(1-A) Whoever possesses any wireless transmitter in contravention of the provisions of section 3 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

(2) For the purposes of this section a Court may presume that a person possesses wireless telegraphy apparatus if such apparatus is under his ostensible charge, or is located in any premises or place over which he has effective control.

(3) If in the trial of an offence under this section the accused is convicted the Court shall decide whether any apparatus in respect of which an offence has been committed should be confiscated, and, if it so decides, may order confiscation accordingly.

7. Power of search.—Any officer specially empowered by the Central Government in this behalf may search any building, vessel or place in which he has reason to believe that any wireless telegraphy apparatus, in respect of which an offence punishable under section 6 has been committed, is kept or concealed, and take possession thereof.

8. Apparatus confiscated or having no owner to be property of Central Government.—All wireless telegraphy apparatus confiscated under the provision of sub-section (3) of section 6, and all wireless telegraphy apparatus having no ostensible owner shall be the property of the Central Government.

9. Power of Court to direct payment of fines to prescribed authority.—*[Ceased to have effect by A.O. 1937 and repealed by the Repealing and Amending Act, 1940 (32 of 1940), section 2 and Schedule I.]*

10. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

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

(i) determining that any article or class of article shall be or shall not be wireless telegraphy apparatus for the purposes of this Act;

(ii) the exemption of persons or classes of persons under section 4 from the provisions of this Act;

(iii) the manner of and the conditions governing the issue, renewal, suspension and cancellation of licences, the form of licences and the payments to be made for the issue and renewal of licences;

(iv) the maintenance of records containing details of the acquisition and disposal by sale or otherwise of wireless telegraphy apparatus possessed by dealers in wireless telegraphy apparatus;

(v) the conditions governing the sale of wireless telegraphy apparatus by dealers in and manufacturers of such apparatus; [*]

[* * *]

(3) In making a rule under this section the Central Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees.

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

11. Saving of Indian Telegraph Act, 1885.—Nothing in this Act contained shall authorize the doing of anything prohibited under the Indian Telegraphy Act, 1885 (13 of 1885), and no licence issued under this Act shall authorize any person to do anything for the doing of which a licence or permission under the Indian Telegraphy Act, 1885 (13 of 1885), is necessary.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

30/12/2000

CHAPTER I PRELIMINARY

1. Short title, extent , commencement and application.—(1) This Act may be called THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.

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

(a) “advisory board” means a Central or a State advisory board or a district and city level advisory board as the case may be, constituted under section 62;

(aa) “adoption” means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship;

(b) “begging” means—

(i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under any pretence;

(ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(c) “Board” means a Juvenile Justice Board constituted under section 4;

(d) “child in need of care and protection” means a child,—

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ia) who is found begging, or who is either a street child or a working child,

(ii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned or surrendered him or who is missing and run away child and whose parents cannot be found after reasonable injury,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict, civil commotion or natural calamity;

(e) "children's home" means an institution established by a State Government or by voluntary organisation and certified by that Government under section 34;

(f) "Committee" means a Child Welfare Committee constituted under section 29;

(g) "competent authority" means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board;

(h) "fit institution" means a governmental or a registered non-governmental organisation or a voluntary organisation prepared to own the responsibility of a child and such organisation is found fit by the State Government on the recommendation of the competent authority;

(i) "fit person" means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of the child;

(j) "guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority;

(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;

(l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;

[* * *]

(n) "narcotic drug" and "psychotropic substance" shall have the meanings respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(o) "observation home" means a home established by a State Government or by a voluntary organisation and certified by that State Government under section 8 as an observation home for the juvenile in conflict with law;

(p) "offence" means an offence punishable under any law for the time being in force;

(q) "place of safety" means any place or institution (not being a police lock-up or jail), the person in charge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile;

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

(s) "probation officer" means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958);

(t) "public place" shall have the meaning assigned to it in the Immoral Traffic (Prevention) Act, 1956 (104 of 1956);

(u) "shelter home" means a home or a drop-in-centre set up under section 37;

(v) "special home" means an institution established by a State Government or by a voluntary organisation and certified by that Government under section 9;

(w) "special juvenile police unit" means a unit of the police force of a State designated for handling of juveniles or children under section 63;

(x) "State Government", in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution;

(y) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.—

Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child.

CHAPTER II

JUVENILE IN CONFLICT WITH LAW

4. Juvenile Justice Board.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

(4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.

(5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if—

(i) he has been found guilty of misuse of power vested under this Act,

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence,

(iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

5. Procedure, etc., in relation to Board.—(1) The Board shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings:

Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate shall prevail.

6. Powers of Juvenile Justice Board.—(1) Where a Board has been constituted for any district [* * *], such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

7. Procedure to be followed by a Magistrate not empowered under the Act.—

(1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.

7-A. Procedure to be followed when claim of juvenility is raised before any Court.—(1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made hereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.

8. Observation homes.—(1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act.

(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such institution as an observation home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn.

(4) Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.

9. Special homes.—(1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law under this Act.

(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialisation of a juvenile, and the circumstances under which, and the manner in which, the certification of a special home may be granted or withdrawn.

(4) The rules made under sub-section (3) may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status.

10. Apprehension of juvenile in conflict with law.—(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government may make rules consistent with this Act,—

(i) to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;

(ii) to provide the manner in which such juvenile may be sent to an observation home.

11. Control of custodian over juvenile.—Any person in whose charge a juvenile is placed in pursuance of this Act shall, while the order is in force have the control over the juvenile as he would have if he were his parents, and shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person.

12. Bail of juvenile.—(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

13. Information to parent, guardian or probation officer.—Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform—

(a) the parent or guardian of the juvenile, if he can be found of such arrest and direct him to be present at the Board before which the juvenile will appear; and

(b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.

14. Inquiry by Board regarding juvenile.—(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit:

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.

15. Order that may be passed regarding juvenile.—(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit,—

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

16. Order that may not be passed against juvenile.—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under section 15 of this Act.

17. Proceeding under Chapter VIII of the Code of Criminal Procedure not competent against juvenile.—Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code.

18. No joint proceeding of juvenile and person not a juvenile.—(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

(2) If a juvenile is accused of an offence for which under section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

19. Removal of disqualification attaching to conviction.—(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

20. Special provision in respect of pending cases.—Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

21. Prohibition of publication of name, etc., of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act.—(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published:

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees.

22. Provision in respect of escaped juvenile.—Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge

without warrant of a juvenile in conflict with law who has escaped from a special home or an observation home or from the care of a person under whom he was placed under this Act, and shall be sent back to the special home or the observation home or that person, as the case may be; and no proceeding shall be instituted in respect of the juvenile by reason of such escape, but the special home, or the observation home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such steps in respect of the juvenile as may be deemed necessary under the provisions of this Act.

23. Punishment for cruelty to juvenile or child.—Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

24. Employment of juvenile or child for begging.—(1) Whoever, employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

25. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.—Whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

26. Exploitation of juvenile or child employee.—Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

27. Special offences.—The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.

28. Alternative punishment.—Where an act or omission constitute an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

CHAPTER III

CHILD IN NEED OF CARE AND PROTECTION

29. Child Welfare Committee.—(1) The State Government may, within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district, one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

(2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if—

(i) he has been found guilty of misuse of power vested under this Act;

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

30. Procedure, etc., in relation to Committee.—(1) The Committee shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee is not in session.

(3) In the event of any difference of opinion among the members of the Committee at the time of any interim decision, the opinion of the majority shall prevail but where there is no such majority the opinion of the Chairperson shall prevail.

(4) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding.

31. Powers of Committee.—(1) The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

32. Production before Committee.—(1) Any child in need of care and protection may be produced before the Committee by one of the following persons—

(i) any police officer or special juvenile police unit or a designated police officer;

(ii) any public servant;

(iii) childline, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government;

(iv) any social worker or a public spirited citizen [* * *]; or

(v) by the child himself:

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act to provide for the manner of making the report [* * *] to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry.

33. Inquiry.—(1) On receipt of a report under section 32, the Committee [* * *] shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of section 32, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

(2) The inquiry under this section shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the Committee:

Provided that the time for the submission of the inquiry report may be extended by such period as the Committee may, having regard to the circumstances and for the reasons recorded in writing, determine.

(3) The State Government shall review the pendency of cases of the Committee at every six months, and shall direct the Committee to increase the frequency of its sittings or may cause the constitution of additional Committees.

(4) After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.

34. Children's homes.—(1) The State Government may establish and maintain either by itself or in association with the voluntary organisations, children's homes, in every district or group or districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

(2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

(3) Without prejudice to anything contained in any other law for the time being in force, all institutions, whether State Government run or those run by voluntary organisations for children in need of care and protection shall, within a period of six months from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, be registered under this Act in such manner as may be prescribed.

35. Inspection.—(1) The State Government may appoint inspection committees for the children's homes (hereinafter referred to as the inspection committees) for the State, a district and city, as the case may be, for such period and for such purposes as may be prescribed.

(2) The inspection committee of a State, district or of a city shall consist of such number of representatives from the State Government, [* * *], Committee, voluntary organisations and such other medical experts and social workers as may be prescribed.

36. Social auditing.—The Central Government or State Government may monitor and evaluate the functioning of the Children's homes at such period and through such persons and institutions as may be specified by that Government.

37. Shelter homes.—(1) The State Government may recognise, reputed and capable voluntary organisations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required.

(2) The shelter homes referred in sub-section (1) shall function as drop-in-centres for the children in the need of urgent support who have been brought to such homes through such persons as are referred to in sub-section (1) of section 32.

(3) As far as possible, the shelter homes shall have such facilities as may be prescribed by the rules.

38. Transfer.—(1) If during the inquiry it is found that the child hails from the place outside the jurisdiction of the Committee, the Committee shall order the transfer of the child to the competent authority having jurisdiction over the place of residence of the child.

(2) Such juvenile or the child shall be escorted by the staff of the home in which he is lodged originally.

(3) The State Government may make rules to provide for the travelling allowance to be paid to the child.

39. Restoration.—(1) Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home.

(2) The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of this family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be.

(3) The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

Explanation.—For the purposes of this section "restoration of and protection of a child" means restoration to—

- (a) parents;
- (b) adopted parents;
- (c) foster parents;
- (d) guardian;
- (e) fit person;

(f) fit institution.

CHAPTER IV

REHABILITATION AND SOCIAL REINTEGRATION

40. Process of rehabilitation and social reintegration.—The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organisation.

41. Adoption.—(1) The primary responsibility for providing care and protection to children shall be that of his family.

(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a Court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.

(4) The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3):

Provided that the children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3).

(5) No child shall be offered for adoption—

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

(6) The Court may allow a child to be given in adoption—

(a) to a person irrespective of marital status; or

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples.

42. Foster care.—(1) The foster care may be used for temporary placement of those infants who are ultimately to be given for adoption.

(2) In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visit regularly and eventually after the rehabilitation, where the children may return to their own homes.

(3) The State Government may make rules for the purposes of carrying out the scheme of foster care programme of children.

43. Sponsorship.—(1) The sponsorship programme may provide supplementary support to families, to children's homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improving their quality of life.

(2) The State Government may make rules for the purposes of carrying out various schemes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship.

44. After-care organisation.—The State Government may, by rules made under this Act, provide—

(a) for the establishment or recognition of after-care organisations and the functions that may be performed by them under this Act;

(b) for a scheme of after-care programme to be followed by such after-care organisations for the purpose of taking care of juveniles or the children after they leave special homes, children homes and for the purpose of enabling them to lead an honest, industrious and useful life;

(c) for the preparation or submission of a report by the probation officer or any other officer appointed by that Government in respect of each juvenile or the child prior to his discharge from a special home, children's home, regarding the necessity and nature of after-care of such juvenile or of a child, the period of such after-care, supervision thereof and for the submission of report by the probation officer or any other officer appointed for the purpose, on the progress of each juvenile or the child;

(d) for the standards and the nature of services to be maintained by such after-care organisations;

(e) for such other matters as may be necessary for the purpose of carrying out the scheme of after-care programme for the juvenile or the child:

Provided that any rule made under this section shall not provide for such juvenile or child to stay in the after-care organisation for more than three years:

Provided further that a juvenile or child over seventeen years of age but less than eighteen years of age would stay in the after-care organisation till he attains the age of twenty years.

45. Linkages and co-ordination.—The State Government may make rules to ensure effective linkages between various governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child.

CHAPTER V

MISCELLANEOUS

46. Attendance of parent or guardian of juvenile or child.—Any competent authority before which a juvenile or the child is brought under any of the provisions of this Act, may, whenever it so thinks fit, require any parent or guardian having the actual charge of or control over the juvenile or the child to be present at any proceeding in respect of the juvenile or the child.

47. Dispensing with attendance of juvenile or child.—If, at any stage during the course of an inquiry, a competent authority is satisfied that the attendance of the juvenile or the child is not essential for the purpose of inquiry, the competent authority may dispense with his attendance and proceed with the inquiry in the absence of the juvenile or the child.

48. Committal to approved place of juvenile or child suffering from dangerous diseases and his future disposal.—(1) When a juvenile or the child who has been brought before a competent authority under this Act, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the juvenile or the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

(2) Where a juvenile or the child is found to be suffering from leprosy, sexually transmitted disease, Hepatitis-B, open cases of Tuberculosis and such other diseases or is of unsound mind, he shall be dealt with separately through various specialised referral services or under the relevant laws as such.

49. Presumption and determination of age.—(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.

50. Sending a juvenile or child outside jurisdiction.—In the case of a juvenile or the child, whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the juvenile or the child back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent authority; and the competent authority exercising jurisdiction over the place to which the juvenile or the child is sent shall in respect of any matter arising subsequently have the same powers in relation to the juvenile or the child as if the original order had been passed by itself.

51. Reports to be treated as confidential.—The report of the probation officer or social worker considered by the competent authority shall be treated as confidential:

Provided that the competent authority may, if it so thinks fit, communicate the substance thereof to the juvenile or the child or his parent or guardian and may give such juvenile or the child, parent or guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

52. Appeals.—(1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session:

Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from—

(a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or

(b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.

(3) No second appeal shall lie from any order of the Court of Session passed in appeal under this section.

53. Revision.—The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

54. Procedure in inquiries, appeals and revision proceedings.—(1) Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

55. Power to amend orders.—(1) Without prejudice to the provisions for appeal and revision under this Act, any competent authority may, on an application received in this behalf, amend any order as to the institution to which a juvenile or the child is to be sent or as to the person under whose care or supervision a juvenile or the child is to be placed under this Act:

Provided that there shall be at least two members and the parties or its defence present during the course of hearing for passing an amendment in relation to any of its order.

(2) Clerical mistakes in orders passed by a competent authority or errors arising therein from any accidental slip or omission may, at any time, be corrected by the competent authority either on its own motion or on an application received in this behalf.

56. Power of competent authority to discharge and transfer juvenile or child.—The competent authority [* * *] may, notwithstanding anything contained in this Act, at any time, order a child in need of care and protection or a juvenile in conflict with law to be discharged or transferred from one children's home or special home to another, as the case may be, keeping in view the best interest of the child or the juvenile, and his natural place of stay, either absolutely or on such conditions as it may think fit to impose:

Provided that the total period of stay of the juvenile or the child in a children's home or a special home or a fit institution or under a fit person shall not be increased by such transfer.

57. Transfer between children's homes under the Act, and juvenile homes of like nature in different parts of India.—The State Government may direct any child or the juvenile to be transferred from any children's home or special home within the State to any other children's home, special home or institution of a like nature or to such institutions outside the State in consultation with the concerned State Government and with the prior intimation to the Committee or the Board, as the case may be, and such order shall be deemed to be operative for the competent authority of the area to which the child or the juvenile is sent.

58. Transfer of juvenile or child of unsound mind or suffering from leprosy or addicted to drugs.—Where it appears to the competent authority that any juvenile or the child kept in a special home or a children's home or shelter home or in an institution in pursuance of this Act, is suffering from leprosy or is of unsound mind or is addicted to any narcotic drug or psychotropic substance, the competent authority may order his removal to a leper asylum or mental hospital or treatment centre for drug addicts or to a place of safety for being kept there for such period not exceeding the period for which he is required to be kept under the order of the competent authority or for such further periods as may be certified by the medical officer necessary for the proper treatment of the juvenile or the child.

59. Release and absence of juvenile or child on placement.—(1) When a juvenile or the child is kept in a children's home or special home and on a report of a probation officer or social worker or of Government or a voluntary organisation, as the case may be, the competent authority may consider, the release of such juvenile or the child permitting him to live with his parent or guardian or under the supervision of any authorised person named in the order, willing to receive and take charge of the juvenile or the child to educate and train him for some useful trade or calling or to look after him for rehabilitation.

(2) The competent authority may also permit leave of absence to any juvenile or the child, to allow him, on special occasions like examination, marriage of relatives, death of kith and kin or the accident or serious illness of parent or any emergency of like nature, to go on leave under supervision, for a period generally not exceeding seven days, excluding the time taken in journey.

(3) Where a permission has been revoked or forfeited and the juvenile or the child refuses or fails to return to the home concerned or juvenile to which he was directed so to return, the Board may, if necessary, cause him to be taken charge of and to be taken back to the concerned home.

(4) The time during which a juvenile or the child is absent from a concerned home in pursuance of such permission granted under this section shall be deemed to be part of the time for which he is liable to be kept in the special home:

Provided that when a juvenile has failed to return to the special home on the permission being revoked or forfeited, the time which elapses after his failure so to return shall be excluded in computing the time during which he is liable to be kept in the institution.

60. Contribution by parents.—(1) The competent authority which makes an order for sending a juvenile or the child to a children's home or to a special home or placing the juvenile under the care of a fit person or fit institution may make an order requiring the parent or other person liable to maintain the juvenile or the child to contribute to his maintenance, if able to do so, in the prescribed manner according to the income.

(2) The competent authority may direct, if necessary, the payment to be made to poor parent or guardian by the Superintendent or the Project Manager of the home to pay such expenses for the journey of the inmate or parent or guardian or both, from the home to his ordinary place of residence at the time of sending the juvenile as may be prescribed.

61. Fund.—(1) The State Government [* * *] may create a Fund under such name as it thinks fit for the welfare and rehabilitation of the juvenile or the child dealt with under this Act.

(2) There shall be credited to the Fund such voluntary donations, contributions or subscriptions as may be made by any individual or organisation.

(3) The Fund created under sub-section (1) shall be administered by the State advisory board in such manner and for such purposes as may be prescribed.

62. Central, State, district and city advisory boards.—(1) The Central Government or a State Government may constitute a Central or a State advisory board, as the case may be, to advise that Government on matter relating to the establishment and maintenance of the homes, mobilisation of resources, provision of facilities for education, training and rehabilitation of child in need of care and protection and juvenile in conflict with law and co-ordination among the various official and non-official agencies concerned.

(2) The Central or State advisory board shall consist of such persons as the Central Government or the State Government, as the case may be, may think fit and shall include eminent social workers, representatives of voluntary organisation in the field of child welfare corporate sector, academicians, medical professional and the concerned Department of the State Government.

(3) The district or city level inspection committee constituted under section 35 of this Act shall also functions as the district or city advisory boards.

62-A. Constitution of Child Protection Unit responsible for implementation of the Act.—Every State Government shall constitute a Child Protection Units for the State and, such Units for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children in need of care and protection and juveniles in conflict with law with a view to ensure the implementation of this Act including the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and co-ordination with various official and non-official agencies concerned.

63. Special juvenile police unit.—(1) In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.

(2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the “juvenile or the child welfare officer” who will handle the juvenile or the child in co-ordination with the police.

(3) Special juvenile police unit, of which all police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children.

64. Juvenile in conflict with law undergoing sentence at commencement of this Act.—In any area in which this Act is brought into force, the State Government [* * *] shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government [* * *] thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act.

Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation.—In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (1) of section 2 and other provisions contained in this Act and the rules made hereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence

but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.

65. Procedure in respect of bonds.—Provisions of Chapter 33 of the Code of Criminal Procedure, 1973 (2 of 1974) shall, as far as may be, apply to bonds taken under this Act.

66. Delegation of powers.—The State Government may, by the general order, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be prescribed in the order, be exercisable also by an officer subordinate to that Government [* * *].

67. Protection of action taken in good faith.—No suit or legal proceedings shall lie against the State Government or voluntary organisation running the home or any officer and the staff appointed in pursuance of this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or order made hereunder.

68. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(i) the term of office of the members of the Board and the manner in which such member may resign under sub-section (4) of section 4;

(ii) the time of the meetings of the Board and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of section 5;

(iii) the management of observation homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the observation home may be granted or withdrawn and such other matters as are referred to in section 8;

(iv) the management of special homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the special home may be granted or withdrawn and such other matters as are referred to in section 9;

(v) persons by whom any juvenile in conflict with law may be produced before the Board and the manner of sending such juvenile, to an observation home under sub-section (2) of section 10;

(vi) matters relating to removal of disqualification attaching to conviction of a juvenile under section 19;

(vii) the qualifications of the Chairperson and members, and the tenure for which they may be appointed under sub-section (3) of section 29;

(viii) the time of the meetings of the Committee and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of section 30;

(ix) the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry under sub-section (2) of section 32;

(x) the management of children's homes including the standards and nature of services to be provided by them, and the manner in which certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn under sub-section (2) and the manner of registration of institutions under sub-section (3) of section 34;

(xi) appointment of inspection committees for children's homes, their tenure and purposes for which inspection committees may be appointed and such other matters as are referred to in section 35;

(xii) facilities to be provided by the shelter homes under sub-section (3) of section 37;

(*xii-a*) rehabilitation mechanism to be resorted to in adoption under sub-section (2), notification of guidelines under sub-section (3) and the manner of recognition of specialised adoption agencies under sub-section (4) of section 41;

(*xiii*) for carrying out the scheme of foster care programme of children under sub-section (3) of section 42;

(*xiv*) for carrying out various schemes of sponsorship of children under sub-section (2) of section 43;

(*xv*) matters relating to after-care organisation under section 44;

(*xvi*) for ensuring effective linkages between various agencies for facilitating rehabilitation and social integration of the child under section 45;

(*xvii*) the purposes and the manner in which the Fund shall be administered under sub-section (3) of section 61;

(*xviii*) any other matter which is required to be, or may be, prescribed.

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

(4) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of that State.

69. Repeal and savings.—(1) The Juvenile Justice Act, 1986 (53 of 1986) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act.

70. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under the section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE LOTTERIES (REGULATION) ACT, 1998

07/07/1998

1. Short title, extent and commencement.—(1) This Act may be called THE LOTTERIES (REGULATION) ACT, 1998.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 2nd day of October, 1997.

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

(a) "bumper draw of a lottery" means a special draw of lottery conducted on or during any festival or other special occasion wherein the prize money offered is greater than the prize money offered in the case of other ordinary draw of lotteries;

(b) "lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets;

(c) "prescribed" means prescribed by rules made under this Act.

3. Prohibition of lotteries.—Save as otherwise provided in section 4, no State Government shall organize, conduct or promote any lottery.

4. Conditions subject to which lotteries may be organized, etc.—A State Government may organize, conduct or promote a lottery, subject to the following conditions, namely:—

(a) prizes shall not be offered on any pre-announced number or on the basis of a single digit;

(b) the State Government shall print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured;

(c) the State Government shall sell the tickets either itself or through distributors or selling agents;

(d) the proceeds of the sale of lottery tickets shall be credited into the public account of the State;

(e) the State Government itself shall conduct the draws of all the lotteries;

(f) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government;

(g) the place of draw shall be located within the State concerned;

(h) no lottery shall have more than one draw in a week;

(i) the draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government;

(j) the number of bumper draws of a lottery shall not be more than six in a calendar year;

(k) such other conditions as may be prescribed by the Central Government.

5. Prohibition of sale of tickets in a State.—A State Government may, within the State, prohibit the sale of tickets of a lottery organized, conducted or promoted by every other State.

6. Prohibition of organisation, etc., of lottery.—The Central Government may, by order published in the Official Gazette, prohibit a lottery organized, conducted or promoted in contravention of the provisions of section 4 or where tickets of such lottery are sold in contravention of the provisions of section 5.

7. Penalty.—(1) Where a lottery is organized, conducted or promoted after the date on which this Act receives the assent of the President, in contravention of the provisions of this Act, by any Department of the State Government, the Head of the Department shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the contravention was committed without his knowledge or that he exercised all due diligence to prevent the commission of such contravention.

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

(3) If any person acts as an agent or promoter or trader in any lottery organized, conducted or promoted in contravention of the provisions of this Act or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.

8. Offences to be cognizable and non-bailable.—The offence under this Act shall be cognizable and non-bailable.

9. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager,

secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

**THE MAHARASHTRA CONTROL OF ORGANISED CRIME
ACT, 1999
(Maharashtra Act**

24/04/1999

1. Short title, extent and commencement.—(1) This Act may be called the Maharashtra Control of Organized Crime Act, 1999.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall be deemed to have come into force on the 24th February, 1999.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) “abet”, with its grammatical variations and cognate expressions, includes,—

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organized crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organized crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organized crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organized crime syndicate;

(b) “Code” means the Code of Criminal Procedure, 1973 (2 of 1974);

(c) “Competent Authority” means the Competent Authority appointed under section 13;

(d) “continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(e) “organized crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

(f) “organized crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime;

(g) “Special Court” means the Special Court constituted under section 5.

(2) Words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

3. Punishment for organized crime.—(1) Whoever commits an offence of organized crime shall,—

(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may

extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived or obtained from commission of an organized crime or which has been acquired through the organized crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

4. Punishment for possessing unaccountable wealth on behalf of member of organized crime syndicate.—If any person on behalf of a member of an organized crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture, as provided by section 20.

5. Special Courts.—(1) The State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction or any Special Court, it shall be referred to the State Government whose decision shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the Chief Justice of the Bombay High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Bombay High Court, additional judges to exercise jurisdiction in a Special Court.

(4) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court, unless he immediately before such appointment, is a sessions judge or an additional sessions judge.

(5) Where any additional judge is or additional judges are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order in writing, provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judges.

6. Jurisdiction of Special Court.—Notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special Court within whose local jurisdiction it was committed, or as the case may be, by the Special Court constituted for trying such offence under sub-section (1) of section 5.

7. Power of Special Courts with respect to other offences.—(1) When trying any offence punishable under this Act, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial, if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act, it is found that the accused persons has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and may pass any sentence authorised by this Act or, as the case may be, such other law, for the punishment thereof.

8. Public Prosecutor.—(1) For every Special Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutor.

Provided that the State Government may also appoint for any case or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor, an Additional Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an Advocate for not less than ten years.

(3) Every person appointed as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

9. Procedure and powers of Special Court.—(1) A Special Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, as far as may be, apply to such trial:

Provided that, where in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation, to a Special Court as they apply to and in relation, to a Magistrate:

Provided further that, in case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A Special Court may, with a view to obtaining the evidence of any person, supposed to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, so far as may be, in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

10. Trial by Special Courts to have precedence.—The trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases shall remain in abeyance.

11. Power to transfer cases to regular Courts.—Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

12. Appeal.—(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court.

(2) Every appeal under this section shall be preferred within thirty days from the date of the judgment, sentence or order.

13. Appointment of Competent Authority.—The State Government may appoint any of its officer, in Home Department, not below the rank of Secretary to Government, to be the Competent Authority for the purposes of section 14.

14. Authorization of interception of wire, electronic or oral communication.—(1) A police officer not below the rank of Superintendent of Police supervising the investigation of an organized crime under this Act may submit an application in writing to the Competent Authority for an order authorizing or approving the interception of wire, electronic or oral communication by the investigating officer when such interception may provide or has provided evidence of any offence involving an organized crime.

(2) Each application shall include the following information:—

(a) the identity of the investigative or law enforcement officer making the application, and the head of the department authorizing the application;

(b) a statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including—

(i) details as to the offence of organized crime that has been, is being, or is about to be committed;

(ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communications sought to be intercepted; and

(iv) the identity of the person, if known, committing the offence of organized crime whose communications are to be intercepted;

(c) a statement as to whether or not other modes of enquiry or intelligence gathering have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the enquiry is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to the Competent Authority for authorization to intercept, or for approval of interceptions of, wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the Competent Authority on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

(4) Upon such application, the Competent Authority may after recording the reasons in writing reject the application, or issue an order, as requested or as modified, authorizing or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that—

(a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under sections 3 and 4 of this Act;

(b) there is a probable cause for belief that particular communications concerning that offence will be obtained through such interception;

(c) normal modes of enquiry and intelligence gathering have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;

(d) there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted or be used or are about to be used, in connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.

(5) Each order by the Competent Authority authorizing or approving the interception of any wire, electronic or oral communication under this section shall specify—

- (a) the identity of the person, if known, whose communications are to be intercepted;
- (b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;
- (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;
- (d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application, and
- (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(6) The Competent Authority shall immediately after passing the order under sub-section (4), but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 15 along with all the relevant underlying papers, record and his own findings, etc., in respect of the said order, for consideration and approval of the order by the Review Committee.

(7) An order authorizing the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communications are to be intercepted.

(8) No order issued under this section may authorize or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than sixty days. Such sixty days period shall begin on the day immediately preceding the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier. Extension of an order may be granted, but only upon an application for an extension is made in accordance with sub-section (1) and the Competent Authority making the findings required by sub-section (4). The period of extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable and shall be conducted in such a way or manner as to minimize the interception of communications not otherwise subject to interception under this section and must terminate upon attainment of the authorized objective, or in any event on expiry of the period of order. In the event the intercepted communication is in a Code of foreign language, and an expert in that foreign language or Code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this section may be conducted in whole or in part by public servant, or by an individual operating under a contract with the State Government, acting under the supervision of the investigative or law enforcement officer authorized to conduct the interception.

(9) Whenever an order authorizing interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the Competent Authority may require.

(10) Notwithstanding anything contained in any other provision of this section, an Officer not below the rank of Additional Director General of Police who reasonably determines that—

- (a) an emergency situation exists that involves—
 - (i) immediate danger of death or serious physical injury to any person;
 - (ii) conspiratorial activities threatening the security or interest of the State; or

(iii) conspiratorial activities, characteristic of organized crime, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be issued under this section to authorize such interception,

may authorize, in writing, the investigating Police Officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) within forty-eight hours after the interception has occurred, or begins to occur.

(11) In the absence of an order approving the interception made under sub-section (10), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier. In the event where an application for permitting interception is rejected under sub-section (4) or an application under sub-section (10) for approval is rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

(12)(a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this section shall, if possible, be recorded on tape or wire or other comparable device. Recording of the contents of any wire, electronic or oral communication under this sub-section shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of order, or extension thereof, such recordings shall be made available to the Competent Authority issuing such order and shall be sealed under his directions. Custody of the recordings shall be wherever the Competent Authority orders. They shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(b) Applications made and orders issued under this section shall be sealed by the Competent Authority. Custody of the applications and orders shall be wherever the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

The Competent Authority upon the filing of a motion, may in his discretion make available to such person or his Counsel for inspection such portions of the intercepted communications, applications and orders as the Competent Authority determines to be in the interest of justice.

(13) Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this section shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this section or evidence derived there from shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any Court unless each party, not less than ten days before trial, hearing or proceeding, has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved:

Provided further that, this ten days period may be waived by the judge, trying the matter, if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

Explanation.—For the purposes of this section—

(a) “wire communication” means any aural transfer made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication;

(b) “oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such terms does not include any electronic communication;

(c) "electronic communication" means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not includes,—

(i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit;

(ii) any wire or oral communication;

(iii) any communication made through a tone only paging device; or

(iv) any communication from a tracking device;

(v) "intercept" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device.

15. Constitution of Review Committee for review of authorization orders.—

(1) There shall be a Review Committee to review every order passed by the Competent Authority under section 14.

(2) The Review Committee shall consist of the following *ex officio* members, namely:—

(i) the Chief Secretary to Government ... Chairman.

(ii) the Additional Chief Secretary or the senior-most Principal Secretary, as the case may be, in the Home Department. ... Member.

(iii) Principal Secretary or Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department. ... Member.

(3) Every order passed by the Competent Authority under section 14, placed before the Review Committee, shall be considered by the Review Committee within ten days after its receipt, to decide whether the order, authorising or approving the application under sub-section (4) of section 14, for interception or disapproving the interception made under sub-section (10) of that section in emergency situation, passed by the Competent Authority was necessary, reasonable and justified.

(4) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same. On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued. The intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

16. Interception and disclosure of wire, electronic or oral communications prohibited.—Except as otherwise specifically provided in section 14, any police officer who—

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;

(b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section;

(d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section; or

(e) (i) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, intercepted by means authorized by section 14;

(ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation under this Act;

(iii) having obtained or received the information in connection with a criminal investigation; and

(iv) with intent to improperly obstruct, impede, or interfere with a duly authorised criminal investigation; or

(f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (4) of section 15,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine upto rupees fifty thousand.

17. Special rules of evidence.—(1) Notwithstanding anything to the contrary contained in the Code, or the Indian Evidence Act, 1872 (1 of 1872), for the purposes of trial and punishment for offences under this Act or connected offences, the Court may take into consideration as having probative value, the fact that the accused was,—

(a) on any previous occasion bound under section 107 or section 110 of the Code;

(b) detained under any law relating to preventive detention; or

(c) on any previous occasion was prosecuted in the Special Court under this Act.

(2) Where it is proved that any person involved in an organized crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities.

(3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.

18. Certain confessions made to police officer to be taken into consideration.—

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

19. Protection of witnesses.—(1) Notwithstanding anything contained in the Code, the proceedings under this Act may be held in Camera, if the Special Court so desires.

(2) A Special Court may, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include,—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;

(d) that, it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

20. Forfeiture and attachment of property.—(1) Where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the State Government, free from all encumbrances.

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass an order that all or any properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government, free from all encumbrances.

(3)(a) If, upon a report in writing made by an investigating police officer with the approval of the supervisory officer referred to in sub-section (1) of section 14, any Special Court has reason to believe that any person, who has committed an offence punishable under this Act has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation:

Provided that, if the investigating police officer concerned fails to arrest the accused, who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person, the officer shall, on the expiry of the said period, make a report to the Special Court for issuing the proclamation.

(b) The Special Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

(c) If, within six months from the date of attachment, any person, whose property is, or has been, at the disposal of the State Government under sub-section (2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Special Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the specified time therein, such property or, if the same has been sold, the net proceeds of the same and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

21. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),—

(a) the references to “fifteen days”, and “sixty days”, wherever they occur, shall be construed as references to “thirty days” and “ninety days”, respectively;

(b) after the proviso, the following proviso shall be inserted, namely :—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period unto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days.”

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

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

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

(6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.

(7) The police officer seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such custody and also for the delay, if any, in seeking the police custody.

22. Presumption as to offences under section 3.—(1) In a prosecution for an offence of organized crime punishable under section 3, if it is proved—

(a) that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or

(b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence, the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence of organized crime punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of organized crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).

23. Cognizance of, and investigation into, an offence.—(1) Notwithstanding anything contained in the Code,—

(a) no information about the commission of an offence of organized crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

24. Punishment for public servants failing in the discharge of their duties.—Whoever being a public servant renders any help or support in any manner in the commission of organized crime as defined in clause (e) of section 2, whether before or after the commission of any offence by a member of an organized crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine.

25. Overriding effect.—The provisions of this Act or any rule made hereunder or any order made under any such rule shall, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having the force of law.

26. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made hereunder or any order issued under any such rule.

27. Annual Report of Interceptions.—(1) The State Government shall cause an annual report to be prepared giving a full account of,—

(i) the number of applications for authorization of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;

(ii) the number of such applications permitted or rejected;

(iii) the number of interceptions carried out in emergency situations and the number of *ex-post-facto* authorizations or approvals granted or rejected in such matters;

(iv) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions,

along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.

(2) Such annual report shall be laid by the State Government before each House of the State Legislature within three months of the completion of every calendar year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any organized crime, the State Government may exclude such matter from being included in such annual report.

28. Power of High Court to make rules.—The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the provisions of this Act relating to the Special Courts.

29. Powers of State Government to make rules.—(1) Without prejudice to the powers of the High Court to make rules under section 28, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Repeal of Mah. Ord. III of 1999 and saving.—(1) The Maharashtra Control of Organized Crime Ordinance, 1999 (Mah. Ord. III of 1999) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken, as the case may be, under the corresponding provisions of this Act.

MINISTRY OF HOME AFFAIRS

Notification

New Delhi, the 2nd January, 2002

G.S.R. 6(E).—*In exercise of the powers conferred by section 2 of the Union Territories (Laws) Act, 1950 (30 of 1950), the Central Government hereby extends to the National Capital Territory of Delhi, the Maharashtra Control of Organized Crime Act, 1999 (Maharashtra Act No. XXX of 1999), as in force in the State of Maharashtra on the date of this notification, subject to the following modifications, namely:—*

Modifications

1. In the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as the said Act),—

(i) the existing Preamble occurring below the long title shall be omitted;

(ii) for the words, "State" and "State of Maharashtra", the words "Capital" and "the National Capital Territory of Delhi", shall respectively be substituted;

(iii) for the words, "Official Gazette", wherever they occur, the words "Delhi Gazette", shall be substituted.

2. In the said Act, in section 1, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) It shall come into force on such date as the Lieutenant Governor may, by notification, in the Delhi Gazette, appoint."

3. In the said Act, in section 2,—

(a) after clause (a), the following clause shall be inserted, namely:—

"(aa) "Capital" means the National Capital Territory of Delhi";

(b) "Lieutenant Governor" means the Lieutenant Governor of the National Capital Territory of Delhi, appointed by the President under article 239 and designated as such under article 239 AA of the Constitution;"

(c) after clause (g), the following clause shall be inserted, namely:—

"(gg) "State Government" means the Lieutenant Governor of the National Capital Territory of Delhi."

4. In the said Act, in section 5, in sub-section (3), at both the places, for the words "Bombay High Court", the words "Delhi High Court" shall be substituted.

5. In the said Act, in section 14,—

(i) in sub-section (i) for the words "Superintendent of Police", the words "Deputy Commissioner of Police" shall be substituted;

(ii) in sub-section (10), for the words "Additional Director General of Police", the words "Additional Commissioner of Police" shall be substituted.

6. In the said Act, in section 15, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The Review Committee shall consist of the following ex-officio members, namely:—

(i) the Chief Secretary, Government
of National Capital territory of Delhi. ...Chairman

(ii) the Principal Secretary or the
Secretary in the Home Department,
National Capital Territory of Delhi. ...Member

(iii) the Secretary, Law and
Judicial Department, Government
of National Capital Territory of Delhi. ...Member."

7. In the said Act, in section 18, in sub-section (1), for the words "Superintendent of Police", the words "Deputy Commissioner of Police" shall be substituted.

8. In the said Act, in section 23,—

(a) in sub-section (1),—

(i) in clause (a), for the words "Deputy Inspector General of Police", the words "Additional Commissioner of Police" shall be substituted;

(ii) in clause (b), for the words "Deputy Superintendent of Police", the words "Assistant Commissioner of Police" shall be substituted;

(b) in sub-section (2), for the words "Additional Director General of Police", the words "Additional Commissioner of Police" shall be substituted.

9. In the said Act, in section 27, in sub-section (2), for the words "the State Legislature", the word "Parliament" shall be substituted.

10. In the said Act, in section 29,—

(i) in sub-section (1), for the words "State Government", the words "Central Government" shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

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

11. Section 30 of the said Act shall be omitted.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

10/08/1971

1. Short title, extent and commencement.—(1) This Act may be called THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

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

(a) "guardian" means a person having the care of the person of a minor or a mentally ill person;

(b) "mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation;

(c) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;

(d) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.

3. When pregnancies may be terminated by registered medical practitioners.—

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I.—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II.—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4)(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

4. Place where pregnancy may be terminated.—No termination of pregnancy shall be made in accordance with this Act at any place other than—

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Sections 3 and 4 when not to apply.—(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.—For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.—For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.

6. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act; and

(b) such other matters as are required to be or may be, provided by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Power to make regulations.—(1) The State Government may, by regulations,—

(a) require any such opinion as is referred to in sub-section (2) of section 3 to be certified by a registered medical practitioner or practitioners concerned, in such form and at such time as may be specified in such regulations, and the preservation or disposal of such certificates;

(b) require any registered medical practitioner, who terminates a pregnancy, to give intimation of such termination and such other information relating to the termination as may be specified in such regulations;

(c) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.

(2) The intimation given and the information furnished in pursuance of regulations made by virtue of clause (b) of sub-section (1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.

(2-A) Every regulation made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

8. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

THE MOTOR VEHICLES ACT, 1988

14/10/1988

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE MOTOR VEHICLES ACT, 1988.

(2) It extends to the whole of India.

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

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

(1) “area”, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;

(2) “articulated vehicle” means a motor vehicle to which a semi-trailer is attached;

(3) “axle weight” means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface on which the vehicle rests;

(4) "certificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV;

(5) "conductor", in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed;

(6) "conductor's licence" means the licence issued by a competent authority under Chapter III authorising the person specified therein to act as a conductor;

(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—

(i) a maxicab; and

(ii) a motorcar notwithstanding that separate fares are charged for its passengers;

(8) "dealer" includes a person who is engaged—

(a) [* * *]

(b) in building bodies for attachment to chassis; or

(c) in the repair of motor vehicles; or

(d) in the business of hypothecation, leasing or hire-purchase of motor vehicle;

(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(11) "educational institution bus" means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

(12) "fares" includes sums payable for a season ticket or in respect of the hire of a contract carriage;

(13) "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

(15) "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;

(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;

(18) "invalid carriage" means a motor vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

(19) "learner's licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(20) "licensing authority" means an authority empowered to issue licences under Chapter II or, as the case may be, Chapter III;

(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms;

(21-A) "manufacturer" means a person who is engaged in the manufacture of motor vehicles;

(22) "maxicab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

(23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;

(24) "medium passenger motor vehicle" means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;

(25) "motorcar" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

(26) "motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;

(27) "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;

(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

(29) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;

(30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

(31) "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;

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

(33) "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;

(36) "registered axle weight" means in respect of the axle of any vehicle, the axle weight certified and registered by the registering authority as permissible for that axle;

(37) "registering authority" means an authority empowered to register motor vehicles under Chapter IV;

(38) "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;

(39) "semi-trailer" means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle;

(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

(41) "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution;

(42) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,—

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;

(iv) Zilla Parishad or any other similar local authority.

Explanation.—For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

(43) "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;

(44) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

(45) "traffic signs" includes all signals, warning sign posts, direction posts, markings on the road or other devices for the information, guidance or direction of drivers of motor vehicles;

(46) "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

(48) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

(49) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

CHAPTER II

LICENSING OF DRIVERS OF MOTOR VEHICLES

3. Necessity for driving licence.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motorcab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

4. Age limit in connection with driving of motor vehicles.—(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that a motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.—No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

6. Restrictions on the holding of driving licences.—(1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.

(2) No holder of a driving licence or a learner's licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes of vehicles which the driving licence authorizes the holder to drive.

7. Restrictions on the granting of learner's licences for certain vehicles.—(1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.

(2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence.

19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.—(1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he—

- (a) is a habitual criminal or a habitual drunkard; or
 - (b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or
 - (c) is using or has used a motor vehicle in the commission of a cognizable offence; or
 - (d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or
 - (e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or
 - (f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or
 - (g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of section 22; or
 - (h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care,
- it may, for reasons to be recorded in writing, make an order—

- (i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or
- (ii) revoke any such licence.

(2) Where an order under sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,—

- (a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or
- (b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or
- (c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence:

Provided that where the driving licence of a person authorizes him to drive more than one class or description of motor vehicles and the order, made under sub-section (1), disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final.

20. Power of Court to disqualify.—(1) Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment authorised by law, declare the persons so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence:

Provided that in respect of an offence punishable under section 183 no such order shall be made for the first or second offence.

(2) Where a person is convicted of an offence under clause (c) of sub-section (1) of section 132, section 134 or section 185, the Court convicting any person of any such offence shall order the disqualification under sub-section (1), and if the offence is relatable to clause (c) of sub-section (1) of section 132 or section 134, such disqualification shall be for a period of not less than one month, and if the offence is relatable to section 185, such disqualification shall be for a period of not less than six months.

(3) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of a person—

(a) who having been convicted of an offence punishable under section 184 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable under section 189, or

(c) who is convicted of an offence punishable under section 192:

Provided that the period of disqualification shall not exceed, in the case referred to in clause (a), five years, or, in the case referred to in clause (b), two years or, in the case referred to in clause (c), one year.

(4) A Court ordering the disqualification of a person convicted of an offence punishable under section 184 may direct that such person shall, whether he has previously passed the test of competence to drive as referred to in sub-section (3) of section 9 or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(5) The Court to which an appeal would ordinarily lie from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made under that sub-section notwithstanding that no appeal would lie against the conviction as a result of which such order of disqualification was made.

21. Suspension of driving licence in certain cases.—(1) Where, in relation to a person who had been previously convicted of an offence punishable under section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended—

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

(2) Where, by virtue of the provisions of sub-section (1), the driving licence held by a person becomes suspended, the police officer, by whom the case referred to in sub-section (1) is registered, shall bring such suspension to the notice of the Court competent to take cognizance of such offence, and thereupon, such Court shall take possession of the driving licence, endorse the suspension thereon and intimate the fact of such endorsement to the licensing authority by which the licence was granted or last renewed.

(3) Where the person referred to in sub-section (1) is acquitted or discharged, the Court shall cancel the endorsement on such driving licence with regard to the suspension thereof.

(4) If a driving licence in relation to a particular class or description of motor vehicles is suspended under sub-section (1), the person holding such licence shall be debarred from holding or obtaining any licence to drive such particular class or description of motor vehicles so long as the suspension of the driving licence remains in force.

22. Suspension or cancellation of driving licence on conviction.—(1) Without prejudice to the provisions of sub-section (3) of section 20 where a person, referred to in sub-section (1) of section 21 is convicted of an offence of causing, by such dangerous driving as is referred to in section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person insofar as it relates to that class or description of motor vehicle.

(2) Without prejudice to the provisions of sub-section (2) of section 20, if a person, having been previously convicted of an offence punishable under section 185 is again convicted of an offence punishable under that section, the Court, making such subsequent conviction, shall, by order, cancel the driving licence held by such person.

(3) If a driving licence is cancelled or suspended under this section, the Court shall take the driving licence in its custody, endorse the cancellation or, as the case may be, suspension, thereon and send the driving licence so endorsed to the authority by which the licence was issued or last renewed and such authority shall, on receipt of the licence, keep the licence in its safe custody, and in the case of a suspended licence, return the licence to the holder thereof after the expiry of the period of suspension on an application made by him for such return:

Provided that no such licence shall be returned unless the holder thereof has, after the expiry of the period of suspension, undergone and passed, to the satisfaction of the licensing authority by which the licence was issued or last renewed, a fresh test of competence to drive referred to in sub-section (3) of section 9 and produced a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8.

(4) If a licence to drive a particular class or description of motor vehicles is cancelled or suspended under this section, the person holding such a licence shall be debarred from holding, or obtaining, any licence to drive such particular class or description of motor vehicles so long as the cancellation or suspension of the driving licence remains in force.

23. Effect of disqualification order.—(1) A person in respect of whom any disqualification order is made under section 19 or section 20 shall be debarred to the extent and for the period specified in such order from holding or obtaining a driving licence and the driving licence, if any, held by such person at the date of the order shall cease to be effective to such extent and during such period.

(2) The operation of a disqualification order made under section 20 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order, apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either cancel or vary the disqualification order:

Provided that where the Court or other authority refuses to cancel or vary any disqualification order under this section, a second application hereunder shall not be entertained before the expiry of a period of three months from the date of such refusal.

24. Endorsement.—(1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the driving licence, if any, held by the person disqualified, particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any cancellation or variation of an order of disqualification made under sub-section (3) of section 23 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence under this Act as may be prescribed by the Central Government, having regard to the objects of this Act, shall, whether or not a disqualification order is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any driving licence held by the person convicted.

(3) Any person accused of an offence prescribed under sub-section (2) shall when attending the Court bring with him his driving licence if it is in his possession.

(4) Where any person is convicted of any offence under this Act and sentenced to imprisonment for a period exceeding three months, the Court awarding the sentence shall endorse the fact of such sentence upon the driving licence of the person concerned and the prosecuting authority shall intimate the fact of such endorsement to the authority by which the driving licence was granted or last renewed.

(5) When the driving licence is endorsed or caused to be endorsed by any Court, such Court shall send the particulars of the endorsement to the licensing authority by which the driving licence was granted or last renewed.

(6) Where on an appeal against any conviction or order of a Court, which has been endorsed on a driving licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the driving licence was granted or last renewed and such authority shall amend or cause to be amended the endorsement.

CHAPTER III

LICENSING OF CONDUCTORS OF STAGE CARRIAGES

34. Power of licensing authority to disqualify.—(1) If any licensing authority is of opinion that it is necessary to disqualify the holder of a conductor's licence for holding or obtaining such a licence on account of his previous conduct as a conductor, it may, for reasons to be recorded, make an order disqualifying that person for a specified period, not exceeding one year, for holding or obtaining a conductor's licence:

Provided that before disqualifying the holder of a licence, the licensing authority shall give the person holding such licence a reasonable opportunity of being heard.

(2) Upon the issue of any such order, the holder of the conductor's licence shall forthwith surrender the licence to the authority making the order, if the licence has not already been surrendered, and the authority shall keep the licence until the disqualification has expired or has been removed.

(3) Where the authority disqualifying the holder of a conductor's licence under this section is not the authority which issued the licence, it shall intimate the fact of such disqualification to the authority which issued the same.

(4) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority which made the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority which made the order.

35. Power of Court to disqualify.—(1) Where any person holding a conductor's licence is convicted of an offence under this Act, the Court by which such person is convicted may, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified for such period as the Court may specify for holding a conductor's licence.

(2) The Court to which an appeal lies from any conviction of an offence under this Act may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from such Court, may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

CHAPTER IV

REGISTRATION OF MOTOR VEHICLES

53. Suspension of registration.—(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

(a) is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of this Act or of the rules made hereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such,

the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle—

(i) in any case falling under clause (a), until the defects are rectified to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of such suspension and the reasons therefore to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration.

(5) A certificate of registration surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

54. Cancellation of registration suspended under section 53.—Where the suspension of registration of a vehicle under section 53 has continued without interruption for a period of not less than six months, the registering authority within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel the registration.

55. Cancellation of registration.—(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to the authority the certificate of registration of the vehicle.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the State Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), it is satisfied that the vehicle is in such a condition that it is incapable of being used or its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of India, the registering authority shall cancel the registration.

(5) If a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), and for reasons to be recorded in writing, cancel the registration.

(6) A registering authority cancelling the registration of a motor vehicle under section 54 or under this section shall communicate such fact in writing to the owner of the vehicle, and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle.

(7) A registering authority making an order of cancellation under section 54 or under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(8) The expression "original registering authority" in this section and in sections 41, 49, 50, 51, 52, 53 and 54 means the registering authority in whose records the registration of the vehicle is recorded.

(9) In this section "certificate of registration" includes a certificate of registration renewed under the provisions of this Act.

56. Certificate of fitness of transport vehicles.—(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made hereunder:

Provided that where the prescribed authority or the "authorized testing station" refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) The "authorized testing station" referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

(3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made hereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualification.

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

57. Appeals.—(1) Any person aggrieved by an order of the registering authority under sections 41, 42, 43, 45, 47, 48, 49, 50, 52, 53, 55 or 56 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving an opportunity to the original authority and the appellant to be heard in the appeal pass such order as it thinks fit.

58. Special provisions in regard to transport vehicles.—(1) The Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle (other than a motorcab), and its make and model and other relevant considerations, by notification in the Official Gazette, specify, in relation to each make and model of a transport vehicle, the maximum gross vehicle weight of such vehicle and the maximum safe axle weight of each axle of such vehicle.

(2) A registering authority, when registering a transport vehicle, other than a motorcab shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

- (a) the unladen weight of the vehicle;
- (b) the number, nature and size of the tyres attached to each wheel;
- (c) the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and
- (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided, and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

(3) There shall not be entered in the certificate of registration of any such vehicle any gross vehicle weight or a registered axle weight of any of the axles different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels:

Provided that where it appears to the Central Government that heavier weights than those specified in the notification under sub-section (1) may be permitted in a particular locality for vehicles of a particular type, the Central Government may, by order in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

[* * *]

(5) In order that the gross vehicle weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of sub-section (3), the registering authority may require the owner of transport vehicle in accordance with such procedure as may be prescribed to produce the certificate of registration within such time as may be specified by the registering authority.

59. Power to fix the age limit of motor vehicle.—(1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the Rules made hereunder:

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in section 56, no prescribed authority or authorized testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

62. Information regarding stolen and recovered motor vehicles to be furnished by the police to the State Transport Authority.—The State Government may, if it thinks necessary or expedient so to do in the public interest, direct the submission by the Inspector General of Police (by whatever designation called) and such other police officers as the State Government may specify in this behalf, of such returns containing the information regarding vehicles which have been stolen and stolen vehicles which have been recovered of which the police are aware, to the State Transport Authority, and may prescribe the form in which and the period within which such returns shall be made.

CHAPTER V

CONTROL OF TRANSPORT VEHICLES

66. Necessity for permits.—(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.

(3) The provisions of sub-section (1) shall not apply—

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

[* * *]

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

[* * *]

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

67. Power to State Government to control road transport.—(1) A State Government, having regard to—

(a) the advantages offered to the public, trade and industry by the development of motor transport,

(b) the desirability of co-ordinating road and rail transport,

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among holders of permits,

may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority—

(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages:

[* * *]

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages;

(iii) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic:

Provided that no such notification in respect of the matters referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.

(2) Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods.

86. Cancellation and suspension of permits.—(1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

(a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

(2) The Transport Authority may exercise the powers conferred on it under sub-section (1) in relation to a permit granted by any authority or person to whom power in this behalf has been delegated under sub-section (5) of section 68 as if the said permit was a permit granted by the Transport Authority.

(3) Where a Transport Authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the action taken.

(4) The powers exercisable under sub-section (1) (other than the power to cancel a permit) by the Transport Authority which granted the permit may be exercised by any authority or person to whom such powers have been delegated under sub-section (5) of section 68.

(5) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the Transport Authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend

the permit if the holder of the permit agrees to pay a certain sum of money, then notwithstanding anything contained in sub-section (1), the Transport Authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

(6) The powers exercisable by the Transport Authority under sub-section (5) may, where an appeal has been preferred under section 89, be exercised also by the appellate authority.

(7) In relation to a permit referred to in sub-section (9) of section 88, the powers exercisable under sub-section (1) (other than the power to cancel a permit) by the Transport Authority which granted the permit, may be exercised by any Transport Authority and any authority or persons to whom power in this behalf has been delegated under sub-section (5) of section 68, as if the said permit was a permit granted by any such authority or persons.

87. Temporary permits.—(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorize the use of a transport vehicle temporarily—

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit, and may attach to any such permit such condition as it may think fit:

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted hereunder in respect of any route or area where—

(i) no permit could be issued under section 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a Court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or

(ii) as a result of the suspension by a Court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.

88. Validation of permits for use outside region in which granted.—(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State:

Provided also that—

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (5).

(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the States shall, insofar as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

(7) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

(8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority, may, for the convenience of the public, grant a special permit to any public service vehicle including any vehicle covered by a permit issued under section 72 (including a reserve stage carriage) or under section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.

(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport

Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86, clause (d) of sub-section (1) of section 87 and section 89 shall, as far as may be, apply in relation to such permits.

[* * *]

(11) The following shall be conditions of every permit granted under sub-section (9), namely:—

(i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;

(ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and

(iii) such other conditions as may be prescribed by the Central Government.

(12) Notwithstanding anything contained in sub-section (1), but, subject to the rules that may be made by the Central Government under sub-section (14), the appropriate authority may, for the purpose of encouraging long distance inter-State road transport, grant in a State, national permits in respect of goods carriages and the provisions of sections 69, 77, 79, 80, 81, 82, 83, 84, 85, 86, clause (d) of sub-section (1) of section 87 and section 89 shall, as far as may be, apply to or in relation to the grant of national permits.

[* * *]

(14)(a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the authorization fee payable for the issue of a permit referred to in sub-sections (9) and (12);

(ii) the fixation of the laden weight of the motor vehicle;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;

(iv) the colour or colours in which the motor vehicle is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation.—In this section,—

(a) “appropriate authority”, in relation to a national permit, means the authority which is authorised under this Act to grant a goods carriage permit;

(b) “authorization fee” means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in sub-sections (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned;

(c) “national permit” means a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application.

89. Appeals.—(1) Any person—

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit under section 82, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) aggrieved by the refusal to grant permission under section 83, or

(g) aggrieved by any other order which may be prescribed,

may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

(2) The State Government shall constitute such number of Transport Appellate Tribunals as it thinks fit and each such Tribunal shall consist of a judicial officer who is not below the rank of a District Judge or who is qualified to be a Judge of the High Court and it shall exercise jurisdiction within such area as may be notified by that Government.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed.

Explanation.—For the removal of doubts, it is hereby declared that when any order is made by the State Transport Authority or the Regional Transport Authority in pursuance of a direction issued by the Inter-State Transport Commission under clause (c) of sub-section (2) of section 63-A of the Motor Vehicles Act, 1939 (4 of 1939), as it stood immediately before the commencement of this Act, and any person feels aggrieved by such order on the ground that it is not in consonance with such direction, he may appeal under sub-section (1) to the State Transport Appellate Tribunal against such order but not against the direction so issued.

90. Revision.—The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

91. Restriction of hours of work of drivers.—(1) The hours of work of any person engaged for operating a transport vehicle shall be such as provided in the Motor Transport Workers Act, 1961 (27 of 1961).

(2) A State Government may, by notification in the Official Gazette, grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) A State Government or, if authorised in this behalf by the State Government by rules made under section 96, the State or a Regional Transport Authority may require persons employing any person whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons so as to conform to those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons under sub-section (3).

(5) A State Government may prescribe the circumstances under which and the period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

92. Voidance of contracts restrictive of liability.—Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or

purports to impose any conditions with respect to the enforcement of any such liability, be void.

93. Agent or canvasser to obtain licence.—(1) No person shall engage himself—

(i) as an agent or a canvasser, in the sale of tickets for travel by public service vehicles or in otherwise soliciting customers for such vehicles, or

(ii) as an agent in the business of collecting, forwarding or distributing goods carried by goods carriages,

unless he has obtained a licence from such authority and subject to such conditions as may be prescribed by the State Government.

(2) The conditions referred to in sub-section (1) may include all or any of the following matters, namely:—

(a) the period for which a licence may be granted or renewed;

(b) the fee payable for the issue or renewal of the licence;

(c) the deposit of security—

(i) of a sum not exceeding rupees fifty thousand in the case of an agent in the business of collecting, forwarding or distributing goods carried by goods carriages;

(ii) of a sum not exceeding rupees five thousand in the case of any other agent or canvasser,

and the circumstances under which the security may be forfeited;

(d) the provision by the agent of insurance of goods in transit;

(e) the authority by which and the circumstances under which the licence may be suspended or revoked;

(f) such other conditions as may be prescribed by the State Government.

(3) It shall be a condition of every licence that no agent or canvasser to whom the licence is granted shall advertise in any newspaper, book, list, classified directory or other publication unless there is contained in such advertisement appearing in such newspaper, book, list, classified directory or other publication the licence number, the date of expiry of licence and the particulars of the authority which granted the licence.

94. Bar on jurisdiction of Civil Courts.—No Civil Court shall have jurisdiction to entertain any question relating to the grant of a permit under this Act, and no injunction in respect of any action taken or to be taken by the duly constituted authorities under this Act with regard to the grant of a permit, shall be entertained by any Civil Court.

95. Power of State Government to make rules as to stage carriages and contract carriages.—(1) A State Government may make rules to regulate, in respect of stage carriages and contract carriages and the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(a) authorize the removal from such vehicle of any person contravening the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger, by any police officer;

(b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;

(c) require a passenger to declare, if so demanded by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket issued therefore;

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owners of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;

(e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;

(f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him;

(g) require a passenger to abstain from doing anything which is likely to obstruct or interfere with the working of the vehicle or to cause damage to any part of the vehicle or its equipment or to cause injury or discomfort to any other passenger;

(h) require a passenger not to smoke in any vehicle on which a notice prohibiting smoking is exhibited;

(i) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

CHAPTER VI

SPECIAL PROVISIONS RELATING TO STATE TRANSPORT UNDERTAKINGS

102. Cancellation or modification of scheme.—(1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving—

(i) the State transport undertaking; and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,
an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government.

104. Restriction on grant of permits in respect of a notified area or notified route.—Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.

CHAPTER VIII

CONTROL OF TRAFFIC

112. Limits of speed.—(1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under this Act or by or under any other law for the time being in force:

Provided that such maximum speed shall in no case exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette.

(2) The State Government or any authority authorised in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interest of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, and by causing appropriate traffic signs to be placed or erected under section 116 at suitable places, fix such maximum speed limits or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads:

Provided that no such notification is necessary if any restriction under this section is to remain in force for not more than one month.

(3) Nothing in this section shall apply to any vehicle registered under section 60 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under sub-section (1) of section 2 of the Manoeuvres, Field Firing and Artillery Practice Act, 1938 (5 of 1938).

113. Limits of weight and limitations on use.—(1) The State Government may prescribe the conditions for the issue of permits for transport vehicles by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

114. Power to have vehicle weighed.—(1) Any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113, require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit.

115. Power to restrict the use of vehicles.—The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may, by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.

116. Power to erect traffic signs.—(1)(a) The State Government or any authority authorised in this behalf by the State Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of bringing to public notice any speed limits fixed under sub-section (2) of section 112 or any prohibitions or restrictions imposed under section 115 or generally for the purpose of regulating motor vehicle traffic.

(b) A State Government or any authority authorised in this behalf by the State Government may, by notification in the Official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Schedule, designate certain roads as main roads for the purposes of the driving regulations made by the Central Government.

(2) Traffic signs placed or erected under sub-section (1) for any purpose for which provision is made in the Schedule shall be of the size, colour and type and shall have the meanings set forth in the Schedule, but the State Government or any authority empowered in this behalf by the State Government may make or authorize the addition to any sign set forth

in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the State Government may think fit provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Schedule.

(3) Except as provided by sub-section (1), no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs placed or erected prior to the commencement of this Act by any competent authority shall for the purpose of this Act be deemed to be traffic signs placed or erected under the provisions of sub-section (1).

(4) A State Government may, by notification in the Official Gazette, empower any police officer not below the rank of a Superintendent of Police to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which in his opinion is so similar in appearance to a traffic sign as to be misleading or which in his opinion is likely to distract the attention or concentration of the driver.

(5) No person shall wilfully remove, alter, deface, or in any way tamper with, any traffic signs placed or erected under this section.

(6) If any person accidentally causes such damage to a traffic sign as renders it useless for the purpose for which it is placed or erected under this section, he shall report the circumstances of the occurrence to a police officer or at a police station as soon as possible, and in any case within twenty-four hours of the occurrence.

(7) For the purpose of bringing the signs set forth in the First Schedule in conformity with any International Convention relating to motor traffic to which the Central Government is for the time being a party, the Central Government may, by notification in the Official Gazette, make any addition or alteration to any such sign and on the issue of any such notification, the First Schedule shall be deemed to be amended accordingly.

124. Prohibition against travelling without pass or ticket.—No person shall enter or remain in any stage carriage for the purposes of travelling therein unless he has with him a proper pass or ticket:

Provided that where arrangements for the supply of tickets are made in the stage carriage by which a person has to travel, a person may enter such stage carriage but as soon as may be after his entry therein, he shall make the payment of his fare to the conductor or the driver who performs the functions of a conductor and obtain from such conductor or driver, as the case may be, a ticket for his journey.

Explanation.—In this section,—

(a) “pass” means a duty privilege or courtesy pass entitling the person to whom it is given to travel in a stage carriage gratuitously and includes a pass issued on payment for travel in a stage carriage for the period specified therein;

(b) “ticket” includes a single ticket, a return ticket or a season ticket.

125. Obstruction of driver.—No person driving a motor vehicle shall allow any person to stand or sit or to place anything in such a manner or position as to hamper the driver in his control of the vehicle.

126. Stationary vehicles.—No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver’s seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

127. Removal of motor vehicles abandoned or left unattended on a public place.—

(1) Where any motor vehicle is abandoned or left unattended on a public place for ten hours or more or is parked in a place where parking is legally prohibited, its removal by a towing service or its immobilisation by any means including wheel clamping may be authorised by a police officer in uniform having jurisdiction.

(2) Where an abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.

(3) Where a vehicle is authorised to be removed under sub-section (1) or sub-section (2) by a police officer, the owner of the vehicle shall be responsible for all towing costs, besides any other penalty.

128. Safety measures for drivers and pillion riders.—(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon.

129. Wearing of protective headgear.—Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards:

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation.—"Protective headgear" means a helmet which,—

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear.

130. Duty to produce licence and certificate of registration.—(1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination:

Provided that the driver may, if his licence has been submitted to, or has been seized by, any officer or authority under this or any other Act, produce in lieu of the licence a receipt or other acknowledgement issued by such officer or authority in respect thereof and thereafter produce the licence within such period, in such manner as the Central Government may prescribe to the police officer making the demand.

(2) The conductor, if any, of a motor vehicle on any public place shall, on demand by any officer of the Motor Vehicles Department authorised in this behalf, produce the licence for examination.

(3) The owner of a motor vehicle (other than a vehicle registered under section 60), or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any other officer of the Motor Vehicles Department duly authorised in this behalf, produce the certificate of insurance of the vehicle and, where the vehicle is a transport vehicle, also the certificate of fitness referred to in section 56 and the permit; and if any or all of the certificates or the permit are not in his possession, he shall, within fifteen days from the date of demand, submit photo copies of the same, duly attested in person or send the same by registered post to the officer who demanded it.

Explanation.—For the purposes of this sub-section, "certificate of insurance" means the certificate issued under sub-section (3) of section 147.

(4) If the licence referred to in sub-section (2) or the certificates or permit referred to in sub-section (3), as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates or permit within such period in such manner as the Central Government may prescribe, to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

131. Duty of the driver to take certain precautions at unguarded railway level crossings.—Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and

ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed.

132. Duty of driver to stop in certain cases.—(1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may for such reasonable time as may be necessary, but not exceeding twenty-four hours,—

(a) when required to do so by any police officer not below the rank of a Sub-Inspector in uniform, in the event of the vehicle being involved in the occurrence of an accident to a person, animal or vehicle or of damage to property, or

(b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or

(c) [* * *]

and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 184, give his name and address to that person.

(3) In this section the expression “animal” means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

133. Duty of owner of motor vehicle to give information.—The owner of a motor vehicle, the driver or conductor of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the State Government, give all information regarding the name and address of, and the licence held by, the driver or conductor which is in his possession or could by reasonable diligence be ascertained by him.

134. Duty of driver in case of accident and injury to a person.—When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:—

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation.—For the purposes of this section, the expression “driver” includes the owner of the vehicle.

135. Schemes to be framed for the investigation of accident cases and wayside amenities, etc.—(1) The State Government may, by notification in the Official Gazette, make one or more schemes to provide for—

(a) an in depth study on causes and analysis of motor vehicle accidents;

- (b) wayside amenities on highways;
- (c) traffic aid posts on highways; and
- (d) truck parking complexes along highways.

(2) Every scheme made under this section by any State Government shall be laid, as soon as may be after it is made, before the State Legislature.

136. Inspection of vehicle involved in accident.—When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the State Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be, and may remove the vehicle for examination:

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle and the vehicle shall be returned after completion of the formalities to the owner, driver or the person in charge of the vehicle within twenty-four hours.

CHAPTER X

LIABILITY WITHOUT FAULT IN CERTAIN CASES

140. Liability to pay compensation in certain cases on the principle of no fault.—

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A.

141. Provisions as to other right to claim compensation for death or permanent disablement.—(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163-A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned

compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

CHAPTER XI

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

145. Definitions.—In this Chapter,—

(a) “authorised insurer” means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), and any Government insurance fund authorised to do general insurance business under that Act;

(b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (3) of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

(c) “liability”, wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140;

(d) “policy of insurance” includes “certificate of insurance”;

(e) “property” includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile-stones;

(f) “reciprocating country” means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter;

(g) “third party” includes the Government.

146. Necessity for insurance against third party risk.—(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking;

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation.—For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and—

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made hereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

148. Validity of policies of insurance issued in reciprocating countries.—Where, in pursuance of an arrangement between India and any reciprocating country, the motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance in force in that country, then, notwithstanding anything contained in section 147 but subject to any rules which may be made under section 164, such policy of insurance shall be effective throughout the route or area in respect of which, the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163-A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable hereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating

country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation.—For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168.

150. Rights of third parties against insurers on insolvency of the insured.—

(1) Where under any contract of insurance effected in accordance with the provisions of this Chapter, a person is insured against liabilities which he may incur to third parties, then—

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties hereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

151. Duty to give information as to insurance.—(1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 147 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 150, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties hereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

152. Settlement between insurers and insured persons.—(1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding-up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

158. Production of certain certificates, licence and permit in certain cases.—(1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce—

(a) the certificate of insurance;

(b) the certificate of registration;

(c) the driving licence; and

(d) in the case of a transport vehicle also the certificate of fitness referred to in section 56 and the permit,
relating to the use of the vehicle.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificates, driving licence and permit referred to in sub-section (1) to a police officer, he shall produce the said certificates, licence and permit at the police station at which he makes the report required by section 134.

(3) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer-in-charge of the police station at which he reported the accident:

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.

(4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 146 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(5) In this section, the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 146.

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer.

159. Production of certificate of insurance on application for authority to use vehicle.—A State Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 146 does not apply.

160. Duty to furnish particulars of vehicle involved in accident.—A registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any, damaged in such form and within such time as the Central Government may prescribe.

161. Special provisions as to compensation in case of hit and run motor accident.—(1) For the purposes of this section, section 162 and section 163—

(a) "grievous hurt" shall have the same meaning as in the Indian Penal Code (45 of 1860);

(b) "hit and run motor accident" means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c) "scheme" means the scheme framed under section 163.

(2) Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(3) Subject to the provisions of this Act and the scheme, there shall be paid as compensation—

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees.

(4) The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.

162. Refund in certain cases of compensation paid under section 161.—(1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the Tribunal, Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall,—

(a) if compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1);

(b) if an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation.—For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending—

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

163. Scheme for payment of compensation in case of hit and run motor accidents.—(1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that—

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

163-A. Special provisions as to payment of compensation on structured formula basis.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

163-B. Option to file claim in certain cases.—Where a person is entitled to claim compensation under section 140 and section 163-A, he shall file the claim under either of the said sections and not under both.

CHAPTER XII

CLAIMS TRIBUNALS

165. Claims Tribunals.—(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 and section 163-A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a High Court Judge or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

[* * *]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.

167. Option regarding claims for compensation in certain cases.—Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923 (8 of 1923), the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

168. Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

169. Procedure and powers of Claims Tribunals.—(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

170. Impleading insurer in certain cases.—Where in the course of any inquiry, the Claims Tribunal is satisfied that—

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

172. Award of compensatory costs in certain cases.—(1) Any Claims Tribunal adjudicating upon any claim for compensation under this Act, may in any case where it is satisfied for reasons to be recorded by it in writing that—

(a) the policy of insurance is void on the ground that it was obtained by representation of fact which was false in any material particular, or

(b) any party or insurer has put forward a false or vexatious claim or defence, such Tribunal may make an order for the payment, by the party who is guilty of misrepresentation or by whom such claim or defence has been put forward of special costs by way of compensation to the insurer or, as the case may be, to the party against whom such claim or defence has been put forward.

(2) No Claims Tribunal shall pass an order for special costs under sub-section (1) for any amount exceeding one thousand rupees.

(3) No person or insurer against whom an order has been made under this section shall, by reason thereof be exempted from any criminal liability in respect of such misrepresentation, claim or defence as is referred to in sub-section (1).

(4) Any amount awarded by way of compensation under this section in respect of any misrepresentation, claim or defence, shall be taken into account in any subsequent suit for damages for compensation in respect of such misrepresentation, claim or defence.

173. Appeals.—(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

174. Recovery of money from insurer as arrear of land revenue.—Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

175. Bar on jurisdiction of Civil Courts.—Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

CHAPTER XIII

OFFENCES, PENALTIES AND PROCEDURE

177. General provision for punishment of offences.—Whoever contravenes any provision of this Act or of any rule, regulation or notification made hereunder shall, if no penalty is provided for the offence, be punishable for the first offence, with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

178. Penalty for travelling without pass or ticket and for dereliction of duty on the part of conductor and refusal to ply contract carriage, etc.—(1) Whoever travels in a stage carriage without having a proper pass or ticket with him or being in or having alighted from a stage carriage fails or refuses to present for examination or to deliver up his pass or ticket immediately on a requisition being made therefore, shall be punishable with fine which may extend to five hundred rupees.

Explanation.—In this section, “pass” and “ticket” have the meanings respectively assigned to them in section 124.

(2) If the conductor of a stage carriage, or the driver of a stage carriage performing the functions of a conductor in such stage carriage, whose duty is—

(a) to supply a ticket to a person travelling in a stage carriage on payment of fare by such person, either wilfully or negligently,—

(i) fails or refuses to accept the fare when tendered, or

(ii) fails or refuses to supply a ticket, or

(iii) supplies an invalid ticket, or

(iv) supplies a ticket of a lesser value, or

(b) to check any pass or ticket, either wilfully or negligently fails or refuses to do so, he shall be punishable with fine which may extend to five hundred rupees.

(3) If the holder of a permit or the driver of a contract carriage refuses, in contravention of the provisions of this Act or rules made hereunder, to ply the contract carriage or to carry the passengers, he shall,—

(a) in the case of two-wheeled or three-wheeled motor vehicles, be punishable with fine which may extend to fifty rupees; and

(b) in any other case, be punishable with fine which may extend to two hundred rupees.

179. Disobedience of orders, obstruction and refusal of information.—(1) Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to five hundred rupees.

(2) Whoever, being required by or under this Act to supply any information, wilfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

180. Allowing unauthorized persons to drive vehicles.—Whoever, being the owner or person in charge of a motor vehicle, causes or permits, any other person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

181. Driving vehicles in contravention of section 3 or section 4.—Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

182. Offences relating to licences.—(1) Whoever, being disqualified under this Act for holding or obtaining a driving licence, drives a motor vehicle in a public place or in any other place, or applies for or obtains a driving licence or, not being entitled to have a driving licence

issued to him free of endorsement, applies for or obtains a driving licence without disclosing the endorsement made on a driving licence previously held by him shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both, and any driving licence so obtained by him shall be of no effect.

(2) Whoever, being disqualified under this Act for holding or obtaining a conductor's licence, acts as a conductor of a stage carriage in a public place or applies for or obtains a conductor's licence or, not being entitled to have a conductor's licence issued to him free of endorsement, applies for or obtains a conductor's licence without disclosing the endorsements made on a conductor's licence previously held by him, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both, and any conductor's licence so obtained by him shall be of no effect.

182-A. Punishment for offences relating to construction and maintenance of vehicles.—Any person who contravenes the provisions of sub-section (3) of section 109, shall be punishable with a fine of one thousand rupees for the first offence, and with a fine of five thousand rupees for any subsequent offence.

183. Driving at excessive speed, etc.—(1) Whoever drives a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to four hundred rupees, or, if having been previously convicted of an offence under this sub-section is again convicted of an offence under this sub-section, with fine which may extend to one thousand rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to three hundred rupees, or, if having been previously convicted of an offence under this sub-section, is again convicted of an offence under this sub-section, with fine which may extend to five hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical device.

(4) The publication of a time table under which, or the giving of any direction that any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without contravening the speed limits referred to in section 112 be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

184. Driving dangerously.—Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

185. Driving by a drunken person or by a person under the influence of drugs.—Whoever, while driving, or attempting to drive, a motor vehicle,—

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation.—For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.

186. Driving when mentally or physically unfit to drive.—Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for the first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

187. Punishment for offences relating to accident.—Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or of section 133 or section 134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

188. Punishment for abetment of certain offences.—Whoever abets the commission of an offence under section 184 or section 185 or section 186 shall be punishable with the punishment provided for the offence.

189. Racing and trials of speed.—Whoever without the written consent of the State Government permits or takes part in a race or trial of speed of any kind between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with a fine which may extend to five hundred rupees, or with both.

190. Using vehicle in unsafe condition.—(1) Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air-pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

(3) Any person who drives or causes or allows to be driven, in any public place a motor vehicle which violates the provisions of this Act or the rules made hereunder relating to the carriage of goods which are of dangerous or hazardous nature to human life, shall be punishable for the first offence which may extend to three thousand rupees, or with imprisonment for a term which may extend to one year, or with both, and for any second or subsequent offence with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

191. Sale of vehicle in or alteration of vehicle to condition contravening this Act.—Whoever being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition that the use thereof in a public place would be in contravention of Chapter VII or any rule made hereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter VII or any rule made hereunder shall be punishable with fine which may extend to five hundred rupees:

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

192. Using vehicles without registration.—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the Court may, for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

192-A. Using vehicles without permit.—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the Court may for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order, made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

193. Punishment of agents and canvassers without proper authority.—Whoever engages himself as an agent or canvasser in contravention of the provisions of section 93 or of any rules made hereunder shall be punishable for the first offence with fine which may extend to one thousand rupees and for any second or subsequent offence with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

194. Driving vehicle exceeding permissible weight.—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

195. Imposition of minimum fine under certain circumstances.—(1) Whoever having been convicted of an offence under this Act or the rules made hereunder commits a similar offence on a second or subsequent occasion within three years of the commission of the previous offence, no Court shall, except for reasons to be recorded by it in writing, impose on him a fine of less than one-fourth of the maximum amount of the fine imposable for such offence.

(2) Nothing in sub-section (1) shall be construed as restricting the power of the Court from awarding such imprisonment as it considers necessary in the circumstances of the case not exceeding the maximum specified in this Act in respect of that offence.

196. Driving uninsured vehicle.—Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 146 shall be punishable

with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

197. Taking vehicle without authority.—(1) Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both:

Provided that no person shall be convicted under this section, if the Court is satisfied that such person acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefore.

(2) Whoever, unlawfully by force or threat of force or by any other form of intimidation, seizes or exercises control of a motor vehicle, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(3) Whoever attempts to commit any of the acts referred to in sub-section (1) or sub-section (2) in relation to any motor vehicle, or abets the commission of any such act, shall also be deemed to have committed an offence under sub-section (1) or, as the case may be, sub-section (2).

198. Unauthorized interference with vehicle.—Whoever otherwise than with lawful authority or reasonable excuse enters or moves any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

199. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section—

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

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

200. Composition of certain offences.—(1) Any offence whether committed before or after the commencement of this Act punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186, section 189, sub-section (2) of section 190, section 191, section 192, section 194, section 196, or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

201. Penalty for causing obstruction to free flow of traffic.—(1) Whoever keeps a disabled vehicle on any public place, in such a manner, so as to cause impediment to the free flow of traffic, shall be liable for penalty up to fifty rupees per hour, so long as it remains in that position:

Provided that the vehicle involved in accidents shall be liable for penalty only from the time of completion of inspection formalities under the law:

Provided further that where the vehicle is removed by a Government agency, towing charges shall be recovered from the vehicle owner or person in-charge of such vehicle.

(2) Penalties or towing charges under this section shall be recovered by such officer or authority as the State Government may, by notification in the Official Gazette, authorize.

202. Power to arrest without warrant.—(1) A police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under section 184 or section 185 or section 197:

Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody.

(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give his name and address.

(3) A police officer arresting without warrant the driver of a motor vehicle shall if the circumstances so require take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

203. Breath tests.—(1) A police officer in uniform or an officer of the Motor Vehicles Department, as may be authorised in this behalf by that Department, may require any person driving or attempting to drive a motor vehicle in a public place to provide one or more specimens of breath for breath test there or nearby, if such police officer or officer has any reasonable cause to suspect him of having committed an offence under section 185:

Provided that requirement for breath test shall be made (unless it is made) as soon as reasonably practicable after the commission of such offence.

(2) If a motor vehicle is involved in an accident in a public place and a police officer in uniform has any reasonable cause to suspect that the person who was driving the motor vehicle at the time of the accident had alcohol in his blood or that he was driving under the influence of a drug referred to in section 185 he may require the person so driving the motor vehicle, to provide a specimen of his breath for a breath test—

(a) in the case of a person who is at a hospital as an indoor patient, at the hospital,

(b) in the case of any other person, either at or near the place where the requirement is made, or, if the police officer thinks fit, at a police station specified by the police officer:

Provided that a person shall not be required to provide such a specimen while at a hospital as an indoor patient if the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) If it appears to a police officer in uniform, in consequence of a breath test carried out by him on any person under sub-section (1) or sub-section (2), that the device by means of which the test has been carried out indicates the presence of alcohol in the person's blood, the police officer may arrest that person without warrant except while that person is at a hospital as an indoor patient.

(4) If a person, required by a police officer under sub-section (1) or sub-section (2) to provide a specimen of breath for a breath test, refuses or fails to do so and the police officer has reasonable cause to suspect him of having alcohol in his blood, the police officer may arrest him without warrant except while he is at a hospital as an indoor patient.

(5) A person arrested under this section shall while at a police station, be given an opportunity to provide a specimen of breath for a breath test there.

(6) The results of a breath test made in pursuance of the provisions of this section shall be admissible in evidence.

Explanation.—For the purposes of this section “breath test”, means a test for the purpose of obtaining an indication of the presence of alcohol in a person's blood carried out, on one or more specimens of breath provided by that person, by means of a device of a type approved by the Central Government, by notification in the Official Gazette, for the purpose of such a test.

204. Laboratory test.—(1) A person, who has been arrested under section 203 may, while at a police station, be required by a police officer to provide to such registered medical

practitioner as may be produced by such police officer, a specimen of his blood for a laboratory test if,—

(a) it appears to the police officer that the device, by means of which breath test was taken in relation to such person, indicates the presence of alcohol in the blood of such person, or

(b) such person, when given the opportunity to submit to a breath test, has refused, omitted or failed to do so:

Provided that where the person required to provide such specimen is a female and the registered medical practitioner produced by such police officer is a male medical practitioner, the specimen shall be taken only in the presence of a female, whether a medical practitioner or not.

(2) A person while at a hospital as an indoor patient may be required by a police officer to provide at the hospital a specimen of his blood for a laboratory test—

(a) if it appears to the police officer that the device by means of which test is carried out in relation to the breath of such person indicates the presence of alcohol in the blood of such person, or

(b) if the person having been required, whether at the hospital or elsewhere, to provide a specimen of breath for a breath test, has refused, omitted or failed to do so and a police officer has reasonable cause to suspect him of having alcohol in his blood:

Provided that a person shall not be required to provide a specimen of his blood for a laboratory test under this sub-section if the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of such specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) The results of a laboratory test made in pursuance of this section shall be admissible in evidence.

Explanation.—For the purposes of this section, “laboratory test” means the analysis of a specimen of blood made at a laboratory established, maintained or recognised by the Central Government or a State Government.

205. Presumption of unfitness to drive.—In any proceeding for an offence punishable under section 185 if it is proved that the accused, when requested by a police officer at any time so to do, had refused, omitted or failed to consent to the taking of or providing a specimen of his breath for a breath test or a specimen of his blood for a laboratory test, his refusal, omission or failure may, unless reasonable cause therefore is shown, be presumed to be a circumstance supporting any evidence given on behalf of the prosecution, or rebutting any evidence given on behalf of the defence, with respect to his condition at that time.

206. Power of police officer to impound document.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, 1860 (45 of 1860) seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence and the said Court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgement given under sub-section (3).

(3) A police officer or other person seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgement therefore and such acknowledgement shall authorize the holder to drive until the licence has been returned to him or until such date as may be specified by the police officer or other person in the acknowledgement, whichever is earlier:

Provided that if any Magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgement for any reason for which the holder is not responsible, the Magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive to such date as may be specified in the acknowledgement.

207. Power to detain vehicles used without certificate of registration permit, etc.—

(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof.

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order, release the vehicle subject to such conditions as the authority or officer may deem fit to impose.

208. Summary disposal of cases.—(1) The Court taking cognizance of any offence (other than an offence which the Central Government may by rules specify in this behalf) under this Act,—

- (i) may, if the offence is an offence punishable with imprisonment under this Act; and
- (ii) shall, in any other case,

state upon the summons to be served on the accused person that he—

(a) may appear by pleader or in person; or

(b) may, by a specified date prior to the hearing of the charge, plead guilty to the charge and remit to the Court, by money order, such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify, and the plea of guilt indicated in the money order coupon itself:

Provided that the Court shall, in the case of any of the offences referred to in sub-section (2), state upon the summons that the accused person, if he pleads guilty, shall so plead in the manner specified in clause (b) and shall forward his driving licence to the Court with his letter containing such plea.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified by the Central Government by rules for the purposes of this sub-section, the Court shall, if the accused person pleads guilty to the charge and forward his driving licence to the Court with the letter containing his plea, make an endorsement of such conviction on his driving licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (1), or as the case may be, sub-sections (1) and (2), no further proceedings in respect of the offence shall be taken against him nor shall he be liable, notwithstanding anything to the contrary contained in this Act, to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

209. Restriction on conviction.—No person prosecuted for an offence punishable under section 183 or section 184 shall be convicted unless—

(a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

(b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was

served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or

(c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him:

Provided that nothing, in this section shall apply where the Court is satisfied that—

(a) the failure to serve the notice or summons referred to in this sub-section was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or

(b) such failure was brought about by the conduct of the accused.

210. Courts to send intimation about conviction.—Every Court by which any person holding a driving licence is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, shall send intimation to—

(a) the licensing authority which issued the driving licence, and

(b) the licensing authority by whom the licence was last renewed,

and every such intimation shall state the name and address of the holder of the licence, the licence number, the date of issue and renewal of the same, the nature of the offence, the punishment awarded for the same and such other particulars as may be prescribed.

CHAPTER XIV

MISCELLANEOUS

211. Power to levy fee.—Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorization, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made hereunder as may be considered necessary:

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

19/05/1986

1. Short title and extent.—(1) This Act may be called THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(a) “divorced woman” means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b) “iddat period” means, in the case of a divorced woman,—

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(c) “Magistrate” means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the divorced woman resides;

(d) “prescribed” means prescribed by rules made under this Act.

3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.—(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(a) a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—

(a) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of *mahr* or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such *mahr* or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance.—(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other

relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974.—If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974) and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.—For the purposes of this section, “date of the first hearing of the application” means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

- (a) the form of the affidavit or other declaration in writing to be filed under section 5;
- (b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;
- (c) any other matter which is required to be or may be prescribed.

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

7. Transitional provisions.—Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

16/09/1985

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985.

(2) It extends to the whole of India and it applies also—

- (a) to all citizens of India outside India;
- (b) to all persons on ships and aircrafts registered in India, wherever they may be.

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

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

(i) “addict” means a person who has dependence on any narcotic drug or psychotropic substance;

(ii) “Board” means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963);

(iii) “cannabis (hemp)” means—

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

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

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared there from;

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

(v) “coca derivative” means—

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

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

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

(vi) “coca leaf” means—

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

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

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

(viii) “commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

(viii) “controlled delivery” means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorised under section 50-A with a view to identifying the persons involved in the commission of an offence under this Act;

(viii) “corresponding law” means any law corresponding to the provisions of this Act;

(viii) “controlled substance” means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance;

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

(viii) “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means—

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

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

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing concealment, use or consumption, import inter-State, export

inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

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

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),

other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorization issued, hereunder, and includes—

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

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

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

(ix) "International Convention" means—

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

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

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

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

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

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

(2) refining of such drugs or substances;

(3) transformation of such drugs or substances; and

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

(xi) "manufactured drug" means—

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

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

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

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

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

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

(xv) "opium" means—

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

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

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

(xvi) "opium derivative" means—

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

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

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

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

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

(xvii) "opium poppy" means—

(a) the plant of the species *Papaver somniferum* L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

(xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted there from;

(xix) "poppy straw concentrate" means the material arising when poppy straw has entered into a process for the concentration of its alkaloids;

(xx) "preparation", in relation to a narcotic drug or psychotropic substance means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;

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

(xxii) "production" means the separation of opium poppy straw, coca leaves or cannabis from the plants from which they are obtained;

(xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;

(xxiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;

(xxiv) "to import inter-State" means to bring into a State or Union territory in India from another State or Union territory in India;

(xxv) "to import into India", with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

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

(xxvi) "to export from India", with its grammatical variations and cognate expressions, means to take out of India to a place outside India;

(xxvii) "to export inter-State" means to take out of a State or Union territory in India to another State or Union territory in India;

(xxviii) "to transport" means to take from one place to another within the same State or Union territory;

(xxviiiia) "use" in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;

(xxix) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

Explanation.—For the purposes of clauses (v), (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage:

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

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

(a) the information and evidence which has become available to it with respect to the nature and effects of, and the abuse or the scope for abuse of, any substance (natural or synthetic) or natural material or any salt or preparation of such substance or material; and

(b) the modifications or provisions (if any) which have been made to, or in, any International Convention with respect to such substance, natural material or salt or preparation of such substance or material,

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

CHAPTER II

AUTHORITIES AND OFFICERS

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

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

(a) co-ordination of actions by various officers, State Governments and other authorities—

(i) under this Act, or

(ii) under any other law for the time being in force in connection with the enforcement of the provisions of this Act;

(b) obligations under the International Conventions;

(c) assistance to the concerned authorities in foreign countries and concerned international organisations with a view to facilitating co-ordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;

(d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts;

(e) such other matters as the Central Government deems, necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

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

5. Officers of Central Government.—(1) Without prejudice to the provisions of sub-section (3) of section 4, the Central Government shall appoint a Narcotics Commissioner and

may also appoint such other officers with such designations as it thinks fit for the purposes of this Act.

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

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

6. The Narcotic Drugs and Psychotropic Substances Consultative Committee.—

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

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

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

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

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

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

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

CHAPTER II-A

NATIONAL FUND FOR CONTROL OF DRUG ABUSE

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

(a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide;

(b) the sale proceeds of any property forfeited under Chapter V-A;

(c) any grants that may be made by any person or institution;

(d) any income from investment of the amounts credited to the Fund under the aforesaid provisions.

(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for—

(a) combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances;

(b) controlling the abuse of narcotic drugs and psychotropic substances;

(c) identifying, treating, rehabilitating addicts;

(d) preventing drug abuse;

(e) educating public against drug abuse; and

(f) supplying drugs to addicts where such supply is a medical necessity.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette.

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

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

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

CHAPTER III

PROHIBITION, CONTROL AND REGULATION

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

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) Produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

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

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

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

8-A. Prohibition of certain activities relating to property derived from offence.—No person shall—

(a) convert or transfer any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences; or

(b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country; or

(c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act or under any other corresponding law of any other country.

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

(a) permit and regulate—

(i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport import inter-State, export inter-State, use or consumption of coca leaves;

(ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;

(iii) the production and manufacture of opium and production of poppy straw;

(iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) the manufacture or manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances;

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

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

(a) empower the Central Government to fix from time to time the limits within which licences may be given for the cultivation of the opium poppy;

(b) require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorised in this behalf by the Central Government;

(c) prescribe the forms and conditions of licences for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged therefore the authorities by which such licences may be granted, withheld, refused or cancelled and the authorities before which appeals against the orders of withholding, refusal or cancellation of licences shall lie;

(d) prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorised in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;

(e) empower the Central Government to fix from time to time the price to be paid to the cultivators for the opium delivered;

(f) provide for the weighment, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighment, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;

(g) require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorised in this behalf;

(h) prescribe the forms and conditions of licences for the manufacture of manufactured drugs, the authorities by which such licences may be granted and the fees that may be charged therefore;

(i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefore;

(j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transhipped; the forms and conditions of certificates, authorizations or permits, as the case may be, for such import, export or transshipment; the authorities by which such certificates, authorizations or permits may be granted and the fees that may be charged therefore.

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

(2) Without prejudice to the generality of the power conferred by sub-section (1), an order made hereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale,

purchase, consumption, use, storage, distribution disposal or acquisition of any controlled substance.

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

(a) permit and regulate—

(i) the possession, transport, import inter-State, export inter-State warehousing, sale, purchase, consumption and use of poppy straw;

(ii) the possession, transport, import inter-State, export inter-State, sale purchase, consumption and use of opium;

(iii) the cultivation of any cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of cannabis (excluding *charas*);

(iv) the manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(v) the possession, transport, purchase, sale, import inter-State, export inter-State, use or consumption of manufactured drugs other than prepared opium and of coca leaf and any preparation containing any manufactured drug;

(vi) the manufacture and possession of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption:

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

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

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

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

(a) empower the State Government to declare any place to be a warehouse wherein it shall be the duty of the owners to deposit all such poppy straw as is legally imported inter-State and is intended for export inter-State or export from India; to regulate the safe custody of such poppy straw warehoused and the removal of such poppy straw for sale or export inter-State or export from India; to levy fees for such warehousing and to prescribe the manner in which and the period after which the poppy straw warehoused shall be disposed of in default of payment of fees;

(b) provide that the limits within which licences may be given for the cultivation of any cannabis plant shall be fixed from time to time by or under the orders of the State Government;

(c) provide that only the cultivators licensed by the prescribed authority of the State Government shall be authorised to engage in cultivation of any cannabis plant;

(d) require that all cannabis, the produce of land cultivated with cannabis plant, shall be delivered by the cultivators to the officers of the State Government authorised in this behalf;

(e) empower the State Government to fix from time to time, the price to be paid to the cultivators for the cannabis delivered;

(f) prescribe the forms and conditions of licences or permits for the purposes specified in sub-clauses (i) to (vi) of clause (a) of sub-section (1) and the authorities by which such licences or permits may be granted and the fees that may be charged therefore.

11. Narcotic drugs and psychotropic substances, etc., not liable to distress or attachment.—Notwithstanding anything to the contrary contained in any law or contract, no narcotic drug, psychotropic substance, coca plant, the opium poppy or cannabis plant shall be

liable to be distrained or attached by any person for the recovery of any money under any order or decree of any Court or authority or otherwise.

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

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

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

CHAPTER IV

OFFENCES AND PENALTIES

15. Punishment for contravention in relation to poppy straw.—Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted hereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

16. Punishment for contravention in relation to coca plant and coca leaves.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years, or with fine which may extend to one lakh rupees.

17. Punishment for contravention in relation to prepared opium.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both; or

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees; or

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and

shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

18. Punishment for contravention in relation to opium poppy and opium.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

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

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

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

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

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

(a) cultivates any cannabis plant; or

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

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

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

21. Punishment for contravention in relation to manufactured drugs and preparations.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

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

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

23. Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorization issued hereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

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

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

25. Punishment for allowing premises, etc., to be used for commission of an offence.—Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

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

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

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

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

(b) fails to produce without any reasonable cause such licence, permit or authorization on demand of any officer authorised by the Central Government or State Government in this behalf;

(c) keeps any accounts or makes any statement which is false or which he knows or has reasons to believe to be incorrect; or

27. Punishment for consumption of any narcotic drug or psychotropic substance.—Whoever consumes any narcotic drug or psychotropic substance shall be punishable,—

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

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

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

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

29. Punishment for abetment and criminal conspiracy.—(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

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

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

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

30. Preparation.—If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of sections 19, 24 and 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid:

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

31. Enhanced punishment for offences after previous conviction.—(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment, and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent Court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a Court in India.

31-A. Death penalty for certain offences after previous conviction.—

(1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under section 19, section 24, section 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance, is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to,—

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

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(2) Where any person is convicted by a competent Court of criminal jurisdiction outside India under any law corresponding to the provisions of section 19, section 24 or section 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (1) as if he had been convicted by a Court in India.

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

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

32-B. Factors to be taken into account for imposing higher than the minimum punishment.—Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the Court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—

- (a) the use or threat of use of violence or arms by the offender;
- (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;
- (c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence; and
- (d) the fact that the offence is committed in an educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;
- (e) the fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offence; and
- (f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.

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

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

(2) The bond shall be in such form as may be prescribed by the Central Government and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

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

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

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

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

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

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

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

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

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

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

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

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

Provided that in cases which are triable by the Special Court where such Magistrate considers—

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

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

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

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

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

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

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27-A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”:

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.

36-B. Appeal and revision.—The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973

(2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

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

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

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 are pending before a Court of Session, then, notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session:

Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).

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

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

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

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

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

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

38. Offences by companies.—(1) Where an offence under Chapter IV has been committed by a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where any offence under Chapter IV has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

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

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

39. Power of Court to release certain offenders on probation.—(1) When any addict is found guilty of an offence punishable under section 27 or for offences relating to small quantity of any narcotic drug or psychotropic substance and if the Court by which he is found

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

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

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

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

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

CHAPTER V

PROCEDURE

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

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a

constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

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

42. Power of entry, search, seizure and arrest without warrant or authorization.—

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and

(d) detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

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

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

43. Power of seizure and arrest in public place.—Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act;

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

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

44. Power of entry, search seizure and arrest in offences relating to coca plant, opium poppy and cannabis plant.—The provisions of sections 41, 42, and 43, shall so far

as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance or controlled substance, shall be construed as including references to coca plant, the opium poppy and cannabis plant.

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

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

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

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

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

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

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

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

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

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

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a seventy-two hours send a copy thereof to his immediate official superior.

50-A. Power to undertake controlled delivery.—The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—

(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.

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

52. Disposal of persons arrested and articles seized.—(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds of such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

52-A. Disposal of seized narcotic drugs and psychotropic substances.—(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station.—(1) The Central Government, after consultation with the State Government may by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the official Gazette, invest any officer of the department of drugs control, revenue or excise or any other department or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

53-A. Relevancy of statements under certain circumstances.—(1) A statement made and signed by a person before any officer empowered under section 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made hereunder, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

54. Presumption from possession of illicit articles.—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured,

for the possession of which he fails to account satisfactorily.

55. Police to take charge of articles seized and delivered.—An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

56. Obligation of officers to assist each other.—All officers of the several departments mentioned in section 42 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

57. Report of arrest and seizure.—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

58. Punishment for vexatious entry, search, seizure or arrest.—(1) Any person empowered under section 42 or section 43 or section 44 who—

(a) without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building, conveyance or place;

(b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated under this Act, or of seizing any document or other article liable to be seized under section 42, section 43 or section 44; or

(c) vexatiously and unnecessarily detains, searches or arrests any person, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

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

59. Failure of officer in duty or his connivance at the contravention of the provisions of this Act.—(1) Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for term which may extend to one year or with fine or with both.

(2) Any officer on whom any duty has been imposed by or under this Act or any person who has been given the custody of—

(a) any addict; or

(b) any other person who has been charged with an offence under this Act, and who wilfully aids in, or connives at, the contravention of any provision of this Act or any rule or order made hereunder, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Explanation.—For the purposes of this sub-section, the expression “officer” includes any person employed in a hospital or institution maintained or recognised by the Government or a local authority under section 64-A for providing de-addiction treatment.

(3) No Court shall take cognizance of any offence under sub-section (1) or sub-section (2) except on a complaint in writing made with the previous sanction of the Central Government, or as the case may be, the State Government.

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substance which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance, or controlled substance materials apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscations, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

61. Confiscation of goods used for concealing illicit drugs or substances.—Any goods used for concealing any narcotic drug, psychotropic substance or controlled substance which is liable to confiscation under this Act shall also be liable to confiscation.

Explanation.—In this section “goods” does not include conveyance as a means of transport.

62. Confiscation of sale proceeds of illicit drugs or substances.—Where any narcotic drug, psychotropic substance or controlled substance is sold by a person having knowledge or

reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

63. Procedure in making confiscations.—(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the Court may inquire into and decide such liability and may order confiscation accordingly.

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing other than a narcotic drug, psychotropic substance or controlled substance the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the Court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale.

[* * *]

64. Power to tender immunity from prosecution.—(1) The Central Government or the State Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of this Act or of any rule or order made hereunder it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act or State Act, as the case may be, for the time being in force, on condition of his making a full and true disclosure of the whole circumstances relating to such contravention.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made.

(3) If it appears to the Central Government or, as the case may be, the State Government, that any person to whom immunity has been tendered under this section has not complied with the conditions on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government or, as the case may be, the State Government, may record a finding to that effect and thereupon the immunity shall be deemed to have been withdrawn and such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same manner.

64-A. Immunity from prosecution to addicts volunteering for treatment.—Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.

65. Power to make rules regulating disposal of confiscated articles and rewards.—*[Omitted by Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), section 18 (w.e.f. 29-5-1989).]*

66. Presumption as to documents in certain cases.—Where any document—

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed by the Central Government) in the course of investigation of any offence under this Act alleged to have been committed by a person, and such document is tendered in any prosecution under this Act in evidence against him, or against him and any other person who is tried jointly with him, the Court shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

67. Power to call for information, etc.—Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act,—

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made hereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

68. Information as to commission of offences.—No officer acting in exercise of powers vested in him under any provision of this Act or any rule or order made hereunder shall be compelled to say whence he got any information as to the commission of any offence.

CHAPTER V-A

FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN, ILLICIT TRAFFIC

68-A. Application.—(1) The provisions of this Chapter shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely:—

(a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of ten years or more;

(b) every person who has been convicted of a similar offence by a competent Court of criminal jurisdiction outside India;

(c) every person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (46 of 1988), or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988:

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Acts or such order of detention has not been set aside by a Court of competent jurisdiction;

(cc) every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of a similar offence under any corresponding law of any other country;

(d) every person who is a relative of a person referred to in clause (a) or clause (b) or clause (c) or clause (cc);

(e) every associate of a person referred to in clause (a) or clause (b) or clause (c) or clause (cc);

(f) any holder (hereafter in this clause referred to as the "present holder") of any property which was at any time previously held by a person referred to in clause (a) or clause

(b) or clause (c) or clause (cc) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

68-B. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “Appellant Tribunal” means the Appellate Tribunal for Forfeited Property constituted under section 68-N;

(b) “associate” in relation to a person whose property is liable to be forfeited under this Chapter, means—

(i) any individual who had been or is residing in the residential premises (including out-houses) of such person;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association or persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956 (1 of 1956), of which such person had been or is a member, partner or director;

(iv) any individual who had been or is a member, partner or director of an association or persons, body of individuals, partnership firm or private company referred to in sub-clause (iii) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) any person, who had been or in managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii);

(vi) the trustee of any trust, where,—

(1) the trust has been created by such person; or

(2) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which contribution is made, to not less than twenty per cent. of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person;

(c) “competent authority” means an officer of the Central Government authorised by it under section 68-D;

(d) “concealment” means the concealment or disguise of the nature, source, disposition, movement or ownership of property and includes the movement or conversion of such property by electronic transmission or by any other means;

(e) “freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property by an order issued under section 68-F;

(f) “identifying” includes establishment of proof that the property was derived from, or used in, the illicit traffic;

(g) “illegally acquired property”, in relation to any person to whom this Chapter applies, means,—

(i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of this Act; or

(ii) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income or earnings from such property, and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings there from;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived from, or used in, the illicit traffic;

(i) "relative" means—

- (1) spouse of the person;
- (2) brother or sister of the person;
- (3) brother or sister of the spouse of the person;
- (4) any lineal ascendant or descendant of the person;
- (5) any lineal ascendant or descendant of the spouse of the person;
- (6) spouse of a person referred to in sub-clause (2), sub-clause (3), sub-clause (4) or sub-clause (5);
- (7) any lineal descendant of a person referred to in sub-clause (2) or sub-clause (3);

(j) "tracing" means determining the nature, source, disposition, movement, title or ownership of property;

(k) "trust" includes any other legal obligation.

68-C. Prohibition of holding illegally acquired property.—(1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorization of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be.

68-D. Competent authority.—(1) The Central Government may, by order published in the Official Gazette, authorize any Collector of Customs or Collector of Central Excise or Commissioner of Income-tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.

(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.

68-E. Identifying illegally acquired property.—(1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

68-F. Seizure or freezing of illegally acquired property.—(1) Where any officer conducting an inquiry or investigation under section 68-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be

transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation.—For the purposes of this section, “transfer of property” means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

68-G. Management of properties seized or forfeited under this Chapter.—(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (1) of section 68-F or under section 68-I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

68-H. Notice of forfeiture of property.—(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68-E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected (calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person:

Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub-section (2) of section 68-A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.

68-I. Forfeiture of property in certain cases.—(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 68-H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this sub-section *ex parte* on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances:

Provided that no illegally acquired property of any person who is referred to in clause (cc) of sub-section (2) of section 68-A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

68-J. Burden of proof.—In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68-H is not illegally acquired property shall be on the person affected.

68-K. Fine in lieu of forfeiture.—(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 68-I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 68-I and thereupon such property shall stand released.

68-L. Procedure in relation to certain trust properties.—In the case of any person referred to in sub-clause (vi) of clause (b) of section 68-B, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust in illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within a period of thirty days specified in the notice, to explain the source of money or other assets out of or by means of which such property was acquired or, as the case may be, the source of money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 68-H and all the other provisions of this Chapter shall apply accordingly.

Explanation.—For the purposes of this section “illegally acquired property” in relation to any property held in trust, includes—

(i) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(ii) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person acquired such property out of such contributions.

68-M. Certain transfers to be null and void.—Where after the making of an order under sub-section (1) of section 68-F or the issue of a notice under section 68-H or under section 68-L, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 68-I, then, the transfer of such property shall be deemed to be null and void.

68-N. Constitution of Appellate Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by that Government for hearing appeals against the orders made under section 68-F, section 68-I, sub-section (1) of section 68-K or section 68-L.

(2) The Chairman of the Appellate Tribunal shall be person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

68-O. Appeals.—(1) Any officer referred to in sub-section (1) of section 68-E or any person aggrieved by an order of the competent authority made under section 68-F, section 68-I, sub-section (1) of section 68-K or section 68-L; may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On respect of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

(3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in sub-section (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals, under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that member.

(5) The Appellate Tribunal may regulate its own procedure.

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in his behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.

68-P. Notice or order not to be invalid for error in description.—No notice issued or served, no declaration made, and no order passed, under this Chapter shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

68-Q. Bar of jurisdiction.—No order passed or declaration made under this Chapter shall be appealable except as provided therein and no civil Court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Chapter to determine, and no injunction shall be granted by a Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

68-R. Competent Authority and Appellate Tribunal to have powers of Civil Court.—The competent authority and the Appellate Tribunal shall have all the powers of a civil Court

while typing a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office;
- (e) issuing commissions for examination of witnesses or documents;
- (f) any other matter which may be prescribed.

68-S. Information to competent authority.—(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Chapter.

(2) Every officer referred to in section 68-T may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Chapter.

68-T. Certain officers to assist Administrator, competent authority and Appellate Tribunal.—For the purposes of any proceedings under this Chapter, the following officers are hereby empowered and required to assist the Administrator appointed under section 68-G, competent authority and the Appellate Tribunal, namely:—

- (a) officers of the Narcotics Control Bureau;
- (b) officers of the Customs Department;
- (c) officers of the Central Excise Department;
- (d) officers of the Income-tax Department;
- (e) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973)*;
- (f) officers of police;
- (g) officers of the Narcotics Department;
- (h) officers of the Central Economic Intelligence Bureau;
- (i) officers of the Directorate of Revenue Intelligence;
- (j) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

68-U. Power to take possession.—(1) Where any property has been declared to be forfeited to the Central Government under this Chapter, or where the person affected has failed to pay the fine due under sub-section (1) of section 68-K within the time allowed therefore under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the Administrator appointed under section 68-G or to any person duly authorised by him in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Administrator may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the Administrator may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

68-V. Rectification of mistakes.—With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

68-W. Findings under other laws not conclusive for proceedings under this Chapter.—No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Chapter.

68-X. Service of notices and orders.—Any notice or order issued or made under this Chapter shall be served—

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

68-Y. Punishment for acquiring property in relation to which proceedings have been taken under this Chapter.—Any person who knowingly acquired, by any mode whatsoever, any property in relation to which proceedings are pending under this Chapter shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees.

68-Z. Release of property in certain cases.—(1) Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

(2) Where any person referred to in clause (a) or clause (b) or clause (cc) of sub-section (2) of section 68-A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorization of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.

CHAPTER VI

MISCELLANEOUS

69. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of the Central Government or of the State Government or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made hereunder.

70. Central Government and State Government to have regard to international conventions while making rules.—Wherever under this Act the Central Government or the State Government has been empowered to make rules, the Central Government or the State Government, as the case may be, subject to other provisions of this Act, may while making the rules have regard to the provisions of the Single Convention on Narcotic Drugs, 1961, the Protocol of 1972 amending the said Convention and of the Convention on Psychotropic Substances, 1971 to which India is a party and to the provisions of any other international convention relating to narcotic drugs or psychotropic substances to which India may become a party.

71. Power of Government to establish centres for identification, treatment, etc., of addicts and for supply of narcotic drugs and psychotropic substances.—(1) The Government may, in its discretion, establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social re-integration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity.

(2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from, the centres referred to in sub-section (1) and for the appointment, training, powers, duties and persons employed in such centres.

72. Recovery of sums due to Government.—(1) In respect of any licence fee or other sum of any kind payable to the Central Government or to the State Government under any of the provisions of this Act or of any rule or order made hereunder, the officer of the Central Government or the State Government, as the case may be, who is empowered to require the payment of such sum, may deduct the amount of such sum from any money owing to the person from whom such sum may be recoverable or due or may recover such amount or sum by attachment and sale of the goods belonging to such persons and if the amount of the same

is not so recovered, the same may be recovered from the person or from his surety (if any) as if it were an arrear of land revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under section 34 and section 39) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be a public duty within the meaning of section 74 of the Indian Contract Act, 1872 (9 of 1872); and upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land revenue.

73. Bar of jurisdiction.—No civil Court shall entertain any suit or proceeding against any decision made or order passed by any officer or authority under this Act or under any rule made hereunder on any of the following matters, namely:—

(a) withholding, refusal or cancellation of any licence for the cultivation of the opium poppy;

(b) weighment, examination and classification according to the quality and consistence of opium and any deductions from, or addition to, the standard price made in accordance with such examination;

(c) confiscation of opium found to be adulterated with any foreign substance.

74. Transitional provisions.—Every officer or other employee of the Government exercising or performing, immediately before the commencement of this Act, any powers or duties with respect to any matters provided for in this Act, shall, on such commencement, be deemed to have been appointed under the relevant provisions of this Act to the same post and with the same designation as he was holding immediately before such commencement.

74-A. Power of Central Government to give directions.—The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act, and the State Government shall comply with such directions.

75. Power to delegate.—(1) The Central Government may, by notification in the Official Gazette, delegate subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the powers to make rules) as it may deem necessary or expedient, to the Board or any other authority or the Narcotics Commissioner.

(2) The State Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power to make rules) as it may deem necessary or expedient, to any authority or officer of that Government.

76. Power of Central Government to make rules.—(1) Subject to the other provisions of this Act, the Central Government may, by notification in the Official Gazette, make rules* for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the method by which percentages in the case of liquid preparations shall be calculated for the purposes of clauses (v), (vi), (xiv) and (xv) of section 2;

(b) the form of bond to keep the peace to be executed under section 34;

(c) the form of bond to be executed for release of an addict convict for medical treatment under sub-section (1) of section 39 and the bond to be executed by such convict before his release after due admonition under sub-section (2) of that section;

(ca) the manner in which “controlled delivery” under section 50-A is to be undertaken;

(d) the authority or the person by whom and the manner in which a document received from any place outside India shall be authenticated under clause (ii) of section 66;

(da) the manner in which and the conditions subject to which properties shall be managed by the Administrator under sub-section (2) of section 68-G;

(db) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under sub-section (3) of section 68-N;

(*dc*) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining the certified copy of any part thereof under sub-section (6) of section 68-O;

(*dd*) the powers of a Civil Court that may be exercised by the competent authority and the Appellate Tribunal under clause (*f*) of section 68-R;

(*de*) the disposal of all articles or things confiscated under this Act;

(*df*) the drawing of samples and testing and analysis of such samples;

(*dg*) the rewards to be paid to the officers, informers and other persons;

(*e*) the conditions and the manner in which narcotic drugs and psychotropic substances may be supplied for medical necessity to the addicts registered with the Central Government and to others under sub-section (1) of section 71;

(*f*) the establishment, appointment, maintenance, management and superintendence of centres established by the Central Government under sub-section (1) of section 71 and appointment, training, powers and duties of persons employed in such centres;

(*g*) the term of office of, the manner of filling casual vacancies of and the allowances payable, to the Chairman and members of the Narcotic Drugs and Psychotropic Substances Consultative Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of section 6;

(*h*) any other matter which is to be, or may be, prescribed.

77. Rules and notifications to be laid before Parliament.—Every rule made under this Act by the Central Government and every notification or order issued under clause (*viia*), clause (*xi*), clause (*xxiia*) of section 2, section 3, section 7-A, section 9-A and clause (*a*) of section 27 shall be laid, as soon as may be, after it is made or issued before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or the notification shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

78. Power of State Government to make rules.—(1) Subject to the other provisions of this Act the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the conditions and the manner in which narcotic drugs and psychotropic substances shall be supplied for medical necessity to the addicts registered with the State Government and other under sub-section (1) of section 71;

(*b*) the establishment, appointment, maintenance, management, superintendence of centres established under sub-section (1) of section 71 and appointment, training, powers and duties of persons employed in such centres;

(*c*) any other matter which is to be, or may be, prescribed.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made before the Legislature of that State.

79. Application of the Customs Act, 1962.—All prohibitions and restrictions imposed by or under this Act on the import into India, the export from India and transshipment of narcotic drugs and psychotropic substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs Act, 1962 (52 of 1962) and the provisions of that Act shall apply accordingly:

Provided that, where the doing of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.

80. Application of the Drugs and Cosmetics Act, 1940 not barred.—The provisions of this Act or the rules made hereunder shall be in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made hereunder.

81. Saving of State and special laws.—Nothing in this Act or in the rules made hereunder shall affect the validity of any Provincial Act or an Act of any State Legislature for the time being in force, or of any rule made hereunder which imposes any restriction or provides for a punishment not imposed by or provided for under this Act or imposes a restriction or provides for a punishment greater in degree than a corresponding restriction imposed by or a corresponding punishment provided for by or under this Act for the cultivation of cannabis plant or consumption of, or traffic in, any narcotic drug or psychotropic substance within India.

82. Repeal and savings.—(1) The Opium Act, 1857 (13 of 1857), the Opium Act, 1878 (1 of 1878) and the Dangerous Drugs Act, 1930 (2 of 1930) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any one enactments repealed by sub-section (1) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

83. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the houses of Parliament.

THE NATIONAL SECURITY ACT, 1980

27/12/1980

1. Short title and extent.—(1) This Act may be called THE NATIONAL SECURITY ACT, 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(a) “appropriate Government” means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

(b) “detention order” means an order made under section 3;

(c) “foreigner” has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(d) “person” includes a foreigner;

(e) “State Government”, in relation to a Union territory, means the administrator thereof.

3. Power to make orders detaining certain persons.—(1) The Central Government or the State Government may,—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India; or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.—For the purposes of this sub-section, “acting in any manner prejudicial to the maintenance of supplies and services essential to the community” does not include “acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community” as defined in the *Explanation* to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words “twelve days”, the words “fifteen days” shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

5-A. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984 under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

6. Detention orders not to be invalid or inoperative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

(a) that the person to be detained hereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.—(1) If the Central Government or the State Government or an officer mentioned in sub-section (3) of section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government or officer may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(2) Upon the making of a report against any person under clause (a) of sub-section (1), the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

(3) If any person fails to comply with an order issued under clause (b) of sub-section (1), he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under sub-section (3) shall be cognizable.

8. Grounds of order of detention to be disclosed to persons affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Boards.—(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

10. Reference to Advisory Boards.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the

order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section.

11. Procedure of Advisory Boards.—(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board; and the proceedings of the Advisory Board and its report, excepting the part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of the Advisory Board.—(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

13. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

14. Revocation of detention orders.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,—

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984 bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.

14-A. Circumstances in which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Boards.—(1) Notwithstanding anything contained in the foregoing provisions of this Act, or in any judgment, decree or order of any Court or other authority, any person in respect of whom an order of detention has been made under this Act at any time before the 8th day of June, 1989 may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not

exceeding six months, from the date of his detention where such person had been detained with a view to preventing him, in any disturbed area,—

(i) from interfering with the efforts of Government in coping with the terrorist and disruptive activities; and

(ii) from acting in any manner prejudicial to—

(a) the defence of India; or

(b) the security of India; or

(c) the security of the State; or

(d) the maintenance of public order; or

(e) the maintenance of supplies and services essential to the community.

Explanation 1.—The provisions of the *Explanation* to sub-section (2) of section 3 shall apply for the purposes of this sub-section as they apply for the purposes of that sub-section.

Explanation 2.—In this sub-section, “disturbed area” means any area which is for the time being declared by notification under section 3 of the Punjab Disturbed Areas Act, 1983 (32 of 1983), or under section 3 of the Chandigarh Disturbed Areas Act, 1983 (33 of 1983), to be a disturbed area.

Explanation 3.—In this sub-section, “terrorist and disruptive activities” means “terrorist acts” and “disruptive activities” within the meaning of the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (Ord. 2 of 1987).

(2) In the case of any person to whom sub-section (1) applies, sections 3, 8 and 10 to 14 shall have effect subject to the following modifications, namely:—

(a) in section 3,—

(i) in sub-section (4), in the proviso,—

(A) for the words “ten days”, the words “fifteen days” shall be substituted;

(B) for the words “fifteen days”, the words “twenty days” shall be substituted;

(ii) in sub-section (5), for the words “seven days”, the words “fifteen days” shall be substituted;

(b) in section 8, in sub-section (1), for the words “ten days”, the words “fifteen days” shall be substituted;

(c) in section 10, for the words “shall, within three weeks”, the words “shall, within four months and two weeks” shall be substituted;

(d) in section 11,—

(i) in sub-section (1), for the words “seven weeks”, the words “five months and three weeks” shall be substituted;

(ii) in sub-section (2), for the words “detention of the person concerned”, the words “continued detention of the person concerned” shall be substituted;

(e) in section 12, for the words “for the detention”, at both the places where they occur, the words “for the continued detention” shall be substituted;

(f) in section 13, for the words “twelve months”, the words “two years” shall be substituted;

(g) in section 14, in the proviso to sub-section (2), for the words “twelve months”, the words “two years” shall be substituted.

15. Temporary release of persons detained.—(1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails, without sufficient cause, to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

16. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Act not to have effect with respect to detentions under State laws.—(1) Nothing in this Act shall apply or have any effect with respect to orders of detention, made under any State law, which are in force immediately before the commencement of the National Security Ordinance, 1980 (Ord. 11 of 1980), and accordingly every person in respect of whom an order of detention made under any State law is in force immediately before such commencement, shall be governed with respect to such detention by the provisions of such State law or where the State law under which such order of detention is made is an Ordinance (hereinafter referred to as the State Ordinance) promulgated by the Governor of the State and the State Ordinance has been replaced—

(i) before such commencement, by an enactment passed by the Legislature of that State, by such enactment; or

(ii) after such commencement, by an enactment which is passed by the Legislature of that State and the application of which is confined to orders of detention made before such commencement under the State Ordinance, by such enactment, as if this Act had not been enacted.

(3) Nothing in this section shall be deemed to bar the making, under section 3, of a detention order against any person referred to in sub-section (1) after the detention order in force in respect of him as aforesaid immediately before the commencement of the National Security Ordinance, 1980 (Ord. 11 of 1980), ceases to have effect for any reason whatsoever.

Explanation.—For the purposes of this section, “State law” means any law providing for preventive detention on all or any of the grounds on which an order of detention may be made under sub-section (2) of section 3 and in force in any State immediately before the commencement of the said Ordinance.

18. Repeal and saving.—(1) The National Security Ordinance, 1980 (Ord. 11 of 1980), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act had come into force on the 23rd day of September, 1980, and, in particular, any reference made under section 10 of the said Ordinance and pending before any Advisory Board immediately before the date on which this Act receives the assent of the President may continue to be dealt with by that Board after that date as if such Board had been constituted under section 9 of this Act.

THE NEGOTIABLE INSTRUMENTS ACT, 1881

09/12/1981

CHAPTER I PRELIMINARY

1. Short title.—This Act may be called THE NEGOTIABLE INSTRUMENTS ACT, 1881.

Local extent. Saving of usages relating to hundis, etc. Commencement.—It extends to the whole of India [* * *] but nothing herein contained affects the Indian Paper Currency Act, 1871 (II of 1871), section 21, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

2. Repeal of enactments.—[Repealed by the Amending Act, 1891 (XII of 1891), section 2 and Schedule I.]

CHAPTER XVII

OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.

140. Defence which may not be allowed in any prosecution under section 138.—It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

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

Explanation.—For the purposes of this section,—

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

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

142. Cognizance of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

143. Power of Court to try cases summarily.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

144. Mode of service of summons.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgement purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

145. Evidence on affidavit.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

146. Bank's slip *prima facie* evidence of certain facts.—The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

147. Offences to be compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

THE PASSPORT (ENTRY INTO INDIA) ACT, 1920

09/09/1920

1. Short title and extent.—(1) This Act may be called THE PASSPORT (ENTRY INTO INDIA) ACT, 1920.

(2) It shall extend to the whole of India [* * *].

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—
“entry” means entry by water, land or air;

“passport” means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs; and

“prescribed” means prescribed by rules made under this Act.

3. Power to make rules.—(1) The Central Government may make rules requiring that persons entering India shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may—

(a) prohibit the entry into India or any part thereof of any person who has not in his possession a passport issued to him;

(b) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act; and

(c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both.

(4) All rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

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

3-A. Punishable for subsequent offences.—Whoever having been convicted of an offence under any rule or order made under this Act is again convicted of an offence under this Act shall be punishable with double the penalty provided for the later offence.

4. Power of arrest.—(1) Any officer of police, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the Central Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police station and the provisions of section 57 of the Code of Criminal Procedure, 1973 (2 of 1974), shall so far as may be, apply in the case of any such arrest.

5. Power of removal.—The Central Government may, by general or special order, direct the removal of any person from India who in contravention of any rule made under section 3

prohibiting entry into India without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.

6. Application of Act to Part B States.—*[Repealed by the Part B States (Laws) Act, 1951 (3 of 1951), section 3 and Schedule.]*

THE MOTOR VEHICLES ACT, 1988

14/10/1988

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE MOTOR VEHICLES ACT, 1988.

(2) It extends to the whole of India.

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

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

(1) "area", in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;

(2) "articulated vehicle" means a motor vehicle to which a semi-trailer is attached;

(3) "axle weight" means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface on which the vehicle rests;

(4) "certificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV;

(5) "conductor", in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed;

(6) "conductor's licence" means the licence issued by a competent authority under Chapter III authorising the person specified therein to act as a conductor;

(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—

(i) a maxicab; and

(ii) a motorcab notwithstanding that separate fares are charged for its passengers;

(8) "dealer" includes a person who is engaged—

(a) [* * *]

(b) in building bodies for attachment to chassis; or

(c) in the repair of motor vehicles; or

(d) in the business of hypothecation, leasing or hire-purchase of motor vehicle;

(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(11) "educational institution bus" means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

(12) "fares" includes sums payable for a season ticket or in respect of the hire of a contract carriage;

(13) "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

(15) "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;

(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;

(18) "invalid carriage" means a motor vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

(19) "learner's licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(20) "licensing authority" means an authority empowered to issue licences under Chapter II or, as the case may be, Chapter III;

(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms;

(21-A) "manufacturer" means a person who is engaged in the manufacture of motor vehicles;

(22) "maxicab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

(23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;

(24) "medium passenger motor vehicle" means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;

(25) "motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

(26) "motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;

(27) "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;

(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

(29) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;

(30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

(31) "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;

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

(33) "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;

(36) "registered axle weight" means in respect of the axle of any vehicle, the axle weight certified and registered by the registering authority as permissible for that axle;

(37) "registering authority" means an authority empowered to register motor vehicles under Chapter IV;

(38) "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;

(39) "semi-trailer" means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle;

(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

(41) "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution;

(42) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,—

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;

(iv) Zilla Parishad or any other similar local authority.

Explanation.—For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

(43) "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;

(44) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

(45) "traffic signs" includes all signals, warning sign posts, direction posts, markings on the road or other devices for the information, guidance or direction of drivers of motor vehicles;

(46) "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

(48) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

(49) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

CHAPTER II

LICENSING OF DRIVERS OF MOTOR VEHICLES

3. Necessity for driving licence.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motorcab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

4. Age limit in connection with driving of motor vehicles.—(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that a motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.—No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

6. Restrictions on the holding of driving licences.—(1) No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.

(2) No holder of a driving licence or a learner's licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes of vehicles which the driving licence authorizes the holder to drive.

7. Restrictions on the granting of learner's licences for certain vehicles.—(1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.

(2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence.

19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.—(1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he—

(a) is a habitual criminal or a habitual drunkard; or

(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

(g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of section 22; or

(h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care,

it may, for reasons to be recorded in writing, make an order—

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or

(ii) revoke any such licence.

(2) Where an order under sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,—

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence:

Provided that where the driving licence of a person authorizes him to drive more than one class or description of motor vehicles and the order, made under sub-section (1), disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final.

20. Power of Court to disqualify.—(1) Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment authorised by law, declare the persons so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence:

Provided that in respect of an offence punishable under section 183 no such order shall be made for the first or second offence.

(2) Where a person is convicted of an offence under clause (c) of sub-section (1) of section 132, section 134 or section 185, the Court convicting any person of any such offence shall order the disqualification under sub-section (1), and if the offence is relatable to clause (c) of sub-section (1) of section 132 or section 134, such disqualification shall be for a period of not less than one month, and if the offence is relatable to section 185, such disqualification shall be for a period of not less than six months.

(3) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of a person—

(a) who having been convicted of an offence punishable under section 184 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable under section 189, or

(c) who is convicted of an offence punishable under section 192:

Provided that the period of disqualification shall not exceed, in the case referred to in clause (a), five years, or, in the case referred to in clause (b), two years or, in the case referred to in clause (c), one year.

(4) A Court ordering the disqualification of a person convicted of an offence punishable under section 184 may direct that such person shall, whether he has previously passed the test of competence to drive as referred to in sub-section (3) of section 9 or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(5) The Court to which an appeal would ordinarily lie from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made under that sub-section notwithstanding that no appeal would lie against the conviction as a result of which such order of disqualification was made.

21. Suspension of driving licence in certain cases.—(1) Where, in relation to a person who had been previously convicted of an offence punishable under section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended—

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

(2) Where, by virtue of the provisions of sub-section (1), the driving licence held by a person becomes suspended, the police officer, by whom the case referred to in sub-section (1) is registered, shall bring such suspension to the notice of the Court competent to take cognizance of such offence, and thereupon, such Court shall take possession of the driving licence, endorse the suspension thereon and intimate the fact of such endorsement to the licensing authority by which the licence was granted or last renewed.

(3) Where the person referred to in sub-section (1) is acquitted or discharged, the Court shall cancel the endorsement on such driving licence with regard to the suspension thereof.

(4) If a driving licence in relation to a particular class or description of motor vehicles is suspended under sub-section (1), the person holding such licence shall be debarred from holding or obtaining any licence to drive such particular class or description of motor vehicles so long as the suspension of the driving licence remains in force.

22. Suspension or cancellation of driving licence on conviction.—(1) Without prejudice to the provisions of sub-section (3) of section 20 where a person, referred to in sub-section (1) of section 21 is convicted of an offence of causing, by such dangerous driving as is referred to in section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person insofar as it relates to that class or description of motor vehicle.

(2) Without prejudice to the provisions of sub-section (2) of section 20, if a person, having been previously convicted of an offence punishable under section 185 is again convicted of an offence punishable under that section, the Court, making such subsequent conviction, shall, by order, cancel the driving licence held by such person.

(3) If a driving licence is cancelled or suspended under this section, the Court shall take the driving licence in its custody, endorse the cancellation or, as the case may be, suspension, thereon and send the driving licence so endorsed to the authority by which the licence was issued or last renewed and such authority shall, on receipt of the licence, keep the licence in its safe custody, and in the case of a suspended licence, return the licence to the holder thereof after the expiry of the period of suspension on an application made by him for such return:

Provided that no such licence shall be returned unless the holder thereof has, after the expiry of the period of suspension, undergone and passed, to the satisfaction of the licensing authority by which the licence was issued or last renewed, a fresh test of competence to drive referred to in sub-section (3) of section 9 and produced a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8.

(4) If a licence to drive a particular class or description of motor vehicles is cancelled or suspended under this section, the person holding such a licence shall be debarred from holding, or obtaining, any licence to drive such particular class or description of motor vehicles so long as the cancellation or suspension of the driving licence remains in force.

23. Effect of disqualification order.—(1) A person in respect of whom any disqualification order is made under section 19 or section 20 shall be debarred to the extent and for the period specified in such order from holding or obtaining a driving licence and the driving licence, if any, held by such person at the date of the order shall cease to be effective to such extent and during such period.

(2) The operation of a disqualification order made under section 20 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order, apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either cancel or vary the disqualification order:

Provided that where the Court or other authority refuses to cancel or vary any disqualification order under this section, a second application hereunder shall not be entertained before the expiry of a period of three months from the date of such refusal.

24. Endorsement.—(1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the driving licence, if any, held by the person disqualified, particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any cancellation or variation of an order of disqualification made under sub-section (3) of section 23 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence under this Act as may be prescribed by the Central Government, having regard to the objects of this Act, shall, whether or not a disqualification order is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any driving licence held by the person convicted.

(3) Any person accused of an offence prescribed under sub-section (2) shall when attending the Court bring with him his driving licence if it is in his possession.

(4) Where any person is convicted of any offence under this Act and sentenced to imprisonment for a period exceeding three months, the Court awarding the sentence shall endorse the fact of such sentence upon the driving licence of the person concerned and the prosecuting authority shall intimate the fact of such endorsement to the authority by which the driving licence was granted or last renewed.

(5) When the driving licence is endorsed or caused to be endorsed by any Court, such Court shall send the particulars of the endorsement to the licensing authority by which the driving licence was granted or last renewed.

(6) Where on an appeal against any conviction or order of a Court, which has been endorsed on a driving licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the driving licence was granted or last renewed and such authority shall amend or cause to be amended the endorsement.

CHAPTER III

LICENSING OF CONDUCTORS OF STAGE CARRIAGES

34. Power of licensing authority to disqualify.—(1) If any licensing authority is of opinion that it is necessary to disqualify the holder of a conductor's licence for holding or obtaining such a licence on account of his previous conduct as a conductor, it may, for reasons to be recorded, make an order disqualifying that person for a specified period, not exceeding one year, for holding or obtaining a conductor's licence:

Provided that before disqualifying the holder of a licence, the licensing authority shall give the person holding such licence a reasonable opportunity of being heard.

(2) Upon the issue of any such order, the holder of the conductor's licence shall forthwith surrender the licence to the authority making the order, if the licence has not already been surrendered, and the authority shall keep the licence until the disqualification has expired or has been removed.

(3) Where the authority disqualifying the holder of a conductor's licence under this section is not the authority which issued the licence, it shall intimate the fact of such disqualification to the authority which issued the same.

(4) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority which made the order an opportunity of

being heard and the decision of the appellate authority shall be binding on the authority which made the order.

35. Power of Court to disqualify.—(1) Where any person holding a conductor's licence is convicted of an offence under this Act, the Court by which such person is convicted may, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified for such period as the Court may specify for holding a conductor's licence.

(2) The Court to which an appeal lies from any conviction of an offence under this Act may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from such Court, may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

CHAPTER IV

REGISTRATION OF MOTOR VEHICLES

53. Suspension of registration.—(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

(a) is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of this Act or of the rules made hereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such,

the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle—

(i) in any case falling under clause (a), until the defects are rectified to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of such suspension and the reasons therefore to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration.

(5) A certificate of registration surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

54. Cancellation of registration suspended under section 53.—Where the suspension of registration of a vehicle under section 53 has continued without interruption for a period of not less than six months, the registering authority within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel the registration.

55. Cancellation of registration.—(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to the authority the certificate of registration of the vehicle.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the State Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), it is satisfied that the vehicle is in such a condition that it is incapable of being used or its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of India, the registering authority shall cancel the registration.

(5) If a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), and for reasons to be recorded in writing, cancel the registration.

(6) A registering authority cancelling the registration of a motor vehicle under section 54 or under this section shall communicate such fact in writing to the owner of the vehicle, and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle.

(7) A registering authority making an order of cancellation under section 54 or under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(8) The expression "original registering authority" in this section and in sections 41, 49, 50, 51, 52, 53 and 54 means the registering authority in whose records the registration of the vehicle is recorded.

(9) In this section "certificate of registration" includes a certificate of registration renewed under the provisions of this Act.

56. Certificate of fitness of transport vehicles.—(1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made hereunder:

Provided that where the prescribed authority or the "authorized testing station" refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) The "authorized testing station" referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

(3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made hereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the

prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualification.

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

57. Appeals.—(1) Any person aggrieved by an order of the registering authority under sections 41, 42, 43, 45, 47, 48, 49, 50, 52, 53, 55 or 56 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving an opportunity to the original authority and the appellant to be heard in the appeal pass such order as it thinks fit.

58. Special provisions in regard to transport vehicles.—(1) The Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle (other than a motorcab), and its make and model and other relevant considerations, by notification in the Official Gazette, specify, in relation to each make and model of a transport vehicle, the maximum gross vehicle weight of such vehicle and the maximum safe axle weight of each axle of such vehicle.

(2) A registering authority, when registering a transport vehicle, other than a motorcab shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

- (a) the unladen weight of the vehicle;
- (b) the number, nature and size of the tyres attached to each wheel;
- (c) the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and
- (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided, and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

(3) There shall not be entered in the certificate of registration of any such vehicle any gross vehicle weight or a registered axle weight of any of the axles different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels:

Provided that where it appears to the Central Government that heavier weights than those specified in the notification under sub-section (1) may be permitted in a particular locality for vehicles of a particular type, the Central Government may, by order in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

[* * *]

(5) In order that the gross vehicle weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of sub-section (3), the registering authority may require the owner of transport vehicle in accordance with such procedure as may be prescribed to produce the certificate of registration within such time as may be specified by the registering authority.

59. Power to fix the age limit of motor vehicle.—(1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the Rules made hereunder:

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in section 56, no prescribed authority or authorized testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

62. Information regarding stolen and recovered motor vehicles to be furnished by the police to the State Transport Authority.—The State Government may, if it thinks necessary or expedient so to do in the public interest, direct the submission by the Inspector General of Police (by whatever designation called) and such other police officers as the State Government may specify in this behalf, of such returns containing the information regarding vehicles which have been stolen and stolen vehicles which have been recovered of which the police are aware, to the State Transport Authority, and may prescribe the form in which and the period within which such returns shall be made.

CHAPTER V

CONTROL OF TRANSPORT VEHICLES

66. Necessity for permits.—(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.

(3) The provisions of sub-section (1) shall not apply—

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

[* * *]

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

[* * *]

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

67. Power to State Government to control road transport.—(1) A State Government, having regard to—

(a) the advantages offered to the public, trade and industry by the development of motor transport,

(b) the desirability of co-ordinating road and rail transport,

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among holders of permits, may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority—

(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages:

[* * *]

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages;

(iii) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic:

Provided that no such notification in respect of the matters referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.

(2) Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods.

86. Cancellation and suspension of permits.—(1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

(a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or

- (d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or
- (e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or
- (f) if the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

(2) The Transport Authority may exercise the powers conferred on it under sub-section (1) in relation to a permit granted by any authority or person to whom power in this behalf has been delegated under sub-section (5) of section 68 as if the said permit was a permit granted by the Transport Authority.

(3) Where a Transport Authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the action taken.

(4) The powers exercisable under sub-section (1) (other than the power to cancel a permit) by the Transport Authority which granted the permit may be exercised by any authority or person to whom such powers have been delegated under sub-section (5) of section 68.

(5) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the Transport Authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then notwithstanding anything contained in sub-section (1), the Transport Authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

(6) The powers exercisable by the Transport Authority under sub-section (5) may, where an appeal has been preferred under section 89, be exercised also by the appellate authority.

(7) In relation to a permit referred to in sub-section (9) of section 88, the powers exercisable under sub-section (1) (other than the power to cancel a permit) by the Transport Authority which granted the permit, may be exercised by any Transport Authority and any authority or persons to whom power in this behalf has been delegated under sub-section (5) of section 68, as if the said permit was a permit granted by any such authority or persons.

87. Temporary permits.—(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorize the use of a transport vehicle temporarily—

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) for the purposes of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit,

and may attach to any such permit such condition as it may think fit:

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted hereunder in respect of any route or area where—

(i) no permit could be issued under section 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a Court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or

(ii) as a result of the suspension by a Court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.

88. Validation of permits for use outside region in which granted.—(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State:

Provided also that—

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (5).

(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the States shall, insofar as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

(7) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

(8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority, may, for the convenience of the public, grant a special permit to any public service vehicle including any vehicle covered by a permit issued under section 72 (including a reserve stage carriage) or under section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.

(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86, clause (d) of sub-section (1) of section 87 and section 89 shall, as far as may be, apply in relation to such permits.

[* * *]

(11) The following shall be conditions of every permit granted under sub-section (9), namely:—

(i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;

(ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and

(iii) such other conditions as may be prescribed by the Central Government.

(12) Notwithstanding anything contained in sub-section (1), but, subject to the rules that may be made by the Central Government under sub-section (14), the appropriate authority may, for the purpose of encouraging long distance inter-State road transport, grant in a State, national permits in respect of goods carriages and the provisions of sections 69, 77, 79, 80, 81, 82, 83, 84, 85, 86, clause (d) of sub-section (1) of section 87 and section 89 shall, as far as may be, apply to or in relation to the grant of national permits.

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(14)(a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the authorization fee payable for the issue of a permit referred to in sub-sections (9) and (12);

(ii) the fixation of the laden weight of the motor vehicle;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;

(iv) the colour or colours in which the motor vehicle is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation.—In this section,—

(a) "appropriate authority", in relation to a national permit, means the authority which is authorised under this Act to grant a goods carriage permit;

(b) "authorization fee" means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in sub-sections (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned;

(c) "national permit" means a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application.

89. Appeals.—(1) Any person—

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit under section 82, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) aggrieved by the refusal to grant permission under section 83, or

(g) aggrieved by any other order which may be prescribed,

may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

(2) The State Government shall constitute such number of Transport Appellate Tribunals as it thinks fit and each such Tribunal shall consist of a judicial officer who is not below the rank of a District Judge or who is qualified to be a Judge of the High Court and it shall exercise jurisdiction within such area as may be notified by that Government.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed.

Explanation.—For the removal of doubts, it is hereby declared that when any order is made by the State Transport Authority or the Regional Transport Authority in pursuance of a direction issued by the Inter-State Transport Commission under clause (c) of sub-section (2) of section 63-A of the Motor Vehicles Act, 1939 (4 of 1939), as it stood immediately before the commencement of this Act, and any person feels aggrieved by such order on the ground that it is not in consonance with such direction, he may appeal under sub-section (1) to the State Transport Appellate Tribunal against such order but not against the direction so issued.

90. Revision.—The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

91. Restriction of hours of work of drivers.—(1) The hours of work of any person engaged for operating a transport vehicle shall be such as provided in the Motor Transport Workers Act, 1961 (27 of 1961).

(2) A State Government may, by notification in the Official Gazette, grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) A State Government or, if authorised in this behalf by the State Government by rules made under section 96, the State or a Regional Transport Authority may require persons employing any person whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons so as to conform to those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons under sub-section (3).

(5) A State Government may prescribe the circumstances under which and the period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

92. Voidance of contracts restrictive of liability.—Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

93. Agent or canvasser to obtain licence.—(1) No person shall engage himself—

(i) as an agent or a canvasser, in the sale of tickets for travel by public service vehicles or in otherwise soliciting customers for such vehicles, or

(ii) as an agent in the business of collecting, forwarding or distributing goods carried by goods carriages,

unless he has obtained a licence from such authority and subject to such conditions as may be prescribed by the State Government.

(2) The conditions referred to in sub-section (1) may include all or any of the following matters, namely:—

(a) the period for which a licence may be granted or renewed;

(b) the fee payable for the issue or renewal of the licence;

(c) the deposit of security—

(i) of a sum not exceeding rupees fifty thousand in the case of an agent in the business of collecting, forwarding or distributing goods carried by goods carriages;

(ii) of a sum not exceeding rupees five thousand in the case of any other agent or canvasser,

and the circumstances under which the security may be forfeited;

(d) the provision by the agent of insurance of goods in transit;

(e) the authority by which and the circumstances under which the licence may be suspended or revoked;

(f) such other conditions as may be prescribed by the State Government.

(3) It shall be a condition of every licence that no agent or canvasser to whom the licence is granted shall advertise in any newspaper, book, list, classified directory or other publication unless there is contained in such advertisement appearing in such newspaper, book, list, classified directory or other publication the licence number, the date of expiry of licence and the particulars of the authority which granted the licence.

94. Bar on jurisdiction of Civil Courts.—No Civil Court shall have jurisdiction to entertain any question relating to the grant of a permit under this Act, and no injunction in respect of any action taken or to be taken by the duly constituted authorities under this Act with regard to the grant of a permit, shall be entertained by any Civil Court.

95. Power of State Government to make rules as to stage carriages and contract carriages.—(1) A State Government may make rules to regulate, in respect of stage carriages and contract carriages and the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(a) authorize the removal from such vehicle of any person contravening the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger, by any police officer;

(b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;

(c) require a passenger to declare, if so demanded by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket issued therefore;

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owners of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;

(e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;

(f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him;

(g) require a passenger to abstain from doing anything which is likely to obstruct or interfere with the working of the vehicle or to cause damage to any part of the vehicle or its equipment or to cause injury or discomfort to any other passenger;

(h) require a passenger not to smoke in any vehicle on which a notice prohibiting smoking is exhibited;

(i) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

CHAPTER VI

SPECIAL PROVISIONS RELATING TO STATE TRANSPORT UNDERTAKINGS

102. Cancellation or modification of scheme.—(1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving—

(i) the State transport undertaking; and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,

an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government.

104. Restriction on grant of permits in respect of a notified area or notified route.—Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme:

Provided that where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.

CHAPTER VIII
CONTROL OF TRAFFIC

112. Limits of speed.—(1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under this Act or by or under any other law for the time being in force:

Provided that such maximum speed shall in no case exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette.

(2) The State Government or any authority authorised in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interest of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, and by causing appropriate traffic signs to be placed or erected under section 116 at suitable places, fix such maximum speed limits or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads:

Provided that no such notification is necessary if any restriction under this section is to remain in force for not more than one month.

(3) Nothing in this section shall apply to any vehicle registered under section 60 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under sub-section (1) of section 2 of the Manoeuvres, Field Firing and Artillery Practice Act, 1938 (5 of 1938).

113. Limits of weight and limitations on use.—(1) The State Government may prescribe the conditions for the issue of permits for transport vehicles by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

114. Power to have vehicle weighed.—(1) Any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113, require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit.

115. Power to restrict the use of vehicles.—The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may, by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and

conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.

116. Power to erect traffic signs.—(1)(a) The State Government or any authority authorised in this behalf by the State Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of bringing to public notice any speed limits fixed under sub-section (2) of section 112 or any prohibitions or restrictions imposed under section 115 or generally for the purpose of regulating motor vehicle traffic.

(b) A State Government or any authority authorised in this behalf by the State Government may, by notification in the Official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Schedule, designate certain roads as main roads for the purposes of the driving regulations made by the Central Government.

(2) Traffic signs placed or erected under sub-section (1) for any purpose for which provision is made in the Schedule shall be of the size, colour and type and shall have the meanings set forth in the Schedule, but the State Government or any authority empowered in this behalf by the State Government may make or authorize the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the State Government may think fit provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Schedule.

(3) Except as provided by sub-section (1), no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs placed or erected prior to the commencement of this Act by any competent authority shall for the purpose of this Act be deemed to be traffic signs placed or erected under the provisions of sub-section (1).

(4) A State Government may, by notification in the Official Gazette, empower any police officer not below the rank of a Superintendent of Police to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which in his opinion is so similar in appearance to a traffic sign as to be misleading or which in his opinion is likely to distract the attention or concentration of the driver.

(5) No person shall wilfully remove, alter, deface, or in any way tamper with, any traffic signs placed or erected under this section.

(6) If any person accidentally causes such damage to a traffic sign as renders it useless for the purpose for which it is placed or erected under this section, he shall report the circumstances of the occurrence to a police officer or at a police station as soon as possible, and in any case within twenty-four hours of the occurrence.

(7) For the purpose of bringing the signs set forth in the First Schedule in conformity with any International Convention relating to motor traffic to which the Central Government is for the time being a party, the Central Government may, by notification in the Official Gazette, make any addition or alteration to any such sign and on the issue of any such notification, the First Schedule shall be deemed to be amended accordingly.

124. Prohibition against travelling without pass or ticket.—No person shall enter or remain in any stage carriage for the purposes of travelling therein unless he has with him a proper pass or ticket:

Provided that where arrangements for the supply of tickets are made in the stage carriage by which a person has to travel, a person may enter such stage carriage but as soon as may be after his entry therein, he shall make the payment of his fare to the conductor or the driver who performs the functions of a conductor and obtain from such conductor or driver, as the case may be, a ticket for his journey.

Explanation.—In this section,—

(a) "pass" means a duty privilege or courtesy pass entitling the person to whom it is given to travel in a stage carriage gratuitously and includes a pass issued on payment for travel in a stage carriage for the period specified therein;

(b) "ticket" includes a single ticket, a return ticket or a season ticket.

125. Obstruction of driver.—No person driving a motor vehicle shall allow any person to stand or sit or to place anything in such a manner or position as to hamper the driver in his control of the vehicle.

126. Stationary vehicles.—No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

127. Removal of motor vehicles abandoned or left unattended on a public place.—(1) Where any motor vehicle is abandoned or left unattended on a public place for ten hours or more or is parked in a place where parking is legally prohibited, its removal by a towing service or its immobilisation by any means including wheel clamping may be authorised by a police officer in uniform having jurisdiction.

(2) Where an abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.

(3) Where a vehicle is authorised to be removed under sub-section (1) or sub-section (2) by a police officer, the owner of the vehicle shall be responsible for all towing costs, besides any other penalty.

128. Safety measures for drivers and pillion riders.—(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon.

129. Wearing of protective headgear.—Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards:

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation.—"Protective headgear" means a helmet which,—

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear.

130. Duty to produce licence and certificate of registration.—(1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination:

Provided that the driver may, if his licence has been submitted to, or has been seized by, any officer or authority under this or any other Act, produce in lieu of the licence a receipt or other acknowledgement issued by such officer or authority in respect thereof and thereafter produce the licence within such period, in such manner as the Central Government may prescribe to the police officer making the demand.

(2) The conductor, if any, of a motor vehicle on any public place shall, on demand by any officer of the Motor Vehicles Department authorised in this behalf, produce the licence for examination.

(3) The owner of a motor vehicle (other than a vehicle registered under section 60), or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any other officer of the Motor Vehicles Department duly authorised in this behalf, produce the certificate of insurance of the vehicle and, where the vehicle is a transport vehicle, also the certificate of fitness referred to in section 56 and the permit; and if any or all of the certificates or the permit are not in his possession, he shall, within fifteen days from the date of demand, submit photo copies of the same, duly attested in person or send the same by registered post to the officer who demanded it.

Explanation.—For the purposes of this sub-section, “certificate of insurance” means the certificate issued under sub-section (3) of section 147.

(4) If the licence referred to in sub-section (2) or the certificates or permit referred to in sub-section (3), as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates or permit within such period in such manner as the Central Government may prescribe, to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

131. Duty of the driver to take certain precautions at unguarded railway level crossings.—Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed.

132. Duty of driver to stop in certain cases.—(1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may for such reasonable time as may be necessary, but not exceeding twenty-four hours,—

(a) when required to do so by any police officer not below the rank of a Sub-Inspector in uniform, in the event of the vehicle being involved in the occurrence of an accident to a person, animal or vehicle or of damage to property, or

(b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or

(c) [* * *]

and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 184, give his name and address to that person.

(3) In this section the expression “animal” means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

133. Duty of owner of motor vehicle to give information.—The owner of a motor vehicle, the driver or conductor of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the State Government, give all information regarding the name and address of, and the licence held by, the driver or conductor which is in his possession or could by reasonable diligence be ascertained by him.

134. Duty of driver in case of accident and injury to a person.—When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the

duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:—

- (i) insurance policy number and period of its validity;
- (ii) date, time and place of accident;
- (iii) particulars of the persons injured or killed in the accident;
- (iv) name of the driver and the particulars of his driving licence.

Explanation.—For the purposes of this section, the expression “driver” includes the owner of the vehicle.

135. Schemes to be framed for the investigation of accident cases and wayside amenities, etc.—(1) The State Government may, by notification in the Official Gazette, make one or more schemes to provide for—

- (a) an in depth study on causes and analysis of motor vehicle accidents;
- (b) wayside amenities on highways;
- (c) traffic aid posts on highways; and
- (d) truck parking complexes along highways.

(2) Every scheme made under this section by any State Government shall be laid, as soon as may be after it is made, before the State Legislature.

136. Inspection of vehicle involved in accident.—When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the State Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be, and may remove the vehicle for examination:

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle and the vehicle shall be returned after completion of the formalities to the owner, driver or the person in charge of the vehicle within twenty-four hours.

CHAPTER X

LIABILITY WITHOUT FAULT IN CERTAIN CASES

140. Liability to pay compensation in certain cases on the principle of no fault.—

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A.

141. Provisions as to other right to claim compensation for death or permanent disablement.—(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163-A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

CHAPTER XI

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

145. Definitions.—In this Chapter,—

(a) “authorised insurer” means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), and any Government insurance fund authorised to do general insurance business under that Act;

(b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (3) of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

(c) “liability”, wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140;

(d) “policy of insurance” includes “certificate of insurance”;

(e) “property” includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile-stones;

(f) “reciprocating country” means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter;

(g) “third party” includes the Government.

146. Necessity for insurance against third party risk.—(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation.—For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and—

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

147. Requirements of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made hereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

148. Validity of policies of insurance issued in reciprocating countries.—Where, in pursuance of an arrangement between India and any reciprocating country, the motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance in force in that country, then, notwithstanding anything contained in section 147 but subject to any rules which may be made under section 164, such policy of insurance shall be effective throughout the route or area in respect of which, the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163-A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable hereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

- (b) for organized racing and speed testing, or
- (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
- (d) without side-car being attached where the vehicle is a motor cycle; or
- (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
- (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation.—For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168.

150. Rights of third parties against insurers on insolvency of the insured.—

(1) Where under any contract of insurance effected in accordance with the provisions of this Chapter, a person is insured against liabilities which he may incur to third parties, then—

- (a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties hereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

151. Duty to give information as to insurance.—(1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 147 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 150, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties hereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supporting that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall

be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

152. Settlement between insurers and insured persons.—(1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding-up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

158. Production of certain certificates, licence and permit in certain cases.—(1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce—

- (a) the certificate of insurance;
- (b) the certificate of registration;
- (c) the driving licence; and

(d) in the case of a transport vehicle also the certificate of fitness referred to in section 56 and the permit, relating to the use of the vehicle.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificates, driving licence and permit referred to in sub-section (1) to a police officer, he shall produce the said certificates, licence and permit at the police station at which he makes the report required by section 134.

(3) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer-in-charge of the police station at which he reported the accident:

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.

(4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 146 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(5) In this section, the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 146.

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a

copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer.

159. Production of certificate of insurance on application for authority to use vehicle.—A State Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 146 does not apply.

160. Duty to furnish particulars of vehicle involved in accident.—A registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any, damaged in such form and within such time as the Central Government may prescribe.

161. Special provisions as to compensation in case of hit and run motor accident.—(1) For the purposes of this section, section 162 and section 163—

(a) "grievous hurt" shall have the same meaning as in the Indian Penal Code (45 of 1860);

(b) "hit and run motor accident" means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c) "scheme" means the scheme framed under section 163.

(2) Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(3) Subject to the provisions of this Act and the scheme, there shall be paid as compensation—

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees.

(4) The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.

162. Refund in certain cases of compensation paid under section 161.—(1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the Tribunal, Court or

other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall,—

(a) if compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1);

(b) if an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation.—For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending—

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

163. Scheme for payment of compensation in case of hit and run motor accidents.—(1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that—

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

163-A. Special provisions as to payment of compensation on structured formula basis.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

163-B. Option to file claim in certain cases.—Where a person is entitled to claim compensation under section 140 and section 163-A, he shall file the claim under either of the said sections and not under both.

CHAPTER XII
CLAIMS TRIBUNALS

165. Claims Tribunals.—(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 and section 163-A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a High Court Judge or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

[* * *]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.

167. Option regarding claims for compensation in certain cases.—Notwithstanding anything contained in the Workmen’s Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen’s Compensation Act, 1923 (8 of 1923), the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

168. Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold

an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

169. Procedure and powers of Claims Tribunals.—(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

170. Impleading insurer in certain cases.—Where in the course of any inquiry, the Claims Tribunal is satisfied that—

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

172. Award of compensatory costs in certain cases.—(1) Any Claims Tribunal adjudicating upon any claim for compensation under this Act, may in any case where it is satisfied for reasons to be recorded by it in writing that—

(a) the policy of insurance is void on the ground that it was obtained by representation of fact which was false in any material particular, or

(b) any party or insurer has put forward a false or vexatious claim or defence, such Tribunal may make an order for the payment, by the party who is guilty of misrepresentation or by whom such claim or defence has been put forward of special costs by way of compensation to the insurer or, as the case may be, to the party against whom such claim or defence has been put forward.

(2) No Claims Tribunal shall pass an order for special costs under sub-section (1) for any amount exceeding one thousand rupees.

(3) No person or insurer against whom an order has been made under this section shall, by reason thereof be exempted from any criminal liability in respect of such misrepresentation, claim or defence as is referred to in sub-section (1).

(4) Any amount awarded by way of compensation under this section in respect of any mis-representation, claim or defence, shall be taken into account in any subsequent suit for damages for compensation in respect of such mis-representation, claim or defence.

173. Appeals.—(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

174. Recovery of money from insurer as arrear of land revenue.—Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

175. Bar on jurisdiction of Civil Courts.—Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

CHAPTER XIII

OFFENCES, PENALTIES AND PROCEDURE

177. General provision for punishment of offences.—Whoever contravenes any provision of this Act or of any rule, regulation or notification made hereunder shall, if no penalty is provided for the offence, be punishable for the first offence, with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

178. Penalty for travelling without pass or ticket and for dereliction of duty on the part of conductor and refusal to ply contract carriage, etc.—(1) Whoever travels in a stage carriage without having a proper pass or ticket with him or being in or having alighted from a stage carriage fails or refuses to present for examination or to deliver up his pass or ticket immediately on a requisition being made therefore, shall be punishable with fine which may extend to five hundred rupees.

Explanation.—In this section, “pass” and “ticket” have the meanings respectively assigned to them in section 124.

(2) If the conductor of a stage carriage, or the driver of a stage carriage performing the functions of a conductor in such stage carriage, whose duty is—

(a) to supply a ticket to a person travelling in a stage carriage on payment of fare by such person, either wilfully or negligently,—

- (i) fails or refuses to accept the fare when tendered, or
- (ii) fails or refuses to supply a ticket, or
- (iii) supplies an invalid ticket, or
- (iv) supplies a ticket of a lesser value, or

(b) to check any pass or ticket, either wilfully or negligently fails or refuses to do so, he shall be punishable with fine which may extend to five hundred rupees.

(3) If the holder of a permit or the driver of a contract carriage refuses, in contravention of the provisions of this Act or rules made hereunder, to ply the contract carriage or to carry the passengers, he shall,—

(a) in the case of two-wheeled or three-wheeled motor vehicles, be punishable with fine which may extend to fifty rupees; and

(b) in any other case, be punishable with fine which may extend to two hundred rupees.

179. Disobedience of orders, obstruction and refusal of information.—(1) Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to five hundred rupees.

(2) Whoever, being required by or under this Act to supply any information, wilfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

180. Allowing unauthorized persons to drive vehicles.—Whoever, being the owner or person in charge of a motor vehicle, causes or permits, any other person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

181. Driving vehicles in contravention of section 3 or section 4.—Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

182. Offences relating to licences.—(1) Whoever, being disqualified under this Act for holding or obtaining a driving licence, drives a motor vehicle in a public place or in any other place, or applies for or obtains a driving licence or, not being entitled to have a driving licence issued to him free of endorsement, applies for or obtains a driving licence without disclosing the endorsement made on a driving licence previously held by him shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both, and any driving licence so obtained by him shall be of no effect.

(2) Whoever, being disqualified under this Act for holding or obtaining a conductor's licence, acts as a conductor of a stage carriage in a public place or applies for or obtains a conductor's licence or, not being entitled to have a conductor's licence issued to him free of endorsement, applies for or obtains a conductor's licence without disclosing the endorsements made on a conductor's licence previously held by him, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both, and any conductor's licence so obtained by him shall be of no effect.

182-A. Punishment for offences relating to construction and maintenance of vehicles.—Any person who contravenes the provisions of sub-section (3) of section 109, shall be punishable with a fine of one thousand rupees for the first offence, and with a fine of five thousand rupees for any subsequent offence.

183. Driving at excessive speed, etc.—(1) Whoever drives a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to four hundred rupees, or, if having been previously convicted of an offence under this sub-section is again convicted of an offence under this sub-section, with fine which may extend to one thousand rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to three hundred rupees, or, if having been previously convicted of an offence under this sub-section, is again convicted of an offence under this sub-section, with fine which may extend to five hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical device.

(4) The publication of a time table under which, or the giving of any direction that any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a

journey to be completed in the specified time without contravening the speed limits referred to in section 112 be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

184. Driving dangerously.—Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

185. Driving by a drunken person or by a person under the influence of drugs.—Whoever, while driving, or attempting to drive, a motor vehicle,—

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation.—For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.

186. Driving when mentally or physically unfit to drive.—Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for the first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

187. Punishment for offences relating to accident.—Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or of section 133 or section 134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

188. Punishment for abetment of certain offences.—Whoever abets the commission of an offence under section 184 or section 185 or section 186 shall be punishable with the punishment provided for the offence.

189. Racing and trials of speed.—Whoever without the written consent of the State Government permits or takes part in a race or trial of speed of any kind between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with a fine which may extend to five hundred rupees, or with both.

190. Using vehicle in unsafe condition.—(1) Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air-pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

(3) Any person who drives or causes or allows to be driven, in any public place a motor vehicle which violates the provisions of this Act or the rules made hereunder relating to the carriage of goods which are of dangerous or hazardous nature to human life, shall be punishable for the first offence which may extend to three thousand rupees, or with imprisonment for a term which may extend to one year, or with both, and for any second or subsequent offence with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

191. Sale of vehicle in or alteration of vehicle to condition contravening this Act.—

Whoever being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition that the use thereof in a public place would be in contravention of Chapter VII or any rule made hereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter VII or any rule made hereunder shall be punishable with fine which may extend to five hundred rupees:

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

192. Using vehicles without registration.—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the Court may, for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

192-A. Using vehicles without permit.—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the Court may for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order, made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

193. Punishment of agents and canvassers without proper authority.—Whoever engages himself as an agent or canvasser in contravention of the provisions of section 93 or of any rules made hereunder shall be punishable for the first offence with fine which may extend to one thousand rupees and for any second or subsequent offence with imprisonment which

may extend to six months, or with fine which may extend to two thousand rupees, or with both.

194. Driving vehicle exceeding permissible weight.—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

195. Imposition of minimum fine under certain circumstances.—(1) Whoever having been convicted of an offence under this Act or the rules made hereunder commits a similar offence on a second or subsequent occasion within three years of the commission of the previous offence, no Court shall, except for reasons to be recorded by it in writing, impose on him a fine of less than one-fourth of the maximum amount of the fine imposable for such offence.

(2) Nothing in sub-section (1) shall be construed as restricting the power of the Court from awarding such imprisonment as it considers necessary in the circumstances of the case not exceeding the maximum specified in this Act in respect of that offence.

196. Driving uninsured vehicle.—Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 146 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

197. Taking vehicle without authority.—(1) Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both:

Provided that no person shall be convicted under this section, if the Court is satisfied that such person acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefore.

(2) Whoever, unlawfully by force or threat of force or by any other form of intimidation, seizes or exercises control of a motor vehicle, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(3) Whoever attempts to commit any of the acts referred to in sub-section (1) or sub-section (2) in relation to any motor vehicle, or abets the commission of any such act, shall also be deemed to have committed an offence under sub-section (1) or, as the case may be, sub-section (2).

198. Unauthorized interference with vehicle.—Whoever otherwise than with lawful authority or reasonable excuse enters or moves any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

199. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or

other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

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

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

200. Composition of certain offences.—(1) Any offence whether committed before or after the commencement of this Act punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186, section 189, sub-section (2) of section 190, section 191, section 192, section 194, section 196, or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

201. Penalty for causing obstruction to free flow of traffic.—(1) Whoever keeps a disabled vehicle on any public place, in such a manner, so as to cause impediment to the free flow of traffic, shall be liable for penalty up to fifty rupees per hour, so long as it remains in that position:

Provided that the vehicle involved in accidents shall be liable for penalty only from the time of completion of inspection formalities under the law:

Provided further that where the vehicle is removed by a Government agency, towing charges shall be recovered from the vehicle owner or person in-charge of such vehicle.

(2) Penalties or towing charges under this section shall be recovered by such officer or authority as the State Government may, by notification in the Official Gazette, authorize.

202. Power to arrest without warrant.—(1) A police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under section 184 or section 185 or section 197:

Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody.

(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give his name and address.

(3) A police officer arresting without warrant the driver of a motor vehicle shall if the circumstances so require take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

203. Breath tests.—(1) A police officer in uniform or an officer of the Motor Vehicles Department, as may be authorised in this behalf by that Department, may require any person driving or attempting to drive a motor vehicle in a public place to provide one or more specimens of breath for breath test there or nearby, if such police officer or officer has any reasonable cause to suspect him of having committed an offence under section 185:

Provided that requirement for breath test shall be made (unless it is made) as soon as reasonably practicable after the commission of such offence.

(2) If a motor vehicle is involved in an accident in a public place and a police officer in uniform has any reasonable cause to suspect that the person who was driving the motor vehicle at the time of the accident had alcohol in his blood or that he was driving under the influence of a drug referred to in section 185 he may require the person so driving the motor vehicle, to provide a specimen of his breath for a breath test—

(a) in the case of a person who is at a hospital as an indoor patient, at the hospital,

(b) in the case of any other person, either at or near the place where the requirement is made, or, if the police officer thinks fit, at a police station specified by the police officer:

Provided that a person shall not be required to provide such a specimen while at a hospital as an indoor patient if the registered medical practitioner in immediate charge of his case is

not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) If it appears to a police officer in uniform, in consequence of a breath test carried out by him on any person under sub-section (1) or sub-section (2), that the device by means of which the test has been carried out indicates the presence of alcohol in the person's blood, the police officer may arrest that person without warrant except while that person is at a hospital as an indoor patient.

(4) If a person, required by a police officer under sub-section (1) or sub-section (2) to provide a specimen of breath for a breath test, refuses or fails to do so and the police officer has reasonable cause to suspect him of having alcohol in his blood, the police officer may arrest him without warrant except while he is at a hospital as an indoor patient.

(5) A person arrested under this section shall while at a police station, be given an opportunity to provide a specimen of breath for a breath test there.

(6) The results of a breath test made in pursuance of the provisions of this section shall be admissible in evidence.

Explanation.—For the purposes of this section “breath test”, means a test for the purpose of obtaining an indication of the presence of alcohol in a person's blood carried out, on one or more specimens of breath provided by that person, by means of a device of a type approved by the Central Government, by notification in the Official Gazette, for the purpose of such a test.

204. Laboratory test.—(1) A person, who has been arrested under section 203 may, while at a police station, be required by a police officer to provide to such registered medical practitioner as may be produced by such police officer, a specimen of his blood for a laboratory test if,—

(a) it appears to the police officer that the device, by means of which breath test was taken in relation to such person, indicates the presence of alcohol in the blood of such person, or

(b) such person, when given the opportunity to submit to a breath test, has refused, omitted or failed to do so:

Provided that where the person required to provide such specimen is a female and the registered medical practitioner produced by such police officer is a male medical practitioner, the specimen shall be taken only in the presence of a female, whether a medical practitioner or not.

(2) A person while at a hospital as an indoor patient may be required by a police officer to provide at the hospital a specimen of his blood for a laboratory test—

(a) if it appears to the police officer that the device by means of which test is carried out in relation to the breath of such person indicates the presence of alcohol in the blood of such person, or

(b) if the person having been required, whether at the hospital or elsewhere, to provide a specimen of breath for a breath test, has refused, omitted or failed to do so and a police officer has reasonable cause to suspect him of having alcohol in his blood:

Provided that a person shall not be required to provide a specimen of his blood for a laboratory test under this sub-section if the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of such specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) The results of a laboratory test made in pursuance of this section shall be admissible in evidence.

Explanation.—For the purposes of this section, “laboratory test” means the analysis of a specimen of blood made at a laboratory established, maintained or recognised by the Central Government or a State Government.

205. Presumption of unfitness to drive.—In any proceeding for an offence punishable under section 185 if it is proved that the accused, when requested by a police officer at any time so to do, had refused, omitted or failed to consent to the taking of or providing a specimen of his breath for a breath test or a specimen of his blood for a laboratory test, his

refusal, omission or failure may, unless reasonable cause therefore is shown, be presumed to be a circumstance supporting any evidence given on behalf of the prosecution, or rebutting any evidence given on behalf of the defence, with respect to his condition at that time.

206. Power of police officer to impound document.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, 1860 (45 of 1860) seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence and the said Court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgement given under sub-section (3).

(3) A police officer or other person seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgement therefore and such acknowledgement shall authorize the holder to drive until the licence has been returned to him or until such date as may be specified by the police officer or other person in the acknowledgement, whichever is earlier:

Provided that if any Magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgement for any reason for which the holder is not responsible, the Magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive to such date as may be specified in the acknowledgement.

207. Power to detain vehicles used without certificate of registration permit, etc.—

(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof.

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order, release the vehicle subject to such conditions as the authority or officer may deem fit to impose.

208. Summary disposal of cases.—(1) The Court taking cognizance of any offence (other than an offence which the Central Government may by rules specify in this behalf) under this Act,—

(i) may, if the offence is an offence punishable with imprisonment under this Act; and

(ii) shall, in any other case,

state upon the summons to be served on the accused person that he—

(a) may appear by pleader or in person; or

(b) may, by a specified date prior to the hearing of the charge, plead guilty to the charge and remit to the Court, by money order, such sum (not exceeding the maximum fine

that may be imposed for the offence) as the Court may specify, and the plea of guilt indicated in the money order coupon itself:

Provided that the Court shall, in the case of any of the offences referred to in sub-section (2), state upon the summons that the accused person, if he pleads guilty, shall so plead in the manner specified in clause (b) and shall forward his driving licence to the Court with his letter containing such plea.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified by the Central Government by rules for the purposes of this sub-section, the Court shall, if the accused person pleads guilty to the charge and forward his driving licence to the Court with the letter containing his plea, make an endorsement of such conviction on his driving licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (1), or as the case may be, sub-sections (1) and (2), no further proceedings in respect of the offence shall be taken against him nor shall he be liable, notwithstanding anything to the contrary contained in this Act, to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

209. Restriction on conviction.—No person prosecuted for an offence punishable under section 183 or section 184 shall be convicted unless—

(a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

(b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or

(c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him:

Provided that nothing, in this section shall apply where the Court is satisfied that—

(a) the failure to serve the notice or summons referred to in this sub-section was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or

(b) such failure was brought about by the conduct of the accused.

210. Courts to send intimation about conviction.—Every Court by which any person holding a driving licence is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, shall send intimation to—

(a) the licensing authority which issued the driving licence, and

(b) the licensing authority by whom the licence was last renewed,

and every such intimation shall state the name and address of the holder of the licence, the licence number, the date of issue and renewal of the same, the nature of the offence, the punishment awarded for the same and such other particulars as may be prescribed.

CHAPTER XIV

MISCELLANEOUS

211. Power to levy fee.—Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorization, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made hereunder as may be considered necessary:

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

19/05/1986

1. Short title and extent.—(1) This Act may be called THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(a) “divorced woman” means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b) “*iddat* period” means, in the case of a divorced woman,—

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(c) “Magistrate” means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the divorced woman resides;

(d) “prescribed” means prescribed by rules made under this Act.

3. *Mahr* or other properties of Muslim woman to be given to her at the time of divorce.—(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(a) a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—

(a) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of *mahr* or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her,

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such *mahr* or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for

levying the amount of maintenance or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance.—(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974.—If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974) and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.—For the purposes of this section, “date of the first hearing of the application” means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

- (a) the form of the affidavit or other declaration in writing to be filed under section 5;
- (b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;
- (c) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the

expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Transitional provisions.—Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.

THE NATIONAL SECURITY ACT, 1980

27/12/1980

1. Short title and extent.—(1) This Act may be called THE NATIONAL SECURITY ACT, 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(a) “appropriate Government” means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

(b) “detention order” means an order made under section 3;

(c) “foreigner” has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(d) “person” includes a foreigner;

(e) “State Government”, in relation to a Union territory, means the administrator thereof.

3. Power to make orders detaining certain persons.—(1) The Central Government or the State Government may,—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India; or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.—For the purposes of this sub-section, “acting in any manner prejudicial to the maintenance of supplies and services essential to the community” does not include “acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community” as defined in the *Explanation* to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government

may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

5-A. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984 under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

6. Detention orders not to be invalid or inoperative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

(a) that the person to be detained hereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.—(1) If the Central Government or the State Government or an officer mentioned in sub-section (3) of section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has

absconded or is concealing himself so that the order cannot be executed, that Government or officer may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(2) Upon the making of a report against any person under clause (a) of sub-section (1), the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

(3) If any person fails to comply with an order issued under clause (b) of sub-section (1), he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under sub-section (3) shall be cognizable.

8. Grounds of order of detention to be disclosed to persons affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Boards.—(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

10. Reference to Advisory Boards.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section.

11. Procedure of Advisory Boards.—(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board; and the proceedings of the Advisory Board and its report, excepting the part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of the Advisory Board.—(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

13. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

14. Revocation of detention orders.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,—

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984 bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.

14-A. Circumstances in which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Boards.—(1) Notwithstanding anything contained in the foregoing provisions of this Act, or in any judgment, decree or order of any Court or other authority, any person in respect of whom an order of detention has been made under this Act at any time before the 8th day of June, 1989 may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding six months, from the date of his detention where such person had been detained with a view to preventing him, in any disturbed area,—

(i) from interfering with the efforts of Government in coping with the terrorist and disruptive activities; and

(ii) from acting in any manner prejudicial to—

(a) the defence of India; or

(b) the security of India; or

(c) the security of the State; or

(d) the maintenance of public order; or

(e) the maintenance of supplies and services essential to the community.

Explanation 1.—The provisions of the *Explanation* to sub-section (2) of section 3 shall apply for the purposes of this sub-section as they apply for the purposes of that sub-section.

Explanation 2.—In this sub-section, “disturbed area” means any area which is for the time being declared by notification under section 3 of the Punjab Disturbed Areas Act, 1983 (32 of 1983), or under section 3 of the Chandigarh Disturbed Areas Act, 1983 (33 of 1983), to be a disturbed area.

Explanation 3.—In this sub-section, “terrorist and disruptive activities” means “terrorist acts” and “disruptive activities” within the meaning of the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (Ord. 2 of 1987).

(2) In the case of any person to whom sub-section (1) applies, sections 3, 8 and 10 to 14 shall have effect subject to the following modifications, namely:—

(a) in section 3,—

(i) in sub-section (4), in the proviso,—

(A) for the words “ten days”, the words “fifteen days” shall be substituted;

(B) for the words “fifteen days”, the words “twenty days” shall be substituted;

(ii) in sub-section (5), for the words “seven days”, the words “fifteen days” shall be substituted;

(b) in section 8, in sub-section (1), for the words “ten days”, the words “fifteen days” shall be substituted;

(c) in section 10, for the words “shall, within three weeks”, the words “shall, within four months and two weeks” shall be substituted;

(d) in section 11,—

(i) in sub-section (1), for the words “seven weeks”, the words “five months and three weeks” shall be substituted;

(ii) in sub-section (2), for the words “detention of the person concerned”, the words “continued detention of the person concerned” shall be substituted;

(e) in section 12, for the words “for the detention”, at both the places where they occur, the words “for the continued detention” shall be substituted;

(f) in section 13, for the words “twelve months”, the words “two years” shall be substituted;

(g) in section 14, in the proviso to sub-section (2), for the words “twelve months”, the words “two years” shall be substituted.

15. Temporary release of persons detained.—(1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails, without sufficient cause, to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

16. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Act not to have effect with respect to detentions under State laws.—(1) Nothing in this Act shall apply or have any effect with respect to orders of detention, made under any State law, which are in force immediately before the commencement of the National Security Ordinance, 1980 (Ord. 11 of 1980), and accordingly every person in respect of whom an order

of detention made under any State law is in force immediately before such commencement, shall be governed with respect to such detention by the provisions of such State law or where the State law under which such order of detention is made is an Ordinance (hereinafter referred to as the State Ordinance) promulgated by the Governor of the State and the State Ordinance has been replaced—

(i) before such commencement, by an enactment passed by the Legislature of that State, by such enactment; or

(ii) after such commencement, by an enactment which is passed by the Legislature of that State and the application of which is confined to orders of detention made before such commencement under the State Ordinance, by such enactment, as if this Act had not been enacted.

(3) Nothing in this section shall be deemed to bar the making, under section 3, of a detention order against any person referred to in sub-section (1) after the detention order in force in respect of him as aforesaid immediately before the commencement of the National Security Ordinance, 1980 (Ord. 11 of 1980), ceases to have effect for any reason whatsoever.

Explanation.—For the purposes of this section, “State law” means any law providing for preventive detention on all or any of the grounds on which an order of detention may be made under sub-section (2) of section 3 and in force in any State immediately before the commencement of the said Ordinance.

18. Repeal and saving.—(1) The National Security Ordinance, 1980 (Ord. 11 of 1980), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act had come into force on the 23rd day of September, 1980, and, in particular, any reference made under section 10 of the said Ordinance and pending before any Advisory Board immediately before the date on which this Act receives the assent of the President may continue to be dealt with by that Board after that date as if such Board had been constituted under section 9 of this Act.

THE PASSPORTS ACT, [1967]

24/06/1967

1. Short title and extent.—(1) This Act may be called THE PASSPORTS ACT, 1967.

(2) It extends to the whole of India and applies also to citizens of India who are outside India.

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

(a) “departure,” with its grammatical variations and cognate expressions, means departure from India by water, land or air;

(b) “passport” means a passport issued or deemed to have been issued under this Act;

(c) “passport authority” means an officer or authority empowered under rules made under this Act to issue passports or travel documents and includes the Central Government;

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

(e) “travel document” means a travel document issued or deemed to have been issued under this Act.

3. Passport or travel document for departure from India.—No person shall depart from, or attempt to depart from India, unless he holds in this behalf a valid passport or travel document.

Explanation.—For the purposes of this section,—

(a) “passport” includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of passports to which it belongs;

(b) “travel document” includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed.

12. Offences and penalties.—(1) Whoever—

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him,

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1-A) Whoever, not being a citizen of India,—

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(b) holds a forged passport or any travel document,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

(2) Whoever abets any offence punishable under sub-section (1) or sub-section (1-A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made hereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.

13. Power to arrest.—(1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any officer of police or emigration officer not below the rank of a sub-inspector may arrest without warrant any person against whom a reasonable suspicion exists that he has committed any offence punishable under section 12 and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police station and the provisions of section 57 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in case of any such arrest.

14. Power of search and seizure.—(1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any officer of police or emigration officer not below the rank of a sub-inspector may search any place and seize any passport or travel document from any person against whom a reasonable suspicion exists that he has committed any offence punishable under section 12.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures shall, so far as may be, apply to searches and seizures under this section.

THE PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991

18/09/1991

1. Short title, extent and commencement.—(1) This Act may be called THE PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sections 3, 6 and 8 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 11th day of July, 1991.

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

(a) "commencement of this Act" means the commencement of this Act on the 11th day of July, 1991;

(b) "conversion", with its grammatical variations, includes alteration or change of whatever nature;

(c) "place of worship" means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.

3. Bar of conversion of places of worship.—No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of Courts, etc.—(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any Court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any Court, tribunal or other authority:

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall not so abate and every such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,—

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a Court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any Court, tribunal or other authority being barred by limitation under any law for the time being in force.

5. Act not to apply to Ram Janma Bhumi-Babri Masjid.—Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship.

6. Punishment for contravention of section 3.—(1) Whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever attempts to commit any offence punishable under sub-section (1) or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

(3) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under sub-section (1), shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

7. Act to override other enactments.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

8. Amendment of Act 43 of 1951.—In section 8 of the Representation of the People Act, 1951, in sub-section (1),—

(a) in clause (i), the word “or” shall be inserted at the end;

(b) after clause (i), as so amended, the following clause shall be inserted, namely:—

“(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991.”.

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867

22/03/1867

PART I PRELIMINARY

1. Interpretation-clause.—(1) In this Act, unless there shall be something repugnant in the subject or context,—

“Book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed [*];

[* * *]

“editor” means the person who controls the selection of the matter that is published in a newspaper;

[* * *]

“Magistrate” means any person exercising the full powers of a Magistrate, and includes a Magistrate of police [* * *];

“newspaper” means any printed periodical work containing public news or comments on public news;

[* * *]

“paper” means any document, including a newspaper, other than a book;

“prescribed” means prescribed by rules made by the Central Government under section 20-A;

“Press Registrar” means the Registrar of newspapers for India appointed by the Central Government under section 19-A and includes any other person appointed by the Central Government to perform all or any of the functions of the Press Registrar;

“printing” includes cyclostyling and printing by lithography;

“Register” means the register of newspapers maintained under section 19-B.

(2) Any reference in this Act to any law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law in force in that State.

2. Repeal of Act 11 of 1835.—[Repealed by the Repealing Act, 1870 (14 of 1870), section 1 and Schedule II, Part II.]

PART IV PENALTIES

12. Penalty for printing contrary to rule in section 3.—Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months, or by both.

13. Penalty for keeping press without making declaration required by section 4.—Whoever shall keep in his possession any such press as aforesaid, in contravention of any of the provisions contained in section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months, or by both.

14. Punishment for making false statement.—Any person who shall, in making any declaration or other statement under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, and imprisonment for a term not exceeding six months.

15. Penalty for printing or publishing newspaper without conforming to rules.—(1) Whoever shall edit, print or publish any newspaper without conforming to the rules hereinbefore laid down, or whoever shall edit, print or publish, or shall cause to be edited, printed or published, any newspaper, knowing that the said rules have not been observed with respect to that newspaper, shall, on conviction before a Magistrate, be punished with fine not exceeding two thousand rupees, or imprisonment for a term not exceeding six months or both.

(2) Where an offence is committed in relation to a newspaper under sub-section (1), the Magistrate may, in addition to the punishment imposed under the said sub-section, also cancel the declaration in respect of the newspaper.

15-A. Penalty for failure to make a declaration under section 8.—If any person who has ceased to be a printer or publisher of any newspaper fails or neglects to make a declaration in compliance with section 8, he shall, on conviction before a Magistrate, be punishable by fine not exceeding two hundred rupees.

16. Penalty for not delivering books or not supplying printer with maps.—If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

16-A. Penalty for failure to supply copies of newspapers *gratis* to Government.—If any printer of any newspaper published in India neglects to deliver copies of the same in compliance with section 11-A, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default.

16-B. Penalty for failure to supply copies of newspapers to Press Registrar.—If any publisher of any newspaper published in India neglects to deliver copies of the same in compliance with section 11-B, he shall, on the complaint of the Press Registrar, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, by fine which may extend to fifty rupees for every default.

17. Recovery of forfeitures and disposal thereof and of fines.—Any sum forfeited to the Government under section 16 may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of Criminal Procedure (10 of 1882) for the time being in force, and within the period prescribed by the Indian Penal Code (45 of 1860), for the levy of a fine.

[* * *]

PART V-A
REGISTRATION OF NEWSPAPERS

19-K. Penalty for contravention of section 19-D or section 19-E, etc.—If the publisher of any newspaper—

(a) refuses or neglects to comply with the provisions of section 19-D or section 19-E; or
[* * *]

(c) publishes in the newspaper in pursuance of clause (b) of section 19-D any particulars relating to the newspaper which he has reason to believe to be false,
he shall be punishable with fine which may extend to five hundred rupees.

19-L. Penalty for improper disclosure of information.—If any person engaged in connection with the collection of information under this Act wilfully discloses any information or the contents of any return given or furnished under this Act otherwise than in the execution of his duties under this Act or for the purposes of the prosecution of an offence under this Act or under the Indian Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

19/05/1986

1. Short title and extent.—(1) This Act may be called THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(a) “divorced woman” means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b) “*iddat* period” means, in the case of a divorced woman,—

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(c) “Magistrate” means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the divorced woman resides;

(d) “prescribed” means prescribed by rules made under this Act.

3. *Mahr* or other properties of Muslim woman to be given to her at the time of divorce.—(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(a) a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—

(a) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of *mahr* or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such *mahr* or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance.—(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974.—If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure,

1973 (2 of 1974) and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.—For the purposes of this section, “date of the first hearing of the application” means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

- (a) the form of the affidavit or other declaration in writing to be filed under section 5;
- (b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;
- (c) any other matter which is required to be or may be prescribed.

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

7. Transitional provisions.—Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

16/09/1985

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985.

(2) It extends to the whole of India and it applies also—

- (a) to all citizens of India outside India;
- (b) to all persons on ships and aircrafts registered in India, wherever they may be.

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

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

(i) “addict” means a person who has dependence on any narcotic drug or psychotropic substance;

(ii) “Board” means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963);

(iii) “cannabis (hemp)” means—

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

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

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared there from;

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

(v) "coca derivative" means—

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

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

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

(vi) "coca leaf" means—

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

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

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

(viii) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

(viib) "controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorised under section 50-A with a view to identifying the persons involved in the commission of an offence under this Act;

(viic) "corresponding law" means any law corresponding to the provisions of this Act;

(viid) "controlled substance" means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance;

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

(viiiia) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means—

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

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

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

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

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),

other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorization issued, hereunder, and includes—

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

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

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

(ix) "International Convention" means—

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

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

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

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

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

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

(2) refining of such drugs or substances;

(3) transformation of such drugs or substances; and

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

(xi) "manufactured drug" means—

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

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

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

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

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

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

(xv) "opium" means—

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

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

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

(xvi) "opium derivative" means—

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

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

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

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

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

(xvii) "opium poppy" means—

(a) the plant of the species *Papaver somniferum* L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

(xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted there from;

(xix) "poppy straw concentrate" means the material arising when poppy straw has entered into a process for the concentration of its alkaloids;

(xx) "preparation", in relation to a narcotic drug or psychotropic substance means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;

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

(xxii) "production" means the separation of opium poppy straw, coca leaves or cannabis from the plants from which they are obtained;

(xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;

(xxiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;

(xxiv) "to import inter-State" means to bring into a State or Union territory in India from another State or Union territory in India;

(xxv) "to import into India", with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

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

(xxvi) "to export from India", with its grammatical variations and cognate expressions, means to take out of India to a place outside India;

(xxvii) "to export inter-State" means to take out of a State or Union territory in India to another State or Union territory in India;

(xxviii) "to transport" means to take from one place to another within the same State or Union territory;

(xxviiiia) "use" in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;

(xxix) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

Explanation.—For the purposes of clauses (v), (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage:

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

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

(a) the information and evidence which has become available to it with respect to the nature and effects of, and the abuse or the scope for abuse of, any substance (natural or synthetic) or natural material or any salt or preparation of such substance or material; and

(b) the modifications or provisions (if any) which have been made to, or in, any International Convention with respect to such substance, natural material or salt or preparation of such substance or material,

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

CHAPTER II

AUTHORITIES AND OFFICERS

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

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

(a) co-ordination of actions by various officers, State Governments and other authorities—

(i) under this Act, or

(ii) under any other law for the time being in force in connection with the enforcement of the provisions of this Act;

(b) obligations under the International Conventions;

(c) assistance to the concerned authorities in foreign countries and concerned international organisations with a view to facilitating co-ordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;

(d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts;

(e) such other matters as the Central Government deems, necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

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

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

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

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

6. The Narcotic Drugs and Psychotropic Substances Consultative Committee.—

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

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

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

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

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

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

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

CHAPTER II-A

NATIONAL FUND FOR CONTROL OF DRUG ABUSE

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

(a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide;

(b) the sale proceeds of any property forfeited under Chapter V-A;

(c) any grants that may be made by any person or institution;

(d) any income from investment of the amounts credited to the Fund under the aforesaid provisions.

(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for—

(a) combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances;

(b) controlling the abuse of narcotic drugs and psychotropic substances;

(c) identifying, treating, rehabilitating addicts;

(d) preventing drug abuse;

(e) educating public against drug abuse; and

(f) supplying drugs to addicts where such supply is a medical necessity.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette.

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

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

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

CHAPTER III

PROHIBITION, CONTROL AND REGULATION

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

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) Produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

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

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

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

8-A. Prohibition of certain activities relating to property derived from offence.—No person shall—

(a) convert or transfer any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences; or

(b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country; or

(c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act or under any other corresponding law of any other country.

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

(a) permit and regulate—

(i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport import inter-State, export inter-State, use or consumption of coca leaves;

(ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;

(iii) the production and manufacture of opium and production of poppy straw;

(iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) the manufacture or manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) the import into India and export from India and transhipment of narcotic drugs and psychotropic substances;

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

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

(a) empower the Central Government to fix from time to time the limits within which licences may be given for the cultivation of the opium poppy;

(b) require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorised in this behalf by the Central Government;

(c) prescribe the forms and conditions of licences for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged therefore the authorities by which such licences may be granted, withheld, refused or cancelled and the authorities before which appeals against the orders of withholding, refusal or cancellation of licences shall lie;

(d) prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorised in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;

(e) empower the Central Government to fix from time to time the price to be paid to the cultivators for the opium delivered;

(f) provide for the weighment, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighment, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;

(g) require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorised in this behalf;

(h) prescribe the forms and conditions of licences for the manufacture of manufactured drugs, the authorities by which such licences may be granted and the fees that may be charged therefore;

(i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefore;

(j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transhipped; the forms and conditions of certificates, authorizations or permits, as the case may be, for such import, export or transhipment; the authorities by which such certificates, authorizations or permits may be granted and the fees that may be charged therefore.

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

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

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

(a) permit and regulate—

(i) the possession, transport, import inter-State, export inter-State warehousing, sale, purchase, consumption and use of poppy straw;

(ii) the possession, transport, import inter-State, export inter-State, sale purchase, consumption and use of opium;

(iii) the cultivation of any cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of cannabis (excluding *charas*);

(iv) the manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(v) the possession, transport, purchase, sale, import inter-State, export inter-State, use or consumption of manufactured drugs other than prepared opium and of coca leaf and any preparation containing any manufactured drug;

(vi) the manufacture and possession of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption:

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

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

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

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

(a) empower the State Government to declare any place to be a warehouse wherein it shall be the duty of the owners to deposit all such poppy straw as is legally imported inter-State and is intended for export inter-State or export from India; to regulate the safe custody of such poppy straw warehoused and the removal of such poppy straw for sale or export inter-State or export from India; to levy fees for such warehousing and to prescribe the manner in which and the period after which the poppy straw warehoused shall be disposed of in default of payment of fees;

(b) provide that the limits within which licences may be given for the cultivation of any cannabis plant shall be fixed from time to time by or under the orders of the State Government;

(c) provide that only the cultivators licensed by the prescribed authority of the State Government shall be authorised to engage in cultivation of any cannabis plant;

(d) require that all cannabis, the produce of land cultivated with cannabis plant, shall be delivered by the cultivators to the officers of the State Government authorised in this behalf;

(e) empower the State Government to fix from time to time, the price to be paid to the cultivators for the cannabis delivered;

(f) prescribe the forms and conditions of licences or permits for the purposes specified in sub-clauses (i) to (vi) of clause (a) of sub-section (1) and the authorities by which such licences or permits may be granted and the fees that may be charged therefore.

11. Narcotic drugs and psychotropic substances, etc., not liable to distress or attachment.—Notwithstanding anything to the contrary contained in any law or contract, no narcotic drug, psychotropic substance, coca plant, the opium poppy or cannabis plant shall be liable to be distrained or attached by any person for the recovery of any money under any order or decree of any Court or authority or otherwise.

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

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

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

OFFENCES AND PENALTIES

15. Punishment for contravention in relation to poppy straw.—Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted hereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

16. Punishment for contravention in relation to coca plant and coca leaves.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years, or with fine which may extend to one lakh rupees.

17. Punishment for contravention in relation to prepared opium.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both; or

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees; or

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

18. Punishment for contravention in relation to opium poppy and opium.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

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

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

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

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

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

(a) cultivates any cannabis plant; or

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

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

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

21. Punishment for contravention in relation to manufactured drugs and preparations.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted hereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

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

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

23. Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorization issued hereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

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

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

25. Punishment for allowing premises, etc., to be used for commission of an offence.—Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

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

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

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

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

(b) fails to produce without any reasonable cause such licence, permit or authorization on demand of any officer authorised by the Central Government or State Government in this behalf;

(c) keeps any accounts or makes any statement which is false or which he knows or has reasons to believe to be incorrect; or

27. Punishment for consumption of any narcotic drug or psychotropic substance.—Whoever consumes any narcotic drug or psychotropic substance shall be punishable,—

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

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

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

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

29. Punishment for abetment and criminal conspiracy.—(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

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

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

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

30. Preparation.—If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of sections 19, 24 and 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid:

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

31. Enhanced punishment for offences after previous conviction.—(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment, and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent Court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a Court in India.

31-A. Death penalty for certain offences after previous conviction.—

(1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under section 19, section 24, section 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance, is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to,—

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

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(2) Where any person is convicted by a competent Court of criminal jurisdiction outside India under any law corresponding to the provisions of section 19, section 24 or section 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (1) as if he had been convicted by a Court in India.

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

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

32-B. Factors to be taken into account for imposing higher than the minimum punishment.—Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the Court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—

- (a) the use or threat of use of violence or arms by the offender;
- (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;
- (c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence; and
- (d) the fact that the offence is committed in an educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;
- (e) the fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offence; and
- (f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.

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

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

(2) The bond shall be in such form as may be prescribed by the Central Government and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

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

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

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

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

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

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

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

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

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

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

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

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

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or
 (ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

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

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

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

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

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27-A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.

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

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

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

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 are pending before a Court of Session, then, notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session:

Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).

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

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

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

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

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

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

38. Offences by companies.—(1) Where an offence under Chapter IV has been committed by a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where any offence under Chapter IV has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

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

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

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

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

40. Power of Court to publish names, place of business, etc., of certain offenders.—(1) Where any person is convicted of any of the offences punishable under section 15 to section 25 (both inclusive), section 28, section 29 or section 30, it shall be competent for the Court convicting the person to cause the name and place of business or

residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the Court may direct.

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

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

CHAPTER V

PROCEDURE

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

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

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

42. Power of entry, search, seizure and arrest without warrant or authorization.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

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

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

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

43. Power of seizure and arrest in public place.—Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act;

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

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

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

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

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

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

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

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

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

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

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

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

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

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a seventy-two hours send a copy thereof to his immediate official superior.

50-A. Power to undertake controlled delivery.—The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—

(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.

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

52. Disposal of persons arrested and articles seized.—(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds of such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—

- (a) the officer-in-charge of the nearest police station, or
- (b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

52-A. Disposal of seized narcotic drugs and psychotropic substances.—(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station.—(1) The Central Government, after consultation with the State Government may by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the official Gazette, invest any officer of the department of drugs control, revenue or excise or any other department or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

53-A. Relevancy of statements under certain circumstances.—(1) A statement made and signed by a person before any officer empowered under section 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

- (a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made hereunder, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

54. Presumption from possession of illicit articles.—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured,

for the possession of which he fails to account satisfactorily.

55. Police to take charge of articles seized and delivered.—An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

56. Obligation of officers to assist each other.—All officers of the several departments mentioned in section 42 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

57. Report of arrest and seizure.—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

58. Punishment for vexatious entry, search, seizure or arrest.—(1) Any person empowered under section 42 or section 43 or section 44 who—

(a) without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building, conveyance or place;

(b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated under this Act, or of seizing any document or other article liable to be seized under section 42, section 43 or section 44; or

(c) vexatiously and unnecessarily detains, searches or arrests any person, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

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

59. Failure of officer in duty or his connivance at the contravention of the provisions of this Act.—(1) Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for term which may extend to one year or with fine or with both.

(2) Any officer on whom any duty has been imposed by or under this Act or any person who has been given the custody of—

(a) any addict; or

(b) any other person who has been charged with an offence under this Act, and who wilfully aids in, or connives at, the contravention of any provision of this Act or any rule or order made hereunder, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Explanation.—For the purposes of this sub-section, the expression “officer” includes any person employed in a hospital or institution maintained or recognised by the Government or a local authority under section 64-A for providing de-addiction treatment.

(3) No Court shall take cognizance of any offence under sub-section (1) or sub-section (2) except on a complaint in writing made with the previous sanction of the Central Government, or as the case may be, the State Government.

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substance which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance, or controlled substance materials apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscations, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

61. Confiscation of goods used for concealing illicit drugs or substances.—Any goods used for concealing any narcotic drug, psychotropic substance or controlled substance which is liable to confiscation under this Act shall also be liable to confiscation.

Explanation.—In this section “goods” does not include conveyance as a means of transport.

62. Confiscation of sale proceeds of illicit drugs or substances.—Where any narcotic drug, psychotropic substance or controlled substance is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

63. Procedure in making confiscations.—(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the Court may inquire into and decide such liability and may order confiscation accordingly.

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing other than a narcotic drug, psychotropic substance or controlled substance the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the Court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale.

[* * *]

64. Power to tender immunity from prosecution.—(1) The Central Government or the State Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of this Act or of any rule or order made hereunder it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act or State Act, as the case may be, for the time being in force, on condition of his making a full and true disclosure of the whole circumstances relating to such contravention.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made.

(3) If it appears to the Central Government or, as the case may be, the State Government, that any person to whom immunity has been tendered under this section has not complied with the conditions on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government or, as the case may be, the State Government, may record a finding to that effect and thereupon the immunity shall be deemed to have been withdrawn and such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same manner.

64-A. Immunity from prosecution to addicts volunteering for treatment.—Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.

65. Power to make rules regulating disposal of confiscated articles and rewards.—*[Omitted by Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989), section 18 (w.e.f. 29-5-1989).*

66. Presumption as to documents in certain cases.—Where any document—

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed by the Central Government) in the course of investigation of any offence under this Act alleged to have been committed by a person, and such document is tendered in any prosecution under this Act in evidence against him, or against him and any other person who is tried jointly with him, the Court shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

67. Power to call for information, etc.—Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act,—

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made hereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

68. Information as to commission of offences.—No officer acting in exercise of powers vested in him under any provision of this Act or any rule or order made hereunder shall be compelled to say whence he got any information as to the commission of any offence.

CHAPTER V-A

FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN, ILLICIT TRAFFIC

68-A. Application.—(1) The provisions of this Chapter shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely:—

(a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of ten years or more;

(b) every person who has been convicted of a similar offence by a competent Court of criminal jurisdiction outside India;

(c) every person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (46 of 1988), or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988:

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Acts or such order of detention has not been set aside by a Court of competent jurisdiction;

(cc) every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of a similar offence under any corresponding law of any other country;

(d) every person who is a relative of a person referred to in clause (a) or clause (b) or clause (c) or clause (cc);

(e) every associate of a person referred to in clause (a) or clause (b) or clause (c) or clause (cc);

(f) any holder (hereafter in this clause referred to as the “present holder”) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) or clause (c) or clause (cc) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

68-B. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “Appellant Tribunal” means the Appellate Tribunal for Forfeited Property constituted under section 68-N;

(b) “associate” in relation to a person whose property is liable to be forfeited under this Chapter, means—

(i) any individual who had been or is residing in the residential premises (including out-houses) of such person;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association or persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956 (1 of 1956), of which such person had been or is a member, partner or director;

(iv) any individual who had been or is a member, partner or director of an association or persons, body of individuals, partnership firm or private company referred to in sub-clause

(iii) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) any person, who had been or in managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii);

(vi) the trustee of any trust, where,—

(1) the trust has been created by such person; or

(2) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which contribution is made, to not less than twenty per cent. of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person;

(c) "competent authority" means an officer of the Central Government authorised by it under section 68-D;

(d) "concealment" means the concealment or disguise of the nature, source, disposition, movement or ownership of property and includes the movement or conversion of such property by electronic transmission or by any other means;

(e) "freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property by an order issued under section 68-F;

(f) "identifying" includes establishment of proof that the property was derived from, or used in, the illicit traffic;

(g) "illegally acquired property", in relation to any person to whom this Chapter applies, means,—

(i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of this Act; or

(ii) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income or earnings from such property, and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings there from;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived from, or used in, the illicit traffic;

(i) "relative" means—

(1) spouse of the person;

(2) brother or sister of the person;

(3) brother or sister of the spouse of the person;

(4) any lineal ascendant or descendant of the person;

(5) any lineal ascendant or descendant of the spouse of the person;

(6) spouse of a person referred to in sub-clause (2), sub-clause (3), sub-clause (4) or sub-clause (5);

(7) any lineal descendant of a person referred to in sub-clause (2) or sub-clause (3);

(j) "tracing" means determining the nature, source, disposition, movement, title or ownership of property;

(k) "trust" includes any other legal obligation.

68-C. Prohibition of holding illegally acquired property.—(1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorization of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be.

68-D. Competent authority.—(1) The Central Government may, by order published in the Official Gazette, authorize any Collector of Customs or Collector of Central Excise or Commissioner of Income-tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.

(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.

68-E. Identifying illegally acquired property.—(1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

68-F. Seizure or freezing of illegally acquired property.—(1) Where any officer conducting an inquiry or investigation under section 68-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation.—For the purposes of this section, "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

68-G. Management of properties seized or forfeited under this Chapter.—(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (1) of section 68-F or under section 68-I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

68-H. Notice of forfeiture of property.—(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68-E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected (calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person:

Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub-section (2) of section 68-A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.

68-I. Forfeiture of property in certain cases.—(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 68-H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this sub-section *ex parte* on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances:

Provided that no illegally acquired property of any person who is referred to in clause (cc) of sub-section (2) of section 68-A or relative of a person referred to in that clause or associate of

a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

68-J. Burden of proof.—In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68-H is not illegally acquired property shall be on the person affected.

68-K. Fine in lieu of forfeiture.—(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 68-I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 68-I and thereupon such property shall stand released.

68-L. Procedure in relation to certain trust properties.—In the case of any person referred to in sub-clause (vi) of clause (b) of section 68-B, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust in illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within a period of thirty days specified in the notice, to explain the source of money or other assets out of or by means of which such property was acquired or, as the case may be, the source of money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 68-H and all the other provisions of this Chapter shall apply accordingly.

Explanation.—For the purposes of this section “illegally acquired property” in relation to any property held in trust, includes—

(i) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(ii) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person acquired such property out of such contributions.

68-M. Certain transfers to be null and void.—Where after the making of an order under sub-section (1) of section 68-F or the issue of a notice under section 68-H or under section 68-L, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 68-I, then, the transfer of such property shall be deemed to be null and void.

68-N. Constitution of Appellate Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by that Government for hearing appeals against the orders made under section 68-F, section 68-I, sub-section (1) of section 68-K or section 68-L.

(2) The Chairman of the Appellate Tribunal shall be person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

68-O. Appeals.—(1) Any officer referred to in sub-section (1) of section 68-E or any person aggrieved by an order of the competent authority made under section 68-F, section 68-I, sub-section (1) of section 68-K or section 68-L; may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On respect of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

(3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in sub-section (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals, under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that member.

(5) The Appellate Tribunal may regulate its own procedure.

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in his behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.

68-P. Notice or order not to be invalid for error in description.—No notice issued or served, no declaration made, and no order passed, under this Chapter shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

68-Q. Bar of jurisdiction.—No order passed or declaration made under this Chapter shall be appealable except as provided therein and no civil Court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Chapter to determine, and no injunction shall be granted by a Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

68-R. Competent Authority and Appellate Tribunal to have powers of Civil Court.—The competent authority and the Appellate Tribunal shall have all the powers of a civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office;
- (e) issuing commissions for examination of witnesses or documents;
- (f) any other matter which may be prescribed.

68-S. Information to competent authority.—(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Chapter.

(2) Every officer referred to in section 68-T may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Chapter.

68-T. Certain officers to assist Administrator, competent authority and Appellate Tribunal.—For the purposes of any proceedings under this Chapter, the following officers are hereby empowered and required to assist the Administrator appointed under section 68-G, competent authority and the Appellate Tribunal, namely:—

- (a) officers of the Narcotics Control Bureau;
- (b) officers of the Customs Department;
- (c) officers of the Central Excise Department;
- (d) officers of the Income-tax Department;
- (e) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973)*;
- (f) officers of police;
- (g) officers of the Narcotics Department;
- (h) officers of the Central Economic Intelligence Bureau;
- (i) officers of the Directorate of Revenue Intelligence;
- (j) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

68-U. Power to take possession.—(1) Where any property has been declared to be forfeited to the Central Government under this Chapter, or where the person affected has failed to pay the fine due under sub-section (1) of section 68-K within the time allowed therefore under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the Administrator appointed under section 68-G or to any person duly authorised by him in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Administrator may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the Administrator may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

68-V. Rectification of mistakes.—With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

68-W. Findings under other laws not conclusive for proceedings under this Chapter.—No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Chapter.

68-X. Service of notices and orders.—Any notice or order issued or made under this Chapter shall be served—

- (a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;
- (b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

68-Y. Punishment for acquiring property in relation to which proceedings have been taken under this Chapter.—Any person who knowingly acquired, by any mode whatsoever, any property in relation to which proceedings are pending under this Chapter shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees.

68-Z. Release of property in certain cases.—(1) Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

(2) Where any person referred to in clause (a) or clause (b) or clause (cc) of sub-section (2) of section 68-A has been acquitted or discharged from the charges under this Act or any

other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorization of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.

CHAPTER VI

MISCELLANEOUS

69. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of the Central Government or of the State Government or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made hereunder.

70. Central Government and State Government to have regard to international conventions while making rules.—Wherever under this Act the Central Government or the State Government has been empowered to make rules, the Central Government or the State Government, as the case may be, subject to other provisions of this Act, may while making the rules have regard to the provisions of the Single Convention on Narcotic Drugs, 1961, the Protocol of 1972 amending the said Convention and of the Convention on Psychotropic Substances, 1971 to which India is a party and to the provisions of any other international convention relating to narcotic drugs or psychotropic substances to which India may become a party.

71. Power of Government to establish centres for identification, treatment, etc., of addicts and for supply of narcotic drugs and psychotropic substances.—(1) The Government may, in its discretion, establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social re-integration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity.

(2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from, the centres referred to in sub-section (1) and for the appointment, training, powers, duties and persons employed in such centres.

72. Recovery of sums due to Government.—(1) In respect of any licence fee or other sum of any kind payable to the Central Government or to the State Government under any of the provisions of this Act or of any rule or order made hereunder, the officer of the Central Government or the State Government, as the case may be, who is empowered to require the payment of such sum, may deduct the amount of such sum from any money owing to the person from whom such sum may be recoverable or due or may recover such amount or sum by attachment and sale of the goods belonging to such persons and if the amount of the same is not so recovered, the same may be recovered from the person or from his surety (if any) as if it were an arrear of land revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under section 34 and section 39) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be a public duty within the meaning of section 74 of the Indian Contract Act, 1872 (9 of 1872); and upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land revenue.

73. Bar of jurisdiction.—No civil Court shall entertain any suit or proceeding against any decision made or order passed by any officer or authority under this Act or under any rule made hereunder on any of the following matters, namely:—

(a) withholding, refusal or cancellation of any licence for the cultivation of the opium poppy;

(b) weighment, examination and classification according to the quality and consistence of opium and any deductions from, or addition to, the standard price made in accordance with such examination;

(c) confiscation of opium found to be adulterated with any foreign substance.

74. Transitional provisions.—Every officer or other employee of the Government exercising or performing, immediately before the commencement of this Act, any powers or duties with respect to any matters provided for in this Act, shall, on such commencement, be deemed to have been appointed under the relevant provisions of this Act to the same post and with the same designation as he was holding immediately before such commencement.

74-A. Power of Central Government to give directions.—The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act, and the State Government shall comply with such directions.

75. Power to delegate.—(1) The Central Government may, by notification in the Official Gazette, delegate subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the powers to make rules) as it may deem necessary or expedient, to the Board or any other authority or the Narcotics Commissioner.

(2) The State Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power to make rules) as it may deem necessary or expedient, to any authority or officer of that Government.

76. Power of Central Government to make rules.—(1) Subject to the other provisions of this Act, the Central Government may, by notification in the Official Gazette, make rules* for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the method by which percentages in the case of liquid preparations shall be calculated for the purposes of clauses (v), (vi), (xiv) and (xv) of section 2;

(b) the form of bond to keep the peace to be executed under section 34;

(c) the form of bond to be executed for release of an addict convict for medical treatment under sub-section (1) of section 39 and the bond to be executed by such convict before his release after due admonition under sub-section (2) of that section;

(ca) the manner in which “controlled delivery” under section 50-A is to be undertaken;

(d) the authority or the person by whom and the manner in which a document received from any place outside India shall be authenticated under clause (ii) of section 66;

(da) the manner in which and the conditions subject to which properties shall be managed by the Administrator under sub-section (2) of section 68-G;

(db) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under sub-section (3) of section 68-N;

(dc) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining the certified copy of any part thereof under sub-section (6) of section 68-O;

(dd) the powers of a Civil Court that may be exercised by the competent authority and the Appellate Tribunal under clause (f) of section 68-R;

(de) the disposal of all articles or things confiscated under this Act;

(df) the drawing of samples and testing and analysis of such samples;

(dg) the rewards to be paid to the officers, informers and other persons;

(e) the conditions and the manner in which narcotic drugs and psychotropic substances may be supplied for medical necessity to the addicts registered with the Central Government and to others under sub-section (1) of section 71;

(f) the establishment, appointment, maintenance, management and superintendence of centres established by the Central Government under sub-section (1) of section 71 and appointment, training, powers and duties of persons employed in such centres;

(g) the term of office of, the manner of filling casual vacancies of and the allowances payable, to the Chairman and members of the Narcotic Drugs and Psychotropic Substances Consultative Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of section 6;

(h) any other matter which is to be, or may be, prescribed.

77. Rules and notifications to be laid before Parliament.—Every rule made under this Act by the Central Government and every notification or order issued under clause (viiia), clause (xi), clause (xxiiia) of section 2, section 3, section 7-A, section 9-A and clause (a) of section 27 shall be laid, as soon as may be, after it is made or issued before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or the notification shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

78. Power of State Government to make rules.—(1) Subject to the other provisions of this Act the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the conditions and the manner in which narcotic drugs and psychotropic substances shall be supplied for medical necessity to the addicts registered with the State Government and other under sub-section (1) of section 71;

(b) the establishment, appointment, maintenance, management, superintendence of centres established under sub-section (1) of section 71 and appointment, training, powers and duties of persons employed in such centres;

(c) any other matter which is to be, or may be, prescribed.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made before the Legislature of that State.

79. Application of the Customs Act, 1962.—All prohibitions and restrictions imposed by or under this Act on the import into India, the export from India and transshipment of narcotic drugs and psychotropic substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs Act, 1962 (52 of 1962) and the provisions of that Act shall apply accordingly:

Provided that, where the doing of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.

80. Application of the Drugs and Cosmetics Act, 1940 not barred.—The provisions of this Act or the rules made hereunder shall be in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made hereunder.

81. Saving of State and special laws.—Nothing in this Act or in the rules made hereunder shall affect the validity of any Provincial Act or an Act of any State Legislature for the time being in force, or of any rule made hereunder which imposes any restriction or provides for a punishment not imposed by or provided for under this Act or imposes a restriction or provides for a punishment greater in degree than a corresponding restriction imposed by or a corresponding punishment provided for by or under this Act for the cultivation of cannabis plant or consumption of, or traffic in, any narcotic drug or psychotropic substance within India.

82. Repeal and savings.—(1) The Opium Act, 1857 (13 of 1857), the Opium Act, 1878 (1 of 1878) and the Dangerous Drugs Act, 1930 (2 of 1930) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any one enactments repealed by sub-section (1) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

83. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the houses of Parliament.

THE NEGOTIABLE INSTRUMENTS ACT, 1881

09/12/1981

CHAPTER I PRELIMINARY

1. Short title.—This Act may be called THE NEGOTIABLE INSTRUMENTS ACT, 1881.

Local extent. Saving of usages relating to hundis, etc. Commencement.—It extends to the whole of India [* * *] but nothing herein contained affects the Indian Paper Currency Act, 1871 (II of 1871), section 21, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

2. Repeal of enactments.—*[Repealed by the Amending Act, 1891 (XII of 1891), section 2 and Schedule I.]*

CHAPTER XVII

OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.

140. Defence which may not be allowed in any prosecution under section 138.—It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

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

Explanation.—For the purposes of this section,—

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

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

142. Cognizance of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

143. Power of Court to try cases summarily.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

144. Mode of service of summons.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally

works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgement purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

145. Evidence on affidavit.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

146. Bank's slip *prima facie* evidence of certain facts.—The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

147. Offences to be compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

12/02/1980

1. Short title, extent and commencement.—(1) This Act may be called THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 5th day of October, 1979.

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

(a) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or as respects a person detained under such order, the State Government;

(b) "detention order" means an order made under section 3;

(c) "State Government", in relation to a Union Territory, means the Administrator thereof.

3. Power to make orders detaining certain persons.—(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.—For the purposes of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means—

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity—

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:—

(a) District Magistrates;

(b) Commissioners of Police, wherever they have been appointed,

may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted.

(4) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1), the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

6. Detention orders not to be invalid or inoperative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

(a) that the person to be detained hereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.—(1) If the appropriate Government or an officer mentioned in sub-section (2) of section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government or officer may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognizable.

8. Grounds of order of detention to be disclosed to person affected by the order.—

(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Boards.—(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union Territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

10. Reference to Advisory Boards.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer referred to in sub-section (2) of section 3, also the report by such officer under sub-section (3) of that section.

11. Procedure of Advisory Boards.—(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board, and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of Advisory Board.—(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) in any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12, shall be six months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

14. Revocation of detention orders.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified—

(a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

15. Temporary release of persons detained.—(1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

16. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Repeal and saving.—(1) The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Ordinance, 1979 (10 of 1979), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE PREVENTION OF CORRUPTION ACT, 1988

09/09/1988

CHAPTER I PRELIMINARY

1. Short title and extent.—(1) This Act may be called THE PREVENTION OF CORRUPTION ACT, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

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

(a) “election” means any election, by whatever means held under any law for the purpose of selecting Members of Parliament or of any Legislature, local authority or other public authority;

(b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.—In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(c) “public servant” means,—

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a Court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a Court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having

received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

CHAPTER II

APPOINTMENT OF SPECIAL JUDGES

3. Power to appoint special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

5. Procedure and powers of special Judge.—(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944).

6. Power to try summarily.—(1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12-A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by a special Judge.

CHAPTER III

OFFENCES AND PENALTIES

7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanation.—(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and, thus, induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

9. Taking gratification, for exercise of personal influence with public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

10. Punishment for abetment by public servant of offences defined in section 8 or 9.—Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.—Whoever, being a public servant, accepts or obtains or agrees to accept, or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

12. Punishment for abetment of offences defined in section 7 or 11.—Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

14. Habitual committing of offence under sections 8, 9 and 12.—Whoever habitually commits,—

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12,

shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

15. Punishment for attempt.—Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

16. Matters to be taken into consideration for fixing fine.—Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the Court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

CHAPTER IV

INVESTIGATION INTO CASES UNDER THE ACT

17. Persons authorised to investigate.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or makes arrest therefore without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

18. Power to inspect bankers' books.—If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to

investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books insofar as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries there from, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this section, the expressions "banks" and "bankers' books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891.

CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. Previous sanction necessary for prosecution.—(1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or

for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

21. Accused person to be a competent witness.—Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

(ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—

(a) in sub-section (1) of section 243, for the words “The accused shall then be called upon”, the words “The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon” had been substituted;

(b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:—

“Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 had been made by the party to the proceeding.”;

(c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:—

“(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with enquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.”;

(d) in sub-section (1) of section 397, before the *Explanation*, the following proviso had been inserted, namely:—

"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings,—

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

23. Particulars in a charge in relation to an offence under section 13(1)(c).—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under clause (c) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

24. Statement by bribe giver not to subject him to prosecution.—Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under sections 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 12.

25. Military, Naval and Air Force or other law not to be affected.—(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the Court of a special Judge shall be deemed to be a Court of ordinary criminal justice.

26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.—Every special Judge appointed under the Criminal Law Amendment Act, 1952 for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

27. Appeal and revision.—Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the Court of the special Judge were a Court of Session trying cases within the local limits of the High Court.

28. Act to be in addition to any other law.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

29. Amendment of the Ordinance 38 of 1944.—In the Criminal Law Amendment Ordinance, 1944,—

(a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words "State Government", wherever they occur, the words "State Government or, as the case may be, the Central Government" shall be substituted.

(b) in section 10, clause (a), for the words, "three months", the words "one year" shall be substituted;

(c) in the Schedule,—

(i) paragraph 1 shall be omitted;

(ii) in paragraphs 2 and 4,—

(a) after the words "a local authority", the words and figures "or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government company" shall be inserted;

(b) after the words "or authority", the words "or corporation or body or Government company or society" shall be inserted;

(iii) for paragraph 4-A, the following paragraph shall be substituted, namely:—

"4-A. An offence punishable under the Prevention of Corruption Act, 1988.";

(iv) in paragraph 5, for the words and figures "items 2, 3 and 4", the words, figures and letter "items 2, 3, 4 and 4-A" shall be substituted.

30. Repeal and saving.—(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

31. Omission of certain sections of Act 45 of 1860.—Sections 161 to 165-A (both inclusive) of the Indian Penal Code (45 of 1860) shall be omitted, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply to such omission as if the said sections had been repealed by a Central Act.

THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

26/12/1960

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for the different provisions contained in this Act.

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

(a) "animal" means any living creature other than a human being;

(b) "Board" means the Board established under section 4, and as reconstituted from time to time under section 5-A;

(c) "captive animal" means any animal (not being a domestic animal) which is in captivity or confinement, whether permanent or temporary, or which is subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement or which is pinioned or which is or appears to be maimed;

(d) "domestic animal" means any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of man or which, although it neither has been nor is being nor is intended to be so tamed, is or has become in fact wholly or partly tamed;

(e) "local authority" means a municipal committee, district board or other authority for the time being invested by law with the control and administration of any matter within a specified local area;

(f) "owner", used with reference to an animal, includes not only the owner but also any other person for the time being in possession or custody of the animal, whether with or without the consent of the owner;

(g) "*phooka*" or "*doom dev*" includes any process of introducing air or any substance into the female organ of a milch animal with the object of drawing off from the animal any secretion of milk;

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

(i) "street" includes any way, road, lane, square, Court, alley, passage or open space, whether a thoroughfare or not, to which the public have access.

3. Duties of persons having charge of animals.—It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

CHAPTER III

CRUELTY TO ANIMALS GENERALLY

11. Treating animals cruelly.—(1) If any person—

(a) beats, kicks, over-rides over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated; or

(b) employs in any work or labour or for any purpose any animal which, by reason of its age or any disease, infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of any animal, fails to provide such animal with sufficient food, drink or shelter; or

(i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or

(j) wilfully permits any animal, of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or

(k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or

(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or

(m) solely with a view to providing entertainment—

(i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or

(ii) incites any animal to fight or bait any other animal; or

(n) [* * *], organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting,

he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.

(2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to—

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of a destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.

12. Penalty for practising *phooka* or *doom dev*.—If any person performs upon any cow or other milch animal the operation called *phooka* or *doom dev* or any other operation (including injection of any substance) to improve lactation which is injurious to the health of the animal or permits such operation being performed upon any such animal in his possession or under his control, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both, and the animal on which the operation was performed shall be forfeited to the Government.

13. Destruction of suffering animals.—(1) Where the owner of an animal is convicted of an offence under section 11, it shall be lawful for the Court, if the Court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animal to any suitable person for that purpose, and the person to whom such animal is so assigned shall, as soon as possible, destroy such animal or cause such animal to be destroyed in his presence without unnecessary suffering, and any reasonable expense incurred in destroying the animal may be ordered by the Court to be recovered from the owner as if it were a fine:

Provided that unless the owner assents thereto, no order shall be made under this section except upon the evidence of a veterinary officer in charge of the area.

(2) When any magistrate, commissioner of police or district superintendent of police has reason to believe that an offence under section 11 has been committed in respect of any animal, he may direct the immediate destruction of the animal, if in his opinion, it would be cruel to keep the animal alive.

(3) Any police officer above the rank of a constable or any person authorised by the State Government in this behalf who finds any animal so diseased or so severely injured or in such a physical condition that in his opinion it cannot be removed without cruelty, may, if the owner is absent or refuses his consent to the destruction of the animal, forthwith summon the veterinary officer in charge of that area in which the animal is found, and if the veterinary officer certifies that the animal is mortally injured or so severely injured or in such a physical condition that it would be cruel to keep it alive, the police officer or the person authorised, as the case may be, may, after obtaining orders from a magistrate, destroy the animal injured or cause it to be destroyed in such manner as may be prescribed.

(4) No appeal shall lie from any order of a magistrate for the destruction of an animal.

CHAPTER VI

MISCELLANEOUS

31. Cognizability of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence punishable under clause (1), clause (n) or clause (o) of sub-section (1) of section 11 or under section 12 shall be a cognizable offence within the meaning of that Code.

32. Powers of search and seizure.—(1) If a police officer not below the rank of sub-inspector or any person authorised by the State Government in this behalf has reason to

believe that an offence under clause (1) of sub-section (1) of section 11 in respect of any such animal as is referred to in section 30 is being, or is about to be, or has been, committed in any place, or that any person has in his possession the skin of any such animal with any part of the skin of the head attached thereto, he may enter and search such place or any place in which he has reason to believe any such skin to be, and may seize such skin or any article or thing used or intended to be used in the commission of such offence.

(2) If a police officer not below the rank of sub-inspector, or any person authorised by the State Government in this behalf, has reason to believe that *phooka* or *doom dev* on any other operation of the nature referred to in section 12 has just been, or is being, performed or any animal within the limits of his jurisdiction, he may enter any place in which he has reason to believe such animal to be, and may seize the animal and produce it for examination by the veterinary officer in charge of the area in which the animal is seized.

33. Search warrants.—(1) If a magistrate of the first or second class or a presidency magistrate or a sub-divisional magistrate or a commissioner of police or district superintendent of police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence under this Act is being, or is about to be, or has been committed in any place, he may either himself enter and search or by his warrant authorize any police officer not below the rank of sub-inspector to enter and search the place.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as those provisions can be made applicable, apply to searches under this Act.

34. General power of seizure for examination.—Any police officer above the rank of a constable or any person authorised by the State Government in this behalf, who has reason to believe that an offence against this Act has been or is being, committed in respect of any animal, may, if in his opinion the circumstances so require, seize the animal and produce the same for examination by the nearest magistrate or by such veterinary officer as may be prescribed, and such police officer or authorised person may, when seizing the animal, require the person in charge thereof to accompany it to the place of examination.

36. Limitation of prosecutions.—A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984

16/03/1984

1. Short title, extent and commencement.—(1) This Act may be called THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 28th day of January, 1984.

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

(a) “mischief” shall have the same meaning as in section 425 of the Indian Penal Code (45 of 1860);

(b) “public property” means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of—

(i) the Central Government; or

(ii) any State Government; or

(iii) any local authority; or

(iv) any corporation established by, or under, a Central, Provincial or State Act; or

(v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government shall not specify any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

3. Mischief causing damage to public property.—(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being—

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith,

shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the Court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

4. Mischief causing damage to public property by fire or explosive substance.—Whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years and with fine:

Provided that the Court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.

5. Special provisions regarding bail.—No person accused or convicted of an offence punishable under section 3 or section 4 shall, if in custody, be released on bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release.

6. Saving.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, and nothing contained in this Act shall exempt any person from any proceeding (whether by way of investigation or otherwise) which might, apart from this Act, be instituted or taken against him.

7. Repeal and saving.—(1) The Prevention of Damage to Public Property Ordinance, 1984 (3 of 1984), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE PREVENTION OF FOOD ADULTERATION ACT, 1954

29/09/1954

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE PREVENTION OF FOOD ADULTERATION ACT, 1954.

(2) It extends to the whole of India [* * *].

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

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

(i) “adulterant” means any material which is or could be employed for the purposes of adulteration;

(ia) “adulterated”—an article of food shall be deemed to be adulterated—

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, [* * *] rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation.—Where two or more articles of primary food are mixed together and the resultant article of food—

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health,

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;

(ii) "Central Food Laboratory" means any laboratory or institute established or specified under section 4;

(iii) "Committee" means the Central Committee for the Food Standards constituted under section 3;

(iv) "Director of the Central Food Laboratory" means the person appointed by the Central Government by notification in the Official Gazette as the Director of the Central Food Laboratory and includes any person appointed by the Central Government in like manner to perform all or any of the functions of the Director under this Act:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Director under this clause;

(v) "food" means any article used as food or drink for human consumption other than drugs and water and includes—

(a) any article which ordinarily enters into, or is used in the composition or preparation of, human food,

(b) any flavouring matter or condiments, and

(c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purposes of this Act;

(vi) "Food (Health) Authority" means the Director of Medical and Health Services or the Chief Officer in charge of Health administration in a State, by whatever designation he is known, and includes any officer empowered by the Central Government or the State

Government, by notification in the Official Gazette, to exercise the powers and perform the duties of the Food (Health) Authority under this Act with respect to such local area as may be specified in the notification;

(vii) "local area" means any area, whether urban or rural, declared by the Central Government or the State Government by notification in the Official Gazette, to be a local area for the purposes of this Act;

(viii) "local authority" means in the case of—

(1) a local area which is—

(a) a municipality, the municipal board or municipal corporation;

(b) a cantonment, the cantonment authority;

(c) a notified area, the notified area committee;

(2) any other local area, such authority as may be prescribed by the Central Government or the State Government under this Act;

(viiia) "Local (Health) Authority", in relation to a local area, means the officer appointed by the Central Government or the State Government, by notification in the Official Gazette, to be in charge of Health administration in such area with such designation as may be specified therein;

(viiib) "manufacture" includes any process incidental or ancillary to the manufacture of an article of food;

(ix) "misbranded"—an article of food shall be deemed to be misbranded—

(a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;

(b) if it is falsely stated to be the product of any place or country;

(c) if it is sold by a name which belongs to another article of food;

(d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged, is concealed or if the article is made to appear better or of greater value than it really is;

(e) if false claims are made for it upon the label or otherwise;

(f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;

(g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;

(h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;

(i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;

(j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made hereunder;

(k) if it is not labelled in accordance with the requirements of this Act or rules made hereunder;

(x) "package" means a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed;

(xi) "premises" include any shop, stall, or place where any article of food is sold or manufactured or stored for sale;

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

(xiiia) "primary food" means any article of food, being a produce of agriculture or horticulture in its natural form;

(*xiii*) "sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash, or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;

(*xiv*) "sample" means a sample of any article of food taken under the provisions of this Act or of any rules made hereunder;

(*xv*) the words "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

GENERAL PROVISIONS AS TO FOOD

5. Prohibition of import of certain articles of food.—No person shall import into India—

(*i*) any adulterated food;

(*ii*) any misbranded food;

(*iii*) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence; and

(*iv*) any article of food in contravention of any other provision of this Act or of any rule made hereunder.

7. Prohibitions of manufacture, sale, etc., of certain articles of food.—No person shall himself or by any person on his behalf manufacture for sale or store, sell or distribute—

(*i*) any adulterated food;

(*ii*) any misbranded food;

(*iii*) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(*iv*) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; [*]

(*v*) any article of food in contravention of any other provision of this Act or of any rule made hereunder; or

(*vi*) any adulterant.

Explanation.—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (*iii*) or clause (*iv*) or clause (*v*) if he stores such food for the manufacture there from of any article of food for sale.

16. Penalties.—(1) Subject to the provisions of sub-section (1-A), if any person—

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales, or stores, sells or distributes any article of food—

(*i*) which is adulterated within the meaning of sub-clause (*m*) of clause (*ia*) of section 2 or misbranded within the meaning of clause (*ix*) of that section or the sale of which is prohibited under any provision of this Act or any rule made hereunder or by an order of the Food (Health) Authority;

(*ii*) other than an article of food referred to in sub-clause (*i*), in contravention of any of the provisions of this Act or of any rule made hereunder; or

(b) whether by himself or by any other person on his behalf, imports into India or manufactures for sales, or stores, sells or distributes any adulterant which is not injurious to health; or

(c) prevents a Food Inspector from taking a sample as authorised by this Act; or

(d) prevents a Food Inspector from exercising any other power conferred on him by or under this Act; or

(e) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or

(f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or

(g) whether by himself or by any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:

Provided that—

(i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of section 2; or

(ii) if the offence is under sub-clause (ii) of clause (a), but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1-A) of section 23 or under clause (b) of sub-section (2) of section 24,

the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees:

Provided further that if the offence is under sub-clause (ii) of clause (a) and is with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1-A) of section 23 or under clause (b) of sub-section (2) of section 24, the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees.

(1-A) If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,—

(i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (l) (both inclusive) of clause (ia) of section 2; or

(ii) any adulterant which is injurious to health,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees:

Provided that if such article of food or adulterant when consumed by any person is likely to cause his death or is likely, to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees.

(1-AA) If any person in whose safe custody any article of food has been kept under sub-section (4) of section 10, tampers or in any other manner interferes with such article, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees.

(1-B) If any person in whose safe custody any article of food has been kept under sub-section (4) of section 10, sells or distributes such article which is found by the Magistrate before whom it is produced to be adulterated within the meaning of sub-clause (h) of clause (ia) of section 2 and which, when consumed by any person, is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in sub-section (1-AA), he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine which shall not be less than five thousand rupees.

(1-C) If any person contravenes the provisions of section 14 or section 14-A, he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than five hundred rupees.

(1-D) If any person convicted of an offence under this Act commits a like offence afterwards, then, without prejudice to the provisions of sub-section (2), the Court, before which the second or subsequent conviction takes place, may order the cancellation of the licence, if any, granted to him under this Act and thereupon such licence shall, notwithstanding anything contained in this Act, or in the rules made hereunder, stand cancelled.

(2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

16-A. Power of Court to try cases summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

17. Offences by companies.—(1) Where an offence under this Act has been committed by a company—

(a)(i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or

(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and

(b) the company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation.—Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

(3) The person nominated under sub-section (2) shall, until—

(i) further notice cancelling such nomination is received from the company by the Local (Health) Authority; or

(ii) he ceases to be a director or, as the case may be, manager of the company; or

(iii) he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination [which request shall be complied with by the Local (Health) Authority,

whichever is the earliest, continue to be the person responsible:

Provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local (Health) Authority:

Provided further that where such person makes a request under clause (iii), the Local (Health) Authority shall not cancel such nomination with effect from a date earlier than the date on which the request is made.

(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company [not being a person nominated under sub-section (2) such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

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

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

(c) “manager”, in relation to a company engaged in hotel industry, includes the person in charge of the catering department of any hotel managed or run by it.

18. Forfeiture of property.—Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or of any rule hereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government:

Provided that where the Court is satisfied that the article of food is capable of being made to conform to prescribed standards for human consumption after reprocessing, the Court may order the article of food to be returned to the owner, on his executing a bond with or without sureties, for being sold, subject to the other provisions of this Act, after reprocessing under the supervision of such officer as may be specified therein.

19. Defence which may or may not be allowed in prosecutions under this Act.—(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves—

(a) that he purchased the article of food—

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3) Any person by whom a warranty as is referred to in section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence.

20. Cognizance and trial of offences.—(1) No prosecution for an offence under this Act, not being an offence under section 14 or section 14-A shall be instituted except by, or with the written consent of, the Central Government or the State Government [* * *] or a person authorised in this behalf, by general or special order, by the Central Government or the State Government [* * *]:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in section 12, if he or it produces in Court a copy of the report of the public analyst along with the complaint.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1-AA) of section 16 shall be cognizable and non-bailable.

20-A. Power of Court to implead manufacturer, etc.—Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the Court may, notwithstanding anything contained in sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974) or in section 20 proceed against him as though a prosecution had been instituted against him under section 20.

20-AA. Application of the Probation of Offenders Act, 1958 and section 360 of the Code of Criminal Procedure, 1973.—Nothing contained in the Probation of Offenders Act, 1958 (20 of 1958) or section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

21. Magistrate's power to impose enhanced penalties.—Notwithstanding anything contained in section 29 of the Code of Criminal Procedure 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate or any Judicial Magistrate of the first class to pass any sentence authorised by this Act, except a sentence of imprisonment for life or for a term exceeding six years, in excess of his powers under the said section.

22. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988

06/09/1988

1. Short title, extent and commencement.—(1) This Act may be called THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 4th day of July, 1988.

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

(a) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government, or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government, or a person detained under such order, the State Government;

(b) "customs airport" means any airport appointed under clause (a) of section 7 of the Customs Act, 1962 (52 of 1962), to be a customs airport;

(c) "detention order" means an order made under section 3;

(d) "foreigner" has the same meaning as in the Foreigners Act, 1946 (31 of 1946);

(e) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means—

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

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

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

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

(v) handling or letting any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), or any rule or order made, or any condition of any licence, term or authorization issued, hereunder and includes—

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

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

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

(f) "Indian customs waters" has the same meaning as in clause (28) of section 2 of the Customs Act, 1962 (52 of 1962);

(g) "State Government", in relation to a Union territory, means the Administrator thereof;

(h) words and expressions used herein but not defined, and defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), have the meanings respectively assigned to them in that Act.

3. Power to make orders detaining certain persons.—(1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions including conditions as to maintenance, interviews or communication with others, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State by order of the appropriate Government: Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

6. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with Reference to the remaining ground or grounds and make the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

7. Detention orders not to be invalid or inoperative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

(a) that the person to be detained hereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention; or

(b) that the place of detention of such person is outside the said limits.

8. Powers in relation to absconding persons.—(1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognizable.

9. Advisory Boards.—For the purposes of sub-clause (a) of clause (4) and sub-clause (c) of clause (7) of article 22 of the Constitution,—

(a) the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of a Chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of article 22 of the Constitution;

(b) save as otherwise provided in section 10, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order, make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of article 22 of the Constitution ;

(c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

(d) when there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board;

(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

10. Cases in which and circumstances under which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Board.—

(1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the 31st day of July, 1999, may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by that Government, is satisfied that such person engages or is likely to engage in illicit traffic in narcotic drugs and psychotropic substances into, out of, through or within any area highly vulnerable to such illicit traffic and makes a declaration to that effect within five weeks of the detention of such person.

Explanation 1.—In this sub-section, “area highly vulnerable to such illicit traffic” means—

- (i) the Indian customs waters;
- (ii) the customs airport;
- (iii) the metropolitan cities of Bombay, Calcutta, Delhi, Madras and the city of Varanasi;
- (iv) the inland area one hundred kilometres in width from the coast of India falling within the territories of the States of Andhra Pradesh, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Orissa, Tamil Nadu and West Bengal and the Union territories of Daman and Diu and Pondicherry;
- (v) the inland area one hundred kilometres in width from—
 - (a) the India-Pakistan border in the States of Gujarat, Punjab and Rajasthan;
 - (b) the India-Nepal border in the States of Bihar, Sikkim, Uttar Pradesh and West Bengal;
 - (c) the India-Burma border in the States of Arunachal Pradesh, Manipur, Mizoram and Nagaland;
 - (d) the India-Bangladesh border in the States of Assam, Meghalaya, Tripura and West Bengal;
 - (e) the India-Bhutan border in the States of Arunachal Pradesh, Assam, Sikkim and West Bengal,
- (vi) such other area or customs station, as the Central Government may, having regard to the vulnerability of such areas or customs station, as the case may be, to illicit traffic, by notification in the Official Gazette, specify in this behalf.

Explanation 2.—For the purposes of *Explanation 1*, “customs station” has the same meaning as in clause (13) of section 2 of the Customs Act, 1962 (52 of 1962).

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, section 9 shall have effect subject to the following modifications, namely:—

- (i) in clause (b), for the words “shall, within five weeks”, the words “shall, within four months and two weeks” shall be substituted;
- (ii) in clause (c),—
 - (a) for the words “the detention of the person concerned”, the words “the continued detention of the person concerned” shall be substituted;
 - (b) for the words “eleven weeks”, the words “five months and three weeks” shall be substituted;
 - (iii) in clause (f), for the words “for the detention”, at both the places where they occur, the words “for the continued detention” shall be substituted.

11. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 do not apply and which has been confirmed under clause (f) of section 9 shall be one year from the date of detention, and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 apply and which has been confirmed under clause (f) of section 9, read with sub-section (2) of section 10, shall be two years from the date of detention:

Provided that nothing contained in this section shall affect the power of appropriate Government in either case to revoke or modify the detention order at any earlier time.

12. Revocation of detention orders.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified—

(a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order under section 3 against the same person.

13. Temporary release of persons detained.—(1) The Central Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or by an officer subordinate to that Government or by a State Government or by an officer subordinate to a State Government, may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) A State Government may, at any time, direct that any person detained in pursuance of a detention order made by that Government or by an officer subordinate to that Government may be released for any specified period either without conditions or upon such conditions specified in the direction as the person accepts, and may, at any time, cancel his release.

(3) In directing the release of any person under sub-section (1) or sub-section (2), the Government directing the release may require him to enter into a bond with sureties for the due observance of the conditions specified in the direction.

(4) Any person released under sub-section (1) or sub-section (2) shall surrender himself at the time and place, and to the authority, specified in the order directing his release, or cancelling his release, as the case may be.

(5) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (4), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(6) If any person released under sub-section (1) or sub-section (2) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

(7) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.

14. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government or a State Government and no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

15. Amendment of Act 52 of 1974.—In section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974), to sub-section (1), the following proviso shall be added, namely:—

“Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (J&K. Ordinance 1 of 1988).”

16. Repeal and saving.—(1) The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (Ordinance 7 of 1988), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE PREVENTION OF INSULTS TO NATIONAL HONOUR ACT, 1971

23/12/1971

1. Short title and extent.—(1) This Act may be called THE PREVENTION OF INSULTS TO NATIONAL HONOUR ACT, 1971.

(2) It extends to the whole of India.

2. Insult to Indian National Flag and Constitution of India.—Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1.—Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section.

Explanation 2.—The expression “Indian National Flag” includes any picture, painting, drawing or photograph, or other visible representation of the Indian National Flag, or of any part or parts thereof, made of any substance or represented on any substance.

Explanation 3.—The expression “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance.

Explanation 4.—The disrespect to the Indian National Flag means and includes—

- (a) a gross affront or indignity offered to the Indian National Flag; or
- (b) dipping the Indian National Flag in salute to any person or thing; or
- (c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or
- (d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other para-military forces funerals; or
- (e) using the Indian National Flag,—
 - (i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or
 - (ii) by embroidering or printing it on cushions, handkerchiefs, napkins, undergarments or any dress material; or
- (f) putting any kind of inscription upon the Indian National Flag; or
- (g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence Day; or
- (h) using the Indian National Flag as covering for a statute or a monument or a speaker’s desk or a speaker’s platform; or
- (i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or
- (j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar object; or
- (k) using the Indian National Flag as a covering for a building; or
- (l) intentionally displaying the Indian National Flag with the “saffron” down.

3. Prevention of singing of Indian National Anthem, etc.—Whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

3-A. Enhanced penalty on second and subsequent convictions.—Whoever, having already been convicted of an offence under section 2 or section 3, is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1911

22/03/1911

1. Short title and extent.—(1) This Act may be called THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1911.

(2) It extends to the whole of India except territories which, immediately before the 1st November, 1956, were comprised in Part B States, but shall have operation only in such States or parts of States as the State Government may from time to time notify in the Official Gazette.

2. Power of State Government to notify proclaimed areas.—(1) The Government may, [* * *] by notification in the Official Gazette, declare the whole or any part of a State, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the State Government [* * *] from making any further notifications in respect of the same area from time to time as it may think fit.

3. Definition.—(1) In this Act, the expression “public meeting” means a meeting which is open to the public or any class or portion of the public.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

4. Notice to be given of public meetings.—(1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or for the exhibition or distribution of any writing or printed matter relating to any such subject, shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously; or

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police, as the case may be.

(2) **Power of Magistrate to cause report to be taken.**—The District Magistrate or any Magistrate of the first class authorised by the District Magistrate in this behalf may, by order in writing, depute one or more police officers, not being below the rank of head constable, or other persons, to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

(3) **Exception.**—Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority, or to public meetings convened by a Sheriff, or to any public meetings or class of public meetings exempted for that purpose by the State Government by general or special order.

5. Power to prohibit public meetings.—The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

6. Penalties.—(1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code (45 of 1860) and of Chapter IX of the Code of Criminal Procedure, 1898 (5 of 1898).

7. Penalty for delivery of speeches in public places.—Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from the provisions of section 4 without the permission in writing of the Magistrate of the district or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

8. Cognizance of offences.—No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class or Sub-Divisional Magistrate shall try any offence against this Act.

9. Repeals.—*[Repealed by the Repealing Act, 1927 (12 of 1927), section 2 and Schedule.]*

THE PREVENTION OF TERRORISM (REPEAL) ACT, 2004

21/12/2004

1. Short title and commencement.—(1) This Act may be called THE PREVENTION OF TERRORISM (REPEAL) ACT, 2004.

(2) It shall be deemed to have come into force on the 21st day of September, 2004.

2. Repeal of Act 15 of 2002 and saving.—(1) The Prevention of Terrorism Act, 2002 (15 of 2002) (hereinafter referred to as the principal Act) is hereby repealed.

(2) The repeal of the principal Act shall not affect—

(a) the previous operation of, or anything duly done or suffered under the principal Act, or

(b) any right, privilege or obligation or liability acquired, accrued or incurred under the principal Act, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under the principal Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the principal Act had not been repealed:

Provided that notwithstanding anything contained in this sub-section or in any other law for the time being in force, no Court shall take cognizance of an offence under the principal Act after the expiry of the period of one year from the commencement of this Act.

(3) Notwithstanding the repeal of section 60 of the principal Act, the Review Committee constituted by the Central Government under sub-section (1) of that section, whether or not an application under sub-section (4) of that section has been made, shall review all cases registered under the principal Act as to whether there is a *prima facie* case for proceeding against the accused hereunder and such review shall be completed within a period of one year from the commencement of this Act and where the Review Committee is of the opinion that there is no *prima facie* case for proceeding against the accused, then,—

(a) in cases in which cognizance has been taken by the Court, the cases shall be deemed to have been withdrawn; and

(b) in cases in which investigations are pending, the investigations shall be closed forthwith,

with effect from the date of issuance of the direction by such Review Committee in this regard.

(4) The Review Committee constituted by the Central Government under sub-section (1) of section 60 of the principal Act shall, while reviewing cases, have powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) discovery and production of any document;

(b) requisitioning any public record or copy thereof from any Court or office.

(5) The Central Government may constitute more Review Committees, as it may consider necessary, for completing the review within the period specified in sub-section (3).

3. Repeal and saving.—(1) The Prevention of Terrorism (Repeal) Ordinance, 2004 (Ord. 1 of 2004) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE PRISONERS ACT, 1990

2/2/1990

PART I PRELIMINARY

1. Short title and extent.—(1) This Act may be called THE PRISONERS ACT, 1990.

(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States [*].

[* * *]

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

(a) "Court" includes a Coroner and any officer lawfully exercising civil, criminal or revenue jurisdiction; and

(b) "prison" includes any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

(c) "States" means the territories to which this Act extends.

PART II

GENERAL

3. Officers in charge of prisons to detain persons duly committed to their custody.—The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law.

4. Officers in charge of prisons to return writs, etc., after execution or discharge.—The officer in charge of a prison shall forthwith, after the execution of every such writ, order or warrant as aforesaid other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

PART III

PRISONERS IN THE PRESIDENCY-TOWNS

5. Warrants, etc., to be directed to police officers.—Every writ or warrant for the arrest of any person issued by the High Court in the exercise of its ordinary, extraordinary or other criminal jurisdiction shall be directed to and executed by a police officer within the local limits of such jurisdiction.

6. Power for State Governments to appoint Superintendents of Presidency prisons.—The State Government may appoint officers who shall have authority to receive and detain prisoners committed to their custody under this Part.

Explanation.—Any officer so appointed, by whatever designation he may be styled, is hereinafter referred to as "the Superintendent".

7. Delivery of persons sentenced to imprisonment or death by High Court.—Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the Superintendent together with its warrant, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

8. Delivery of persons sentenced to transportation by High Court.—Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation [* * *], the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the transportation [* * *] of such person shall be deemed to commence from such delivery.

9. Delivery of persons committed by High Court in execution of a decree or for contempt.—Where any person is committed by the High Court, whether in execution of a decree or for contempt of Court or for any other cause, the Court shall cause him to be delivered to the Superintendent, together with its warrant of commitment.

10. Delivery of persons sentenced by Presidency Magistrates.—Where any person is sentenced by a Presidency Magistrate to imprisonment, or is committed to prison for failure to find security to keep the peace or to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with his warrant.

11. Delivery of persons committed for trial by High Court.—Every person committed by a Magistrate, or Justice of the peace for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing the Superintendent to produce such person before the Court for trial; and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a criminal session thereof, together with the warrant of commitment, in order that he may be dealt with according to law.

12. Custody pending hearing by High Court under section 350 of the Code of Civil Procedure of application for insolvency.—The High Court may, pending the hearing, under section 350 of the Code of Civil Procedure (14 of 1882), of any application for a declaration of insolvency, cause the judgment-debtor concerned to be delivered to the Superintendent, subject to the provisions as to release on security of section 349 of the said Code, and the Superintendent shall detain the said judgment-debtor in safe custody until he is re-delivered to an officer of the High Court for the purpose of being taken before it in pursuance of its order, or until he is released in due course of law.

13. Delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency-town.—(1) Every person arrested in pursuance of a writ, warrant or order of the High Court in the exercise of its original civil jurisdiction, or in pursuance of a warrant of any Civil Court established in a presidency-town under any law or enactment for the time being in force, or in pursuance of a warrant issued under section 5, shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant or order was issued, awarded or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction.

(2) If the said Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, such person arrested as aforesaid shall, unless a Judge of the said Court otherwise directs, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction in order that such person may be dealt with according to law; and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

PART IV

PRISONERS OUTSIDE THE PRESIDENCY-TOWNS

14. References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.—In this Part all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

15. Power for officers in charge of prisons to give effect to sentences of certain Courts.—(1) Officers in charge of prisons outside the Presidency-towns may give effect to any sentence or order or warrant for the detention of any person passed or issued—

(a) by any Court or tribunal acting, whether within or without the States under the general or special authority of the Central Government, or of any State Government, or of the Government of Burma, or by any Court or tribunal, which was before the commencement of the Constitution acting under the general or special authority of His Majesty, or of the Crown Representative; or

(b) before the 26th January, 1950, by any Court or tribunal in any Indian State—

(i) if the presiding Judge, or if the Court or tribunal consisted of two or more Judges, at least one of the Judges, was an officer of the Crown authorised to sit as such Judge by the State or the Ruler thereof or by the Central Government or the Crown Representative; and

(ii) if the reception, detention or imprisonment in any Province of India of persons sentenced by any such Court or tribunal had been authorised by general or special order by the State Government: [*]

[* * *]

Provided that effect shall not be given to any sentence or order or warrant for detention passed or issued by any Court or tribunal in Burma without the previous sanction of the State Government concerned.

(2) Where a Court or tribunal of such an Indian State as aforesaid had passed a sentence which could not have been executed without the concurrence of an officer of the Crown, and such sentence has been considered on the merits and confirmed by any such officer specially authorised in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order or warrant of a Court or tribunal acting under the authority of the Central Government or the Crown Representative.

16. Warrant of officer of such Court to be sufficient authority.—A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him.

17. Procedure where officer in charge of prison doubts and legality of warrant sent to him for execution under this Part.—(1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to the State Government, by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant or order.

18. Execution in the States of certain capital sentences not ordinarily executable there.—(1) Where a Court established by the authority of the Central Government exercising, in or with respect to territory beyond the limits of the States, jurisdiction which the Central Government has in such territory,—

(a) has sentenced any person to death, and

(b) being of opinion that such sentence should, by reason of there being in such territory no secure place for the confinement of such person or no suitable appliances for his execution in a decent and humane manner, be executed in the States, has issued its warrant for the execution of such sentence to the officer in charge of a prison in the States, such officer shall, on receipt of the warrant, cause the execution to be carried out at such place as may be prescribed therein in the same manner and subject to the same conditions in all respects as if it were a warrant duly issued under the provisions of section 381 of the Code of Criminal Procedure, 1898 (5 of 1898).

(2) The prisons of which the officers in charge are to execute sentences under any such warrants as aforesaid shall in each State be such as the State Government may, by general or special order, direct.

[* * *]

[* * *]

PART V

PERSONS UNDER SENTENCE OF PENAL SERVITUDE

19-27.—*[Repealed by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (17 of 1949), section 4 (w.e.f. 6-4-1949).]*

PART VI

REMOVAL OF PRISONERS

28. References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.—In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

29. Removal of prisoners.—(1) The State Government may, by general or special order, provide for the removal of any prisoner confined in a person—

(a) under sentence of death, or

(b) under, or in lieu of, a sentence of imprisonment or transportation, or

(c) in default of payment of a fine, or

(d) in default of giving security for keeping the peace or for maintaining good behaviour,
to any other prison in the State [* * *].

(2) Subject to the orders, and under the control, of the State Government, the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State [* * *].

30. Lunatic prisoners how to be dealt with.—(1) Where it appears to the State Government that any person detained or imprisoned under any order or sentence of any Court

is of unsound mind, the State Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the State, there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the State Government that the prisoner has become of sound mind, the State Government shall, by a warrant direct to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the State, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of section 9 of the Lunatic Asylums Act, 1858 (36 of 1858) shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.

(4) In any case in which the State Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the State, the State Government may order his removal to any such asylum or place within any other State or within any part of India to which this Act does not extend by agreement with the State Government of such other State [* * *]; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section.

31. Removal of prisoners from territories under one Local Government to territories under another.—*[Repealed by the Amending Act, 1903 (1 of 1903), section 4 and Schedule III.]*

PART VII

PERSONS UNDER SENTENCE OF TRANSPORTATION

32. Appointment of places for confinement of persons under sentence of transportation and removal thereto.—(1) The State Government may appoint places within the State to which persons under sentence of transportation shall be sent; and the State Government, or some officer duly authorised in this behalf by the State Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

(2) In any case in which the State Government is competent under sub-section (1) to appoint places within the States and to order the removal thereto of persons under sentence of transportation, the State Government may appoint such places in any other State by agreement with the State Government of that State, and may by like agreement give orders or duly authorize some officer to give orders for the removal thereto of such persons.

PART VIII

DISCHARGE OF PRISONERS

33. Release, on recognizance, by order of High Court, of prisoner recommended for pardon.—Any High Court may, in any case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

PART IX

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE

34-52. *[Repealed by the Prisoners (Attendance in Courts) Act, 1955 (32 of 1955), section 10.]*

53. Repeals.—*[Repealed by the Repealing and Amending Act, 1914 (10 of 1914), section 3 and Schedule II.]*

THE PRISONS ACT, 1894

22/03/1984

CHAPTER I PRELIMINARY

1. Title, extent and commencement.—(1) This Act may be called THE PRISONS ACT, 1894.

(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States; and

(3) It shall come into force on the first day of July, 1894.

(4) Nothing in this Act shall apply to civil jails in the State of Bombay as it existed immediately before the 1st November, 1956 outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive) of Bombay Act 2 of 1874, as amended by subsequent enactments.

2. Repeal.—*[Repealed by the Repealing Act, 1938 (1 of 1938), section 2 and Schedule.]*

3. Definitions.—In this Act,—

(1) “prison” means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(a) any place for the confinement of prisoners who are exclusively in the custody of the police;

(b) any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882 (10 of 1882); or

(c) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

(2) “criminal prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial;

(3) “convicted criminal prisoner” means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882 (10 of 1882) or under the Prisoners Act, 1871 (5 of 1871);

(4) “civil prisoner” means any prisoner who is not a criminal prisoner;

(5) “remission system” means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jail;

(6) “history ticket” means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules hereunder;

(7) “Inspector General” means the Inspector General of Prisons;

(8) “Medical Subordinate” means an Assistant Surgeon, Apothecary or qualified Hospital Assistant; and

(9) “prohibited article” means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

CHAPTER II

MAINTENANCE AND OFFICERS OF PRISONS

4. Accommodation for prisoners.—The State Government shall provide for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

5. Inspector-General.—An Inspector General shall be appointed for the territories subject to each State Government, and shall exercise, subject to the orders of the State Government, the general control and superintendence of all prisons situated in the territories under such Government.

6. Officers of prisons.—For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the State Government thinks necessary:

Provided that the State Government of Bombay may [* * *] declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

7. Temporary accommodation for prisoners.—Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison, or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoner, provision shall be made, by such officer and in such manner as the State Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as can be conveniently or safely kept in the prison.

CHAPTER III

DUTIES OF OFFICERS

Generally

8. Control and duties of officers of prisons.—All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent or be prescribed by rules under section 59.

9. Officers not to have business dealings with prisoners.—No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings, directly or indirectly, with any prisoner.

10. Officers not to be interested in prison contracts.—No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison; nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

Superintendent

11. Superintendent.—(1) Subject to the orders of the Inspector General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by the State Government, the Superintendent of a prison other than a Central prison or a prison situated in Presidency-town shall obey all orders not inconsistent with this Act or any rule hereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector General all such orders and the action taken thereon.

12. Records to be kept by Superintendent.—The Superintendent shall keep, or cause to be kept, the following records:—

- (1) a register of prisoners admitted;
 - (2) a book showing when each prisoner is to be released;
 - (3) a punishment book for the entry of the punishments inflicted on prisoners for prison-offences;
 - (4) a visitors' book for the entry of any observation made by the visitors touching any matters connected with the administration of the prison;
 - (5) a record of the money and other articles taken from prisoners;
- and all such other records as may be prescribed by rules under section 59 [* * *].

Medical Officer

13. Duties of Medical Officer.—Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the State Government under section 59.

14. Medical Officer to report in certain cases.—Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector General for information.

15. Report on death of prisoner.—On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely:—

- (1) the day on which the deceased first complained of illness or was observed to be ill,
 - (2) the labour, if any, on which he was engaged on that day,
 - (3) the scale of his diet on that day,
 - (4) the day on which he was admitted to hospital,
 - (5) the day on which the Medical Officer was first informed of the illness,
 - (6) the nature of the disease,
 - (7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,
 - (8) when the prisoner died, and
 - (9) (in cases where a post-mortem examination is made) an account of the appearances after death,
- together with any special remarks that appear to the Medical Officer to be required.

Jailer

16. Jailer.—(1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailer shall not, without the Inspector General's sanction in writing, be concerned in any other employment.

17. Jailer to give notice of death of prisoner.—Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

18. Responsibility of Jailer.—The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confined to his care, and for the money and other articles taken from prisoners.

19. Jailer to be present at night.—The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

20. Powers of Deputy and Assistant Jailers.—Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule hereunder.

Subordinate Officers

21. Duties of gate-keeper.—The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer.

22. Subordinate officers not to be absent without leave.—Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

23. Convict officers.—Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

CHAPTER IV

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS

24. Prisoners to be examined on admission.—(1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

25. Effects of prisoners.—All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer.

26. Removal and discharge of prisoners.—(1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V

DISCIPLINE OF PRISONERS

27. Separation of prisoners.—The requisitions of this Act with respect to the separation of prisoners are as follows:—

(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any inter-course with the male prisoners;

(2) in a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and

(4) civil prisoners shall be kept apart from criminal prisoners.

28. Association and segregation of prisoners.—Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

29. Solitary confinement.—No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

30. Prisoners under sentence of death.—(1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS

31. Maintenance of certain prisoners from private sources.—A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules, as may be approved by the Inspector General.

32. Restriction on transfer of food and clothing between certain prisoners.—No part of any food, clothing, bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

33. Supply of clothing and bedding to civil and unconvicted criminal prisoners.—(1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner, and in default of such payment the prisoner may be released.

CHAPTER VII

EMPLOYMENT OF PRISONERS

34. Employment of civil prisoners.—(1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

35. Employment of criminal prisoners.—(1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(2) The Medical Officer shall, from time to time, examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

36. Employment of criminal prisoners sentenced to simple imprisonment.—Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

CHAPTER VIII

HEALTH OF PRISONERS

37. Sick prisoners.—(1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

38. Record of directions of Medical Officers.—All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket or in such other record as the State Government may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

39. Hospital.—In every prison a hospital or proper place for the reception of sick prisoners shall be provided.

CHAPTER IX

VISITS TO PRISONERS

40. Visits to civil and unconvicted criminal prisoners.—Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

41. Search of visitors.—The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the State Government may direct.

CHAPTER X

OFFENCES IN RELATIONS TO PRISONS

42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.—Whoever, contrary to any rule under section 59 introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

and whoever abets any offence made punishable by this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. Power to arrest for offence under section 42.—When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

44. Publication of penalties.—The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

CHAPTER XI

PRISON OFFENCES

45. Prison offences.—The following acts are declared to be prison-offences when committed by a prisoner:—

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence;

(2) any assault or use of criminal force;

(3) the use of insulting or threatening language;

(4) immoral or indecent or disorderly behaviour;

(5) wilfully disabling himself from labour;

(6) contumaciously refusing to work;

(7) filling, cutting, altering or removing handcuffs, fetters or bars without due authority;

(8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment;

(9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment;

(10) wilful damage to prison property;

(11) tampering with or defacing history-tickets, records or documents;

(12) receiving, possessing or transferring any prohibited article;

(13) feigning illness;

(14) wilfully bringing a false accusation against any officer or prisoner;

(15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison official; and

(16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

46. Punishment of such offences.—The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning.

Explanation.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment book and on the prisoner's history ticket;

(2) change of labour to some more irksome or severe form for such period as may be prescribed by rules made by the State Government;

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government;

(5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months;

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government;

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government;

(8) separate confinement for any period not exceeding three months.

Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners;

(9) penal diet, that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the State Government:

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week;

(10) cellular confinement for any period not exceeding fourteen days:

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement.

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners;

[* * *]

(11) penal diet as defined in clause (9) combined with cellular confinement [* * *];

(12) whipping, provided that the number of stripes shall not exceed thirty:

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

47. Plurality of punishment under section 46.—(1) Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely:—

(1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section;

(2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with cellular confinement;

(3) cellular confinement shall not be combined with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable;

(4) whipping shall not be combined with any other form of punishment except cellular or separate confinement and loss of privileges admissible under the remission system;

(5) no punishment will be combined with any other punishment in contravention of rules made by the State Government.

(2) No punishment shall be awarded for any such offence so as to combine with the punishment awarded for any other such offence, two of the punishment which may not be awarded in combination for any such offence.

48. Award of punishments under sections 46 and 47.—(1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector-General.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

49. Punishments to be in accordance with foregoing sections.—Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

50. Medical Officer to certify to fitness of prisoner for punishment.—(1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded, has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment book prescribed in section 12.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

51. Entries in punishment books.—(1) In the punishment book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison offence of which he was guilty, the date on which such prison offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefore.

(3) Against the entries relating to each punishment the Jailer and Superintendent shall affix their initials as evidence of the correctness of the entries.

52. Procedure on committal of heinous offence.—If any prisoner is guilty of any offence against prison discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class or Presidency Magistrate having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46:

Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate: and

Provided also that no person shall be punished twice for the same offence.

53. Whipping.—(1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in a diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

54. Offences by prison subordinates.—(1) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

CHAPTER XII

MISCELLANEOUS

55. Extramural custody, control and employment of prisoners.—A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

56. Confinement in irons.—Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, may, subject to such rules and instructions as may be laid down by the Inspector-General with the sanction of the State Government, so confine them.

57. Confinement of prisoners under sentence of transportation in irons.—

(1) Prisoners under sentence of transportation may, subject to any rules made under section 59, be confined in fetters for the first three months after admission to prison.

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector-General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector-General may sanction such retention accordingly.

58. Prisoners not to be ironed by Jailer except under necessity.—No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

59. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules consistent with this Act—

- (1) defining the acts which shall constitute prison-offences;
- (2) determining the classification of prison-offences into serious and minor offences;
- (3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof;
- (4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code (45 of 1860) may or may not be dealt with as a prison-offence;
- (5) for the award of marks and the shortening of sentences;
- (6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape;
- (7) defining the circumstances and regulating the conditions under which prisoner in danger of death may be released;
- (8) for the classification of prisons, and description and construction of wards, cells and other places of detention;
- (9) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons;
- (10) for the Government of prisons and for the appointment of all officers appointed under this Act;
- (11) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost;
- (12) for the employment, instruction and control of convicts within or without prisons;

(13) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited;

(14) for classifying and prescribing the forms of labour and regulating the periods of rest from labour;

(15) for regulating the disposal of the proceeds of the employment of prisoners;

(16) for regulating the confinement in fetters of prisoners sentenced to transportation;

(17) for the classification and the separation of prisoners;

(18) for regulating the confinement of convicted criminal prisoners under section 28;

(19) for the preparation and maintenance of history-tickets;

(20) for the selection and appointment of prisoners as officers of prisons;

(21) for rewards for good conduct;

(22) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire subject, however, to the consent of the State Government of any other State to which a prisoner is to be transferred;

(23) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;

(24) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;

(25) for the appointment and guidance of visitors of prisons;

(26) for extending any or all of the provisions of this Act and of the rules hereunder to subsidiary jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure, 1882 (10 of 1882), and to the officers employed, and the prisoners confined, therein;

(27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners; and

(28) generally for carrying into effect the purposes of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

60. Power of Local Government to make rules.—*[Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.]*

61. Exhibition of copies of rules.—Copies of rules, under section 59 so far as they affect the Government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

62. Exercise of powers of Superintendent and Medical Officer.—All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the State Government may appoint in this behalf either by name or by his official designation.

THE PRIVATE SECURITY AGENCIES (REGULATION) ACT, 2005

23/06/2005

1. Short title, extent and commencement.—(1) This Act may be called THE PRIVATE SECURITY AGENCIES (REGULATION) ACT, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

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

(a) “armoured car service” means the service provided by deployment of armed guards along with armoured car and such other related services which may be notified by the Central Government or as the case may be, the State Government from time to time;

(b) “Controlling Authority” means the Controlling Authority appointed under sub-section (1) of section 3;

(c) “licence” means a licence granted under sub-section (5) of section 7;

(d) “notification” means a notification published in the Official Gazette;

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

(f) "private security" means security provided by a person, other than a public servant, to protect or guard any person or property or both and includes provision of armoured car service;

(g) "private security agency" means a person or body of persons other than a government agency, department or organisation engaged in the business of providing private security services including training to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property;

(h) "private security guard" means a person providing private security with or without arms to another person or property or both and includes a supervisor;

(i) "State Government", in relation to a Union territory, includes the Administrator of that Union territory appointed by the President under article 239 of the Constitution.

3. Appointment of Controlling Authority.—(1) The State Government shall, by notification, designate an officer not below the rank of a Joint Secretary in the Home Department of the State or an equivalent officer to be the Controlling Authority for the purposes of this Act.

(2) The State Government may, for efficient discharge of functions by the Controlling Authority, provide it with such other officers and staff as that Government considers necessary.

4. Persons or Private Security Agency not to engage or provide private security guard without licence.—No person shall carry on or commence the business of private security agency, unless he holds a licence issued under this Act:

Provided that the person carrying on the business of private security agency, immediately before the commencement of this Act, may continue to do so for a period of one year from the date of such commencement and if he has made an application for such licence within the said period of one year, till the disposal of such application:

Provided further that no private security agency shall provide private security abroad without obtaining permission of the Controlling Authority, which shall consult the Central Government before according such permission.

5. Eligibility for licence.—An application for issue of a licence under this Act shall only be considered from a person after due verification of his antecedents.

6. Persons not eligible for licence.—(1) A person shall not be considered for issue of a licence under this Act, if he has been—

(a) convicted of an offence in connection with promotion, formation or management of a company (any fraud or misfeasance committed by him in relation to the company), including an undischarged insolvent; or

(b) convicted by a competent Court for an offence, the prescribed punishment for which is imprisonment of not less than two years; or

(c) keeping links with any organisation or association which is banned under any law on account of their activities which pose threat to national security or public order or there is information about such a person indulging in activities which are prejudicial to national security or public order; or

(d) dismissed or removed from Government service on grounds of misconduct or moral turpitude.

(2) A company, firm or an association of persons shall not be considered for issue of a licence under this Act, if, it is not registered in India, or having a proprietor or a majority shareholder, partner or director, who is not a citizen of India.

7. Application for grant of licence.—(1) An application for grant of licence to a private security agency shall be made to the Controlling Authority in such form as may be prescribed.

(2) The applicant shall submit an affidavit incorporating the details in relation to the provisions contained in section 6, ensure the availability of the training for its private security guards and supervisors required under sub-section (2) of section 9, fulfilment of conditions under section 11 and of cases registered with police or pending in a Court of law involving the applicant.

(3) Every application under sub-section (1) shall be accompanied by a fee of—

(a) rupees five thousand if the private security agency is operating in one district of a State;

(b) rupees ten thousand if the agency is operating in more than one but up to five districts of a State; and

(c) rupees twenty-five thousand if it is operating in the whole State.

(4) On receipt of an application under sub-section (1), the Controlling Authority may, after making such inquiries as it considers necessary and obtaining no objection certificate from the concerned police authority, by order in writing, either grant a licence or refuse to grant the same within a period of sixty days from the date of receipt of application with complete particulars and the prescribed fee:

Provided that no order of refusal shall be made unless—

(a) the applicant has been given a reasonable opportunity of being heard; and

(b) the grounds on which licence is refused is mentioned in the order.

(5) A licence granted under this section—

(a) shall be valid for a period of five years unless the same is cancelled under sub-section (1) of section 13;

(b) may be renewed from time to time after the expiry of five years, for a further period of five years on payment of such fee as may be prescribed; and

(c) shall be subject to such conditions as may be prescribed.

8. Renewal of licence.—(1) An application for renewal of licence shall be made to the Controlling Authority, not less than forty-five days before the date of expiry of the period of validity thereof, in such form as may be prescribed and shall be accompanied by the requisite fee and other documents required under sections 6, 7 and 11 of this Act.

(2) The Controlling Authority shall pass an order on application for renewal of licence within thirty days from the date of receipt of application complete in all respects.

(3) On receipt of an application under sub-section (1), the Controlling Authority may, after making such inquiries as he considers necessary and by order in writing, renew the licence or refuse to renew the same:

Provided that no order of refusal shall be made except after giving the applicant a reasonable opportunity of being heard.

9. Conditions for commencement of operation and engagement of supervisors.—

(1) Every private security agency shall, within six months of obtaining the licence, commence its activities.

(2) Every private security agency shall ensure imparting of such training and skills to its private security guards and supervisors as may be prescribed:

Provided that the person carrying on the business of private security agency, before the commencement of this Act, shall ensure the required training to its security guards and supervisors within a period of one year from the date of such commencement.

(3) Every private security agency shall, within sixty days from the date of issue of the licence, employ such number of supervisors, as may be prescribed.

(4) A private security agency shall not employ or engage a person as a supervisor unless he fulfils the conditions specified in sub-section (1) of section 10.

(5) While engaging a supervisor of private security guards, every private security agency shall give preference to a person who has experience of serving in the Army, Navy, Air Force or any other Armed forces of the Union or State Police including armed constabularies and Home Guards for a period of not less than three years.

10. Eligibility to be a private security guard.—(1) A private security agency shall not employ or engage any person as a private security guard unless he—

(a) is a citizen of India or a citizen of such other country as the Central Government may, by notification in the Official Gazette, specify;

(b) has completed eighteen years of age but has not attained the age of sixty-five years;

(c) satisfies the agency about his character and antecedents in such manner as may be prescribed;

- (d) has completed the prescribed security training successfully;
- (e) fulfils such physical standards as may be prescribed; and
- (f) satisfies such other conditions as may be prescribed.

(2) No person who has been convicted by a competent Court or who has been dismissed or removed on grounds of misconduct or moral turpitude while serving in any of the armed forces of the Union, State Police Organisations, Central or State Governments or in any private security agency shall be employed or engaged as a private security guard or a supervisor.

(3) Every private security agency may, while employing a person as a private security guard, give preference to a person who has served as a member in one or more of the following, namely:—

- (i) Army;
- (ii) Navy;
- (iii) Air Force;
- (iv) any other armed forces of the Union;
- (v) Police, including armed constabularies of States; and
- (vi) Home Guards.

11. Conditions of licence.—(1) The State Government may frame rules to prescribe the conditions on which licence shall be granted under this Act and such conditions shall include requirements as to the training which the licensee is to undergo, details of the person or persons forming the agency, obligation as to the information to be provided from time to time to the Controlling Authority regarding any change in their address, change of management and also about any criminal charge made against them in the course of their performance of duties of the private security agency or as the case may be, a private security guard employed or engaged by them.

(2) The State Government may make provision in the rules to verify about imparting of required training by the private security agency under sub-section (2) of section 9 and to review continuation or otherwise of licence of such private security agency which may not have adhered to the condition of ensuring the required training.

12. Licence to be exhibited.—Every private security agency shall exhibit its licence or copy thereof in a conspicuous place of its business.

13. Cancellation and suspension of licence.—(1) The Controlling Authority may cancel any licence on any one or more of the following grounds, namely:—

- (a) that the licence has been obtained on misrepresentation or suppression of material facts;
- (b) that the licence holder has used false documents or photographs;
- (c) that the licence holder has violated the provisions of this Act or the rules made hereunder or any of the conditions of the licence;
- (d) that the licence holder has misused information obtained by him during the discharge of his duties as the private security agency to any industrial or business undertaking or a company or any other person;
- (e) that the licence holder by using any letter-head, advertisement or any other printed matter or in any other manner represented that the private security agency is an instrumentality of the Government or such agency is or has been using a name different from that for which licence has been granted;
- (f) that the licence holder is or has been impersonating or permitting or aiding or abetting any body to impersonate as a public servant;
- (g) that the private security agency had failed to commence its activities or to engage a supervisor within the specified time period;
- (h) that the licence holder is or has wilfully failed or refused to render the services agreed to any person;
- (i) that the licence holder has done any act which is in violation of a Court order or an order of a lawful authority or is or has been advising, encouraging or assisting any person to violate any such order;

(j) that the licence holder has violated the provisions of the Acts given in the Schedule which may be modified by the Central Government, by notification in the Official Gazette;

(k) that there have been repeated instances when the private security guard or guards provided by the private security agency—

(i) failed to provide private security or were guilty of gross negligence in not providing such security;

(ii) committed a breach of trust or misappropriated the property or a part thereof which they were supposed to protect;

(iii) were found habitually drunk or indisciplined;

(iv) were found to be involved in committing crimes; or

(v) had connived or abetted a crime against the person or property placed under their charge; or

(l) that the licence holder has done any act which poses a threat to national security, or did not provide assistance to the police or other authority in the discharge of its duties or acted in a manner prejudicial to national security or public order or law and order.

(2) Where the Controlling Authority, for reasons to be recorded in writing, is satisfied that pending the question of cancelling of licence on any of the grounds mentioned in sub-section (1), it is necessary to do so, that Controlling Authority may, by order in writing, suspend the operation of the licence for such period not exceeding thirty days as may be specified in the order and require the licence holder to show cause, within fifteen days from the date of issue of such order, as to why the suspension of the licence should not be extended till the determination of the question of cancellation.

(3) Every order of suspending or cancelling of a licence shall be in writing and shall specify the reasons for such suspension or cancellation and a copy thereof shall be communicated to the person affected.

(4) No order of cancellation of licence under sub-section (1) shall be made unless the person concerned has been given a reasonable opportunity of being heard.

14. Appeals.—(1) Any person aggrieved by an order of the Controlling Authority refusing the licence under sub-section (4) of section 7 or renewal under sub-section (3) of section 8 or order of suspension of licence under sub-section (2) of section 13 or cancellation of licence under sub-section (1) of that section, may prefer an appeal against that order to the Home Secretary of the State Government within a period of sixty days of the date of such order:

Provided that an appeal may be admitted after the expiry of the said period of sixty days if the appellant satisfies the State Government that he has sufficient cause for not preferring the appeal within that period.

(2) Every appeal under sub-section (1) shall be made in such form as may be prescribed and shall be accompanied by a copy of the order appealed against.

(3) Before disposing of an appeal, the State Government shall give the appellant a reasonable opportunity of being heard.

15. Register to be maintained by a private security agency.—(1) Every private security agency shall maintain a register containing—

(a) the names and addresses of the persons managing the private security agency;

(b) the names, addresses, photographs and salaries of the private security guards and supervisors under its control;

(c) the names and addresses of the persons whom it had provided private security guards or services; and

(d) such other particulars as may be prescribed.

(2) The Controlling Authority may call for such information as it considers necessary from any private security agency, supervisor or private security guard to ensure due compliance of the Act.

16. Inspection of licence, etc.—The Controlling Authority or any other officer authorised by it in this behalf may at any reasonable time, enter the premises of the private security agency and inspect and examine the place of business, the records, accounts and other documents connected with the licence and may take copy of any document.

17. Issue of photo identity card.—(1) Every private security guard shall be issued a photo identity card, by the private security agency employing or engaging the guard.

(2) The photo identity card under sub-section (1) shall be issued in such form as may be prescribed.

(3) Every private security guard or supervisor shall carry on his person the photo identity card issued under sub-section (1) and shall produce it on demand for inspection by the Controlling Authority or any other officer authorised by it in this behalf.

18. Disclosure of information to unauthorized person.—(1) Any person who may be or has been employed or engaged as a private security guard by the private security agency shall not divulge to anyone other than the employer, or in such manner and to such person as the employer directs, any information acquired by him during such employment with respect to the work which he has been assigned by such employer, except such disclosure as may be required under this Act or in connection with any inquiry or investigation by the police or as may be required by an authority or process of law.

(2) All private security guards of a private security agency shall render necessary assistance to the police or to such authority in the process of any investigation pertaining to the activities of that agency.

(3) If violation of any law is noticed by any private security guard during the course of discharge of his duties, he shall bring it to the notice of his superior, who in turn shall inform the police either through his employer or agency or on his own.

19. Delegation.—The State Government may, by notification, direct that any power or function (except the powers to make rules under section 25)—

(a) which may be exercised or performed by it, or

(b) which may be exercised or performed by the Controlling Authority,

under this Act, may, in relation to such matter and subject to such conditions, if any, as may be specified in the notification, be also exercised or performed by such officer or authority subordinate to the Government or officer subordinate to the Controlling Authority, as may be specified in such notification.

20. Punishment for contravention of certain provisions.—(1) Any person who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any person or private security agency who contravenes, the provisions of sections 9, 10 and 12 of the Act, shall be punishable with a fine which may extend to twenty-five thousand rupees, in addition to suspension or cancellation of the licence.

21. Penalty for unauthorized use of certain uniforms.—If any private security guard or supervisor wears the uniform of the Army, Air force, Navy or any other armed forces of the Union or Police or any dress having the appearance or bearing any of the distinctive marks of that uniform, he and the proprietor of the private security agency shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

22. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section—

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

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

23. Indemnity.—No suit, prosecution or other legal proceeding shall lie against the Controlling Authority or any other officer authorised by it in respect of anything in good faith done or intended to be done under this Act.

24. Framing of model rules for adoption by States.—The Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this Act, and where any such model rules have been framed the State Government shall, while making any rules in respect of that matter under section 25, so far as is practicable, conform to such model rules.

25. Power of State Government to make rules.—(1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure for verification of character and antecedents under clause (c) of sub-section (1) of section 10; the type of training under clause (d) of sub-section (1) of section 10; the physical standard under clause (e) of sub-section (1) of section 10; and other conditions under clause (f) of sub-section (1) of section 10;

(b) the number of supervisors to be employed under sub-section (3) of section 9;

(c) the form of an application for grant of licence under sub-section (1) of section 7;

(d) the form in which the licence to be granted under sub-section (4) of section 7 and conditions subject to which such licence to be granted under section 11;

(e) the form of an application for renewal of licence under sub-section (1) of section 8;

(f) the form under sub-section (2) of section 14 for preferring an appeal;

(g) particulars to be maintained in a register under sub-section (1) of section 15;

(h) the form in which photo identity card under sub-section (2) of section 17 be issued;

(i) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

(4) In respect of Union territories, every rule made to carry out the provisions of the Act shall be laid before each House of Parliament and where there exists a Legislative Assembly, before that Assembly.

THE PROBATION OF OFFENDERS ACT, 1958

16/05/1958

1. Short title, extent and commencement.—(1) This Act may be called THE PROBATION OF OFFENDERS ACT, 1958.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State.

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

(a) "Code" means the Code of Criminal Procedure, 1898 (5 of 1898);

(b) "probation officer" means an officer appointed to be a probation officer or recognised as such under section 13;

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

(d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (5 of 1898), shall have the meanings respectively assigned to them in that Code.

3. Power of Court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or

section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. Power of Court to release certain offenders on probation of good conduct.—

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The Court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Power of Court to require released offenders to pay compensation and costs.—

(1) The Court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the Court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A Civil Court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

6. Restrictions on imprisonment of offenders under twenty-one years of age.—

(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which

the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1) the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

7. Report of probation officer to be confidential.—The report of a probation officer referred to in sub-section (2) of section 4 or sub-section (2) of section 6 shall be treated as confidential:

Provided that the Court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.

8. Variation of conditions of probation.—(1) If, on the application of a probation officer, any Court which passes an order under section 4 in respect of an offender is of opinion that in the interests of the offender and the public it is expedient or necessary to vary the conditions of any bond entered into by the offender, it may, at any time during the period when the bond is effective, vary the bond by extending or diminishing the duration thereof so, however, that it shall not exceed three years from the date of the original order or by altering the conditions thereof or by inserting additional conditions therein:

Provided that no such variation shall be made without giving the offender and the surety or sureties mentioned in the bond an opportunity of being heard.

(2) If any surety refuses to consent to any variation proposed to be made under sub-section (1), the Court may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the Court may sentence him for the offence of which he was found guilty.

(3) Notwithstanding anything hereinbefore contained, the Court which passes an order under section 4 in respect of an offender may, if it is satisfied on an application made by the probation officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into by him.

9. Procedure in case of offender failing to observe conditions of bond.—(1) If the Court which passes an order under section 4 in respect of an offender or any Court which could have dealt with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The Court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date which it may fix for hearing.

(3) If the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith—

(a) sentence him for the original offence; or

(b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.

(4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

10. Provision as to sureties.—The provisions of sections 122, 126, 126-A, 406-A, 514, 514-A, 514-B and 515 of the Code shall, so far as may be, apply in the case of bonds and sureties given under this Act.

11. Courts competent to make order under this Act, appeal and revision and powers of Courts in appeal and revision.—(1) Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any Court empowered to try

and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court to which appeals ordinarily lie from the sentences of the former Court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the Court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the Court to which appeals ordinarily lie from the sentences of the former Court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the Court by which the offender was found guilty.

12. Removal of disqualification attaching to conviction.—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence.

13. Probation officers.—(1) A probation officer under this Act shall be—

(a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government; or

(b) a person provided for this purpose by a society recognised in this behalf by the State Government; or

(c) in any exceptional case, any other person who, in the opinion of the Court, is fit to act as a probation officer in the special circumstances of the case.

(2) A Court which passes an order under section 4 or the District Magistrate of the district in which the offender for the time being resides may, at any time, appoint any probation officer in the place of the person named in the supervision order.

Explanation.—For the purposes of this section, a presidency-town shall be deemed to be a district and chief presidency magistrate shall be deemed to be the district magistrate of that district.

(3) A probation officer, in the exercise of his duties under this Act, shall be subject to the control of the district magistrate of the district in which the offender for the time being resides.

14. Duties of probation officers.—A probation officer shall, subject to such conditions and restrictions, as may be prescribed,—

(a) inquire, in accordance with any directions of a Court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the Court in determining the most suitable method of dealing with him and submit reports to the Court;

(b) supervise probationers and other persons placed under this supervision and, where necessary, endeavour to find them suitable employment;

(c) advise and assist offenders in the payment of compensation or costs ordered by the Court;

(d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4; and

(e) perform such other duties as may be prescribed.

15. Probation officers to be public servants.—Every probation officer and every other officer appointed in pursuance of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

16. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the State Government or any probation officer or any other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made hereunder.

17. Power to make rules.—(1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) appointment of probation officers, the terms and conditions of their service and the area within which they are to exercise jurisdiction;

(b) duties of probation officers under this Act and the submission of reports by them;

(c) the conditions on which societies may be recognised for the purposes of clause (b) of sub-section (1) of section 13;

(d) the payment of remuneration and expenses to probation officers or of a subsidy to any society which provides probation officers; and

(e) any other matter which is to be, or may be, prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication and shall, as soon as may be after they are made, be laid before the State Legislature.

18. Saving of operation of certain enactments.—Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947), [* * *] or of any law in force in any State relating to juvenile offenders or Borstal Schools.

19. Section 562 of the Code not to apply in certain areas.—Subject to the provisions of section 18 and section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

10/01/2007

1. Short title, extent and commencement.—(1) This Act may be called THE PROHIBITION OF CHILD MARRIAGE ACT, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir; and it applies also to all citizens of India without and beyond India:

Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.

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

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

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child;

(c) "contracting party", in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised;

(d) "Child Marriage Prohibition Officer" includes the Child Marriage Prohibition Officer appointed under sub-section (1) of section 16;

(e) "district Court" means, in any area for which a Family Court established under section 3 of the Family Courts Act, 1984 (66 of 1984) exists, such Family Court, and in any area for which there is no Family Court but a City Civil Court exists, that Court and in any other area, the principal Civil Court of original jurisdiction and includes and other Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed not to have attained his majority.

3. Child marriages to be voidable at the option of contracting party being a child.—

(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district Court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district Court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district Court and show cause why such order should not be passed.

4. Provision for maintenance and residence to female contracting party to child marriage.—(1) While granting a decree under section 3, the district Court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.

(2) The quantum of maintenance payable shall be determined by the district Court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.

(3) The amount of maintenance may be directed to be paid monthly or in lump sum.

(4) In case the party making the petition under section 3 is the female contracting party, the district Court may also make a suitable order as to her residence until her remarriage.

5. Custody and maintenance of children of child marriages.—(1) Where there are children born of the child marriage, the district Court shall make an appropriate order for the custody of such children.

(2) While making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the district Court.

(3) An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the district Court may, in the interest of the child, deem proper.

(4) The district Court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

6. Legitimacy of children born of child marriages.—Notwithstanding that a child marriage has been annulled by a decree of nullity under section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.

7. Power of district Court to modify orders issued under section 4 or section 5.—The district Court shall have the power to add to, modify or revoke any order made under

section 4 or section 5 and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition.

8. Court to which petition should be made.—For the purpose of grant of reliefs under sections 3, 4 and 5, the district Court having jurisdiction shall include the district Court having jurisdiction over the place where the defendant or the child resides, or where the marriage was solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition.

9. Punishment for male adult marrying a child.—Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

10. Punishment for solemnising a child marriage.—Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

11. Punishment for promoting or permitting solemnisation of child marriages.—
(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees:

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.

12. Marriage of a minor child to be void in certain circumstances.—Where a child, being a minor—

(a) is taken or enticed out of the keeping of the lawful guardian; or

(b) by force compelled, or by any deceitful means induced to go from any place; or

(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

13. Power of Court to issue injunction prohibiting child marriages.—
(1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.

(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take *suo motu* cognizance on the basis of any reliable report or information.

(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as *Akshaya Trutiya*, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.

(5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.

(6) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such

person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).

(9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both:

Provided that no woman shall be punishable with imprisonment.

14. Child marriages in contravention of injunction orders to be void.—Any child marriage solemnised in contravention of an injunction order issued under section 13, whether interim or final, shall be void *ab initio*.

15. Offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be cognizable and non-bailable.

16. Child Marriage Prohibition Officers.—(1) The State Government shall, by notification in the Official Gazette, appoint for the whole State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.

(2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.

(3) It shall be the duty of the Child Marriage Prohibition Officer—

(a) to prevent solemnisation of child marriages by taking such action as he may deem fit;

(b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;

(c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;

(d) to create awareness of the evil which results from child marriages;

(e) to sensitize the community on the issue of child marriages;

(f) to furnish such periodical returns and statistics as the State Government may direct; and

(g) to discharge such other functions and duties as may be assigned to him by the State Government.

(3) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.

(4) The Child Marriage Prohibition Officer shall have the power to move the Court for an order under sections 4, 5 and 13 and along with the child under section 3.

17. Child Marriage Prohibition Officers to be public servants.—The Child Marriage Prohibition Officers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

18. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prohibition Officer in respect of anything in

good faith done or intended to be done in pursuance of this Act or any rule or order made hereunder.

19. Power of State Government to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this Act shall, as soon as may be after it is made, be laid before the State Legislature.

20. Amendment of Act No. 25 of 1955.—In the Hindu Marriage Act, 1955, in section 18, for clause (a), the following clause shall be substituted, namely:—

“(a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both”.

21. Repeal and savings.—(1) The Child Marriage Restraint Act, 1929 (19 of 1929) is hereby repealed.

(2) Notwithstanding such repeal, all cases and other proceedings pending or continued under the said Act at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed.

THE PROHIBITION OF SMOKING IN PUBLIC PLACES RULES, 2008

1. Short title, extent and commencement.—(1) These rules may be called THE PROHIBITION OF SMOKING IN PUBLIC PLACES RULES, 2008.

(2) They shall come into force on the 2nd October, 2008.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) “hotel” shall mean a building or a part of a building where lodging, with or without board or other services, is provided by way of business for consideration monetary or otherwise and includes boarding house and guest house;

(b) “restaurant” shall mean any place to which the public has access and where any kind of food or drink is supplied for consumption on the premises by any person by way of business for consideration monetary or otherwise and shall include the open space surrounding such premises and includes—

(i) refreshment rooms, banquet halls, discotheques, canteen, coffee house, pubs, bars, airport lounge, and the like;

(c) “open space” mentioned in section 3(1) of the Act shall not include any place visited by the public such as open auditorium, stadium, railway station, bus stop/stand and other such places;

(d) “public place” defined in section 3(1) of the Act shall also include work places, shopping malls, and cinema halls;

(e) “smoking area or space” mentioned in the proviso to section 4 of the Act shall mean a separately ventilated smoking room that:—

(i) is physically separated and surrounded by full height walls on all four sides;

(ii) has an entrance with an automatically closing door normally kept in closed position;

(iii) has an air flow system, as specified in Schedule I;

(iv) has negative air pressure in comparison with the remainder of the building;

(f) Words and expressions used herein and not defined in these rules but defined in the Act shall have the meanings, respectively, assigned to them in the Act.

3. Prohibition of smoking in a public place.—(1) The owner, proprietor, manager, supervisor or in charge of the affairs of a public place shall ensure that:—

(a) No person smokes in the public place (under his jurisdiction/implied).

(b) The board as specified in Schedule II is displayed prominently at the entrance of the public place, in case there are more than one entrance at each such entrance and conspicuous place(s) inside. In case if there are more than one floor, at each floor including the staircase and entrance to the lift/s at each floor.

(c) No ashtrays, matches, lighters or other things designed to facilitate smoking are provided in the public place.

(2) The owner, proprietor, manager, supervisor or in charge of the affairs of a public place shall notify and cause to be displayed prominently the name of the person(s) to whom a

complaint may be made by a person(s) who observes any person violating the provisions of these rules.

(3) If the owner, proprietor, manager, supervisor or the authorised officer of a public place fails to act on report of such violation, the owner, proprietor, manager, supervisor or the authorised officer shall be liable to pay fine equivalent to the number of individual offences.

Explanation.—For the purpose of these rules the word offence means a person found violating any provision of the rules.

4. Hotels, restaurants and airports.—(1) The owner, proprietor, manager, supervisor or in charge of the affairs of a hotel having thirty or more rooms or restaurant having seating capacity of thirty persons or more and the manager of the airport may provide for a smoking area or space as defined in rule 2(e).

(2) Smoking area or space shall not be established at the entrance or exit of the hotel, restaurant and the airport and shall be distinctively marked as “Smoking Area” in English and one Indian language, as applicable.

(3) A smoking area or space shall be used only for the purpose of smoking and no other service(s) shall be allowed.

(4) The owner, proprietor, manager, supervisor or in charge of the affairs of a hotel having thirty or more rooms may designate separate smoking rooms in the manner prescribed as under:—

(a) all the rooms so designated shall form a separate section in the same floor or wing, as the case may be. In case of more than one floors/wings the room shall be in one floor/wing as the case may be;

(b) all such rooms shall be distinctively marked as “Smoking rooms” in English and one Indian language, as applicable;

(c) the smoke from such room shall be ventilated outside and does not infiltrate/permeate into the non-smoking areas of the hotel including lobbies and the corridors.

5. Recovery of fine by authorised officers.—(1) The authorised officers mentioned in Schedule III shall be competent to act under and compound the offences committed in violation of section 4 of the Act.

THE PROTECTION OF CIVIL RIGHTS ACT, 1955

08/05/1955

1. Short title, extent and commencement.—(1) This Act may be called THE PROTECTION OF CIVIL RIGHTS ACT, 1955.

(2) It extends to the whole of India.

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

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

(a) “civil rights” means any right accruing to a person by reason of the abolition of “untouchability” by article 17 of the Constitution;

(aa) “hotel” includes a refreshment room, a boarding house, a lodging house, a coffee house and a cafe;

(b) “place” includes a house, building and other structure and premises and also includes a tent, vehicle and vessel;

(c) “place or public entertainment” includes any place to which the public are admitted and in which an entertainment is provided or held.

Explanation.—“Entertainment” includes any exhibition, performance, game, sport and any other form of amusement;

(d) “place of public worship” means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by, persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers, therein, and includes—

(i) all lands and subsidiary shrines appurtenant or attached to any such place;

(ii) a privately owned place of worship which is, in fact, allowed by the owner thereof to be used as a place of public worship; and

(iii) such land or subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship;

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

(db) "Scheduled Castes" has the meaning assigned to it in clause (24) of article 366 of the Constitution;

(e) "shop" means any premises where goods are sold either wholesale or by retail or both wholesale and by retail and includes—

(i) any place from where goods are sold by a hawker or vendor or from a mobile van or cart;

(ii) a laundry and a hair cutting saloon;

(iii) any other place where services are rendered to customers.

3. Punishment for enforcing religious disabilities.—Whoever on the ground of "untouchability" prevents any person—

(a) from entering any place of public worship which is open to other persons professing the same religion [* * *] or any section thereof, as such person; or

(b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water-course, river or lake or bathing at any ghat of such tank, water-course, river or lake in the same manner and to the same extent as is permissible to other persons professing the same religion [* * *] or any section thereof, as such person,

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation.—For the purposes of this section and section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or developments including Virashavias, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminarayan Sampraday shall be deemed to be Hindus.

4. Punishment for enforcing social disabilities.—Whoever on the ground of "untouchability" enforces against any person any disability with regard to—

(i) access to any shop, public restaurant, hotel or place of public entertainment; or

(ii) the use of any utensils, and other articles kept in any public restaurant, hotel, dharmshala, sarai or musafirkhana for the use of the general public or any section thereof; or

(iii) the practice of any profession or the carrying on of any occupation, trade or business or employment in any job; or

(iv) the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public or any section thereof have a right to use or have access to; or

(v) the use of, or access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public, or any section thereof; or

(vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or any section thereof; or

(vii) the use of, or access to, any public conveyance; or

(viii) the construction, acquisition, or occupation of any residential premises in any locality, whatsoever; or

(ix) the use of any dharmshala, sarai or musafirkhana which is open to the general public, or to any section thereof; or

(x) the observance of any social or religious custom, usage or ceremony or taking part in, or taking out, any religious, social or cultural procession; or

(xi) the use of jewellery and finery,

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation.—For the purposes of this section, “enforcement of any disability” includes any discrimination on the ground of “untouchability”.

5. Punishment for refusing to admit persons to hospitals, etc.—Whoever on the ground of “untouchability”—

(a) refuses admission to any person to any hospital, dispensary, educational institution or any hostel [* *], if such hospital, dispensary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof; or

(b) does any act which discriminates against any such person after admission to any of the aforesaid institutions,

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

6. Punishment for refusing to sell goods or render services.—Whoever on the ground of “untouchability” refuses to sell any goods or render any service to any person at the same time and place and on the same terms and conditions at or on which such goods are sold or services are rendered to other persons in the ordinary course of business shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

7. Punishment for other offences arising out of “untouchability”.—(1) Whoever—

(a) prevents any person from exercising any right accruing to him by reason of the abolition of “untouchability” under article 17 of the Constitution; or

(b) molests, injures, annoys, obstructs or causes or attempts to cause obstruction to any person in the exercise of any such right or molests, injures, annoys or boycotts any person by reason of his having exercised any such right; or

(c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or the public generally to practice “untouchability” in any form whatsoever; or

(d) insults or attempts to insult, on the ground of “untouchability”, a member of a Scheduled Caste,

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation I.—A person shall be deemed to boycott another person who—

(a) refuses to let to such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for hire for, or do business with, such other person or to render to him or receive from him any customary service, or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or

(b) abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

Explanation II.—For the purposes of clause (c), a person shall be deemed to incite or encourage the practice of “untouchability”—

(i) if he, directly or indirectly, preaches “untouchability” or its practice in any form; or

(ii) if he justifies, whether on historical, philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of “untouchability” in any form.

(1-A) Whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of the abolition of “untouchability” under article 17 of the Constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.

(2) Whoever—

(i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section, or

(ii) takes any part in the ex-communication of such person, on the ground that such person has refused to practice “untouchability” or that such person has done any act in furtherance of the objects of this Act, that such person has done any act in furtherance of the objects of this Act,

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

7-A. Unlawful compulsory labour when to be deemed to be a practice of “untouchability”.—(1) Whoever compels any person, on the ground of “untouchability”, to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of “untouchability”.

(2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of “untouchability” shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation.—For the purposes of this section, “compulsion” includes a threat of social or economic boycott.

8. Cancellation or suspension of licences in certain cases.—When a person who is convicted of an offence under section 6 holds any licence under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the Court trying the offence may, without prejudice to any other penalty to which such person may be liable under that section, direct that the licence shall stand cancelled or be suspended for such period as the Court may deem fit, and every order of the Court so cancelling or suspending a licence shall have effect as if it had been passed by the authority competent to cancel or suspend the licence under any such law.

Explanation.—In this section, “licence” includes a permit or a permission.

9. Resumption or suspension of grants made by Government.—Where the manager or trustee of a place of public worship or any educational institution or hostel which is in receipt of a grant of land or money from the Government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

10. Abetment of offence.—Whoever abets any offence under this Act shall be punishable with the punishment provided for the offence.

Explanation.—A public servant who wilfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishable under this Act.

10-A. Power of State Government to impose collective fine.—(1) If, after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area are concerned in, or abetting the commission of, any offence punishable under this Act, or harbouring persons concerned in the commission of such offence or failing to render all the assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the Official Gazette, impose a collective fine on such inhabitants and apportion such fine amongst the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the State Government’s judgment of the respective means of such inhabitants and in making any such apportionment the State Government may assign a portion of such fine to a Hindu undivided family to be payable by it:

Provided that the fine apportioned to an inhabitant shall not be realised until the petition, if any, filed by him under sub-section (3) is disposed of.

(2) The notification made under sub-section (1) shall be proclaimed in the area by beat of drum or in such other manner as the State Government may think best in the circumstances to bring the imposition of the collective fine to the notice of the inhabitants of the said area.

(3)(a) Any person aggrieved by the imposition of the collective fine under sub-section (1) or by the order of apportionment, may, within the prescribed period, file a petition before the state Government or such other authority as that Government may specify in this behalf for being exempted from such fine or for modification of the order of apportionment:

Provided that no fee shall be charged for filing such petition.

(b) The State Government or the authority specified by it shall, after giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit:

Provided that the amount of the fine exempted or reduced under this section shall not be realisable from any person, and the total fine imposed on the inhabitants of an area under sub-section (1) shall be deemed to have been reduced to that extent.

(4) Notwithstanding anything contained in sub-section (3), the State Government may exempt the victims of any offence punishable under this Act or any person who does not, in its opinion, fall within the category of persons specified in sub-section (1), from the liability to pay the collective fine imposed under sub-section (1) or any portion thereof.

(5) The portion of collective fine payable by any person (including a Hindu undivided family) may be recovered in the manner provided by the Code of Criminal Procedure, 1973 (2 of 1974), for the recovery of fines imposed by a Court as if such portion were a fine imposed by a Magistrate.

11. Enhanced penalty on subsequent conviction.—Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, shall, on conviction, be punishable—

(a) for the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees;

(b) for the third offence or any offence subsequent to the third offence, with imprisonment for a term of not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees.

12. Presumption by Courts in certain cases.—Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste [* * *], the Court shall presume, unless the contrary is provided, that such act was committed on the ground of “untouchability”.

13. Limitation of jurisdiction of civil Courts.—(1) No civil Court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No Court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of “untouchability”.

14. Offences by companies.—(1) If the person committing an offence under this Act is a company, every person who at the time of the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

14-A. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or a State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

15. Offences to be cognizable and triable summarily.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be cognizable and every such offence, except where it is punishable with imprisonment for a minimum term exceeding three months, may be tried summarily by a Judicial Magistrate of the first class or in a metropolitan area by a Metropolitan Magistrate in accordance with the procedure specified in the said Code.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when any public servant is alleged to have committed the offence of abetment of an offence punishable under this Act, while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence of abetment except with the previous sanction—

(a) of the Central Government, in the case of a person employed in connection with the affairs of the Union; and

(b) of the State Government, in the case of a person employed in connection with the affairs of a State.

15-A. Duty of State Government to ensure that the rights accruing from the abolition of "untouchability" may be availed of by the concerned persons.—

(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability" are made available to, and are availed of by, the persons subjected to any disability arising out of "untouchability".

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include—

(i) the provision of adequate facilities including legal aid, to the persons subjected to any disability arising out of "untouchability" to enable them to avail themselves of such rights;

(ii) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(iii) the setting up of special Courts for the trial of offences under this Act;

(iv) the setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures;

(v) provision for periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;

(vi) the identification of the areas where persons are under any disability arising out of "untouchability" and adoption of such measures as would ensure the removal of such disability from such areas.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Government under sub-section (1).

(4) The Central Government shall, every year, place on the Table of each House of Parliament, a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

16. Act to override other laws.—Save a otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom or usage or any instrument having effect by virtue of any such law or any decree or other of any Court or other authority.

16-A. Probation of Offenders Act, 1958, not to apply to persons above the age of fourteen years.—The provisions of the Probation of Offenders Act, 1958 (20 of 1958), shall not apply to any person above the age of fourteen years who is found guilty of having committed any offence punishable under this Act.

16-B. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

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

17. Repeal.—The enactments specified in the Schedule are hereby repealed to the extent to which they or any of the provisions contained therein correspond or are repugnant to this Act or to any of the provisions contained therein.

THE PROTECTION OF HUMAN RIGHTS ACT, 1993

08/01/1994

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE PROTECTION OF HUMAN RIGHTS ACT, 1993.

(2) It extends to the whole of India:

Provided that it shall apply to the State of Jammu and Kashmir only insofar as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) “armed forces” means the naval, military and air forces and includes any other armed forces of the Union;

(b) “Chairperson” means the Chairperson of the Commission or of the State Commission, as the case may be;

(c) “Commission” means the National Human Rights Commission constituted under section 3;

(d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India;

(e) “Human Rights Court” means the Human Rights Court specified under section 30;

(f) “International Covenants” means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;

(g) “Member” means a Member of the Commission or of the State Commission, as the case may be;

(h) “National Commission for Minorities” means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);

(i) “National Commission for the Scheduled Castes” means the National Commission for the Scheduled Castes referred to in article 338 of the Constitution;

(ia) “National Commission for the Scheduled Tribes” means the National Commission for the Scheduled Tribes referred to in article 338-A of the Constitution;

(j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990 (20 of 1990);

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

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

(m) "public servant" shall have the meaning assigned to in section 21 of the Indian Penal Code (45 of 1860);

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to the State, be construed as a reference to a corresponding law, if any, in force in that State.

CHAPTER II

THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission.—(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of—

(a) a Chairperson who shall be a Chief Justice of the Supreme Court;

(b) one Member who is, or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been the Chief Justice of a High Court;

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission (except judicial functions and the power to make regulations under section 40-B) as may be delegated to him by the Commission or the Chairperson, as the case may be.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with previous approval of the Central Government, establish offices at other places in India.

4. Appointment of Chairperson and other Members.—(1) The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of—

(a) the Prime Minister —Chairperson;

(b) Speaker of the House of the People —Member;

(c) Minister in-charge of the Ministry of Home Affairs in the Government of India —Member;

(d) Leader of the Opposition in the House of the People —Member;

(e) Leader of the Opposition in the Council of States —Member;

(f) Deputy Chairman of the Council of States —Member:

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy of any Member in the Committee referred to in the first proviso to sub-section (1).

5. Resignation and removal of Chairperson and Members.—(1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

(2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved

misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

(3) Notwithstanding anything in sub-section (2), the President may, by order, remove from office the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent Court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of office of Chairperson and Members.—(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

7. Member to act as Chairperson or to discharge his functions in certain circumstances.—(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorize one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence or leave or otherwise, such one of the Members as the President may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Chairperson and Members.—The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

9. Vacancies, etc., not to invalidate the proceedings of the Commission.—No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission.—(1) The Commission shall meet at such time and place as the Chairman may think fit.

(2) Subject to the provisions of this Act and the rules made hereunder, the Commission shall have the power to lay down by regulations its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

11. Officers and other staff of the Commission.—(1) The Central Government shall make available to the Commission—

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission.—The Commission shall perform all or any of the following functions, namely:—

(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any Court, into complaint of—

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

13. Powers relating to inquiries.—(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil Court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the

inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), insofar as it may be applicable.

(4) The Commission shall be deemed to be a civil Court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974) forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

14. Investigation.—(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,—

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. Statement made by persons to the Commission.—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

- (a) is made in reply to the question which he is required by the Commission to answer;
- or
- (b) is relevant to the subject-matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard.—If, at any stage of the inquiry, the Commission—

- (a) consider it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,
it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

CHAPTER IV

PROCEDURE

17. Inquiry into complaints.—The Commission while inquiring into the complaints of violations of human rights may—

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that—

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps during and after inquiry.—The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:—

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority—

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

19. Procedure with respect to armed forces.—(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:—

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by the Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

20. Annual and special reports of the Commission.—(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

CHAPTER V

STATE HUMAN RIGHTS COMMISSIONS

21. Constitution of State Human Rights Commissions.—(1) A State Government may constitute a body to be known as the (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.

(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

- (a) a Chairperson who has been a Chief Justice of a High Court;
- (b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;
- (c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" has been substituted.

(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section (1) of section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.

22. Appointment of Chairperson and Members of State Commission.—(1) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of,—

- (a) the Chief Minister —Chairperson;
- (b) Speaker of the Legislative Assembly —Member;
- (c) Minister in-charge of the Department of Home in that State —Member;
- (d) Leader of the Opposition in the Legislative Assembly —Member:

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee:

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy of any Member in the Committee referred to in sub-section (1).

23. Resignation and removal of Chairperson or a Member of the State Commission.—(1) The Chairperson or a Member of a State Commission may, by notice in writing under his hand addressed to the Governor, resign his office.

(1-A) Subject to the provisions of sub-section (2), the Chairperson or any Member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1-A), the President may by order remove from office of the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent Court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

24. Term of office of Chairperson and Members of the State Commission.—(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

25. Member to act as Chairperson or to discharge his functions in certain circumstances.—(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorize one of the Members to act as the Chairperson until the appointment of new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

26. Terms and conditions of service of Chairperson and Members of State Commissions.—The salaries and allowances payable to, and other terms and conditions of

service of, the Chairperson and Members shall be such as may be prescribed by the State Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

27. Officers and other staff of the State Commission.—(1) The State Government shall make available to the Commission—

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

28. Annual and special reports of State Commission.—(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

29. Application of certain provisions relating to National Human Rights Commission to State Commissions.—The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:—

(a) references to “Commission” shall be construed as references to “State Commission”;

(b) in section 10, in sub-section (3), for the word “Secretary-General”, the word “Secretary” shall be substituted;

(c) in section 12, clause (f) shall be omitted;

(d) in section 17, in clause (i), the words “Central Government or any” shall be omitted.

CHAPTER VI

HUMAN RIGHTS COURTS

30. Human Rights Courts.—For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:

Provided that nothing in this section shall apply if—

(a) a Court of Session is already specified as a special Court; or

(b) a special Court is already constituted,

for such offences under any other law for the time being in force.

31. Special Public Prosecutor.—For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER VII

FINANCE, ACCOUNTS AND AUDIT

32. Grants by the Central Government.—(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of

grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and as such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

33. Grants by the State Government.—(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

34. Accounts and audit.—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid, as soon as may be, after it is received, before each House of Parliament.

35. Accounts and audit of State Commission.—(1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VIII

MISCELLANEOUS

36. Matters not subject to jurisdiction of the Commission.—(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

37. Constitution of special investigation teams.—Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violation of human rights.

38. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made hereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report, paper or proceedings.

39. Members and officers to be public servants.—Every member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

40. Power of Central Government to make rules.—(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances and other terms and conditions of service of the Chairperson and Members under section 8;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;

(c) any other power of a civil Court required to be prescribed under clause (f) of sub-section (1) of section 13;

(d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and

(e) any other matter which has to be, or may be, prescribed.

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

40-A. Power to make rules retrospectively.—The power to make rules under clause (b) of sub-section (2) of section 40 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

40-B. Power of Commission to make regulations.—(1) Subject to the provisions of this Act and the rules made hereunder, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the procedure to be followed by the Commission under sub-section (2) of section 10;

(b) the returns and statistics to be furnished by the State Commissions;

(c) any other matter which has to be, or may be, specified by regulations.

(3) Every regulation made by the Commission under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

41. Power of State Government to make rules.—(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances and other terms and conditions of service of the Chairperson and Members under section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27;

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

42. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

43. Repeal and savings.—(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

13/0/2005

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

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

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) “child” means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) “compensation order” means an order granted in terms of section 22;

(d) “custody order” means an order granted in terms of section 21;

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

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

(n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;

(o) "protection order" means an order made in terms of section 18;

(p) "residence order" means an order granted in terms of sub-section (1) of section 19;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

(r) "service provider" means an entity registered under sub-section (1) of section 10;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

(t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

CHAPTER II

DOMESTIC VIOLENCE

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

CHAPTER III

POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant.—(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate.—A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498-A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.—If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities.—If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officers.—(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers.—(1) It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. Service providers.—(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to—

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government.—The Central Government and every State Government, shall take all measures to ensure that—

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services of women under this Act including the Courts are prepared and put in place.

CHAPTER IV

PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice.—(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate

within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling.—(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert.—In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held *in camera*.—If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act *in camera*.

17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

21. Custody orders.—Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. Compensation orders.—In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23. Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost.—The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the Court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders.—(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings.—(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

27. Jurisdiction.—(1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

28. Procedure.—(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

MISCELLANEOUS

30. Protection Officers and members of service providers to be public servants.—

The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made hereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

31. Penalty for breach of protection order by respondent.—(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498-A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the Court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

33. Penalty for not discharging duty by Protection Officer.—If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

34. Cognizance of offence committed by Protection Officer.—No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

35. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made hereunder.

36. Act not in derogation of any other law.—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

37. Power of Central Government to make rules.—(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;

(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;

(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;

(f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;

(g) the rules regulating registration of service providers under sub-section (1) of section 10;

(h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;

(i) the means of serving notices under sub-section (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;

(k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

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

THE PUBLIC GAMBLING ACT, 1867

25/01/1967

1. Interpretation clause.—In this Act—

[* * *]

“Common gambling-house”.—“Common gaming-house” means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place or otherwise howsoever.

[* * *]

2. Power to extend Act.—Sections 13 and 17 of this Act shall extend to the whole of the said States and it shall be competent to the State Government, whenever it may think fit, to extend, by a notification to be published in three successive numbers of the Official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway, station-house and place being not more than three miles distant from any part of such station-house within the States, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb or station-house, and from time to time, to alter the limits so defined.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

3. Penalty for owning or keeping, or having charge of a gaming-house.—Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room or place, situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house; and

whoever, being the owner or occupier of any such house, walled enclosure, room or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room or place;

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code (45 of 1860), for any term not exceeding three months.

4. Penalty for being found in gaming-house.—Whoever is found in any such house, walled enclosure, room or place playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code (45 of 1860), for any term not exceeding one month,

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

5. Power to enter and authorize police to enter and search.—If the Magistrate of a district or other officer invested with the full powers of a Magistrate, or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place, is used as a common gaming-house;

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the State Government shall appoint in this behalf to enter with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room or place;

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming;

and may seize or authorize such officer to seize all instruments of gaming and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein;

and may search or authorize such officer to search all parts of the house, walled enclosure, room or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

6. Finding cards, etc., in suspected houses, to be evidence that such houses are common gaming-houses.—When any cards, dice, gaming tables, cloths, boards, or other instruments of gaming are found in any house, walled enclosure, room or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police officer, or any of his assistants.

7. Penalty on persons arrested for giving false name and addresses.—If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested, by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. On conviction for keeping a gaming-house, instruments of gaming to be destroyed.—On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. Proof of playing for stakes unnecessary.—It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager or stake.

10. Magistrate may require any person apprehended to be sworn and give evidence.—It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation and give evidence touching any unlawful gaming in such house, walled enclosure, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure, room or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code (45 of 1860).

11. Witness indemnified.—Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. Act not to apply to certain games.—Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.

13. Gaming and setting birds and animals to fight in public streets.—A police officer may apprehend without warrant—

any person found playing for money or other valuable thing, with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill, in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place, or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;

Destruction of instruments of gaming found in public streets.—And such police officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

14. Offences by whom triable.—Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, as to the amount of fine or imprisonment he may inflict.

15. Penalty for subsequent offence.—Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description:

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. Portion of fine may be paid to informer.—The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

17. Recovery and application of fines.—All fines imposed under this Act may be recovered in the manner prescribed by section 61 of the Code of Criminal Procedure, [* * *].

18. Offences under this Act to be "offences" within the meaning of Penal Code.—*[Repealed by the Repealing Act, 1874 (16 of 1874), section 1 and Schedule, Part I.]*

THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

23/08/1971

1. Short title, extent and commencement.—(1) This Act may be called THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 16th day of September, 1958 except sections 11, 19 and 20 which shall come into force at once.

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

[* * *]

(b) "estate officer" means an officer appointed as such by the Central Government under section 3;

(c) "premises" means any land or any building or part of a building and includes,—

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

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

(e) "public premises" means—

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,—

(i) any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), or a local authority) established by or under a Central Act and owned or controlled by the Central Government,

(iii) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),

(vi) the Chakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act, [*]

(vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the National Capital Territory of Delhi,—

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee, [*]

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;

(f) “rent”, in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises, and includes,—

(i) any charge for electricity, water or any other services in connection with the occupation of the premises,

(ii) any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the Central Government or the corporate authority;

(fa) “statutory authority”, in relation to the public premises referred to in clause (e) of this section, means,—

(i) in respect of the public premises placed under the control of the Secretariat of either House of Parliament, the Secretariat of the concerned House of Parliament,

(ii) in respect of the public premises referred to in item (i) of sub-clause (2) of that clause, the company or the subsidiary company, as the case may be, referred to therein,

(iii) in respect of the public premises referred to in item (ii) of sub-clause (2) of that clause, the corporation referred to therein,

(iv) in respect of the public premises referred to, respectively, in items (iii), (iv), (v) , (vi) and (vii) of sub-clause (2) of that clause, the University, Institute or Board, as the case may be, referred to therein, and

(v) in respect of the public premises referred to in sub-clause (3) of that clause, the Corporation, Committee or Authority, as the case may be, referred to in that sub-clause;

(fb) “temporary occupation”, in relation to any public premises, means occupation by any person on the basis of an order of allotment made under the authority of the Central Government, a State Government, the Government of a Union territory or a statutory authority for a total period (including the extended period, if any) which is less than thirty days;

(g) “unauthorized occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever.

11. Offences and penalty.—(1) If any person unlawfully occupies any public premises, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both:

Provided that a person who, having been lawfully in occupation of any public premises by virtue of any authority (whether by way of grant, allotment or by any other mode whatsoever) continues to be in occupation of such premises after such authority has ceased to be valid, shall not be guilty of such offence.

(2) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with

imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Any magistrate convicting a person under sub-section (2) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

11-A. Offences under section 11 to be cognizable.—The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to an offence under section 11 as if it were a cognizable offence—

(i) for the purposes of investigation of such offence, and

(ii) for the purposes of matters, other than—

(1) matters referred to in section 42 of that Code, and

(2) arrest of a person except on the complaint of, or upon information received from,—

(a) a Group A officer as may be appointed by the Central Government, in the case of an offence in relation to the public premises specified in sub-clause (1) of clause (e) of section 2;

(b) an officer equivalent to the rank of a Group A officer of the Central Government or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the statutory authority in the case of an offence in relation to the public premises specified in sub-clause (2) of clause (e) of section 2;

(c) such Deputy Commissioner, in the case of an offence in relation to the public premises belonging to the Municipal Corporation of Delhi, as may be appointed by the Administrator of the Union territory of Delhi;

(d) the Secretary, New Delhi Municipal Committee, in the case of an offence in relation to the public premises belonging to the New Delhi Municipal Committee;

(e) the Secretary of a notified area committee, in the case of an offence in relation to the public premises belonging to that committee;

(f) such Director, in the case of an offence in relation to the public premises belonging to the Delhi Development Authority, as may be appointed by the Administrator of the Union territory of Delhi.

THE RAILWAY PROPERTY (UNLAWFUL POSSESSION) ACT, 1966

16/09/1966

1. Short title, extent and commencement.—(1) This Act may be called THE RAILWAY PROPERTY (UNLAWFUL POSSESSION) ACT, 1966.

(2) It extends to the whole of India.

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

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

(a) "Force" means the Railway Protection Force constituted under section 3 of the Railway Protection Force Act, 1957 (23 of 1957);

(b) "member of the Force" means a person appointed to the Force, other than a superior officer;

(c) "officer of the Force" means an officer of and above the rank of Assistant Sub-Inspector appointed to the Force and includes a superior officer;

(d) "railway property" includes any goods, money or valuable security or animal, belonging to, or in the charge or possession of, a railway administration;

(e) "superior officer" means any of the officers appointed under section 4 of the Railway Protection Force Act, 1957 (23 of 1957), and includes any other officer appointed by the Central Government as a superior officer of the Force;

(f) words and expressions used but not defined in this Act and defined in the Indian Railways Act, 1890 (9 of 1890), shall have the meanings respectively assigned to them under that Act.

3. Penalty for unlawful possession of railway property.—Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable—

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

4. Punishment for connivance at offences.—Any owner or occupier of land or building, or any agent of such owner or occupier in charge of the management of that land or building, who wilfully connives at an offence against the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

5. Offences under the Act not to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act shall not be cognizable.

6. Power to arrest without warrant.—Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned.

7. Disposal of persons arrested.—Every person arrested for an offence punishable under this Act shall, if the arrest was made by a person other than an officer of the Force, be forwarded without delay to the nearest officer of the Force.

8. Inquiry how to be made against arrested persons.—(1) When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquire into the charge against such person.

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

Provided that—

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

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

9. Power to summon persons to give evidence and produce documents.—(1) An officer of the Force shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document, or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

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

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

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to requisitions for attendance under this section.

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

10. Issue of search warrant.—(1) If an officer of the Force has reason to believe that any place is used for the deposit or sale of railway property which had been stolen or unlawfully obtained, he shall make an application to the Magistrate, having jurisdiction over the area in which that place is situate, for issue of a search warrant.

(2) The Magistrate to whom an application is made under sub-section (1), may, after such inquiry as he thinks necessary, by his warrant authorize any officer of the Force—

- (a) to enter, with such assistants as may be required, such place;
- (b) to search the same in the manner specified in the warrant;
- (c) to take possession of any railway property therein found which he reasonably suspects to be stolen or unlawfully obtained; and
- (d) to convey such railway property before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety.

11. Searches and arrests how to be made.—All searches and arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating respectively to searches and arrests made under that Code.

12. Officers required to assist.—All officers of Government and all village officers are hereby empowered and required to assist the superior officers and members of the Force in the enforcement of this Act.

13. Power of Courts to order forfeiture of vehicles, etc.—Any Court trying an offence punishable under this Act may order the forfeiture to Government of any property in respect of which the Court is satisfied that an offence under this Act has been committed and may also order the forfeiture of any receptacles, packages or coverings in which such property is contained, and the animals, vehicles, or other conveyances used in carrying the property.

14. Act to override other laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

15. Construction of references to laws not in force in Jammu and Kashmir.—Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

16. Repeal and savings.—(1) The Railway Stores (Unlawful Possession) Act, 1955 (51 of 1955), is hereby repealed.

(2) Nothing contained in this Act shall apply to offences punishable under the Act hereby repealed and such offences may be investigated and tried as if this Act had not been passed.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

THE RAILWAY PROTECTION FORCE ACT, 1957

29/08/1957

1. Short title, extent and commencement.—(1) This Act may be called THE RAILWAY PROTECTION FORCE ACT, 1957.

(2) It extends to the whole of India.

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

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

- (a) "Force" means the Railway Protection Force constituted under section 3;
- (b) "Director-General" means the Director-General of the Force appointed under sub-section (1) of section 4;
- (ba) "enrolled member of the Force" means any subordinate officer, under officer or any other member of the Force of a rank lower than that of under officer;
- (bb) "Force custody" means the arrest or confinement of a member of the Force in accordance with rules made under this Act;

(c) "member of the Force" means a person appointed to the Force under this Act [* * *];

(ca) "passenger" shall have the meaning assigned to it in the Railways Act, 1989;

(cb) "passenger area" shall include railway platform, train, yard and such other area as is frequently visited by passengers;

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

(e) "railway property" includes any goods, money or valuable security, or animal, belonging to, or in the charge or possession of, a railway administration;

(ea) "subordinate officer" means a person appointed to the Force as an Inspector, a Sub-Inspector or an Assistant Sub-Inspector;

(f) "superior officer" means any of the officers appointed under section 4 and includes any other officer appointed by the Central Government as a superior officer of the Force;

(fa) "under officer" means a person appointed to the Force as a Head Constable or Naik;

(g) words and expressions used but not defined in this Act and defined in the Indian Railways Act, 1890 (9 of 1890) shall have the meanings respectively assigned to them under that Act.

(2) Any reference in this Act to a law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

3. Constitution of the Force.—(1) There shall be constituted and maintained by the Central Government an armed Force of the Union to be called the Railway Protection Force for the better protection and security of railway property.

(2) The force shall be constituted in such manner, shall consist of such number of superior officers, subordinate officers, under officers and other enrolled members of the Force and shall receive such pay and other remuneration as may be prescribed.

4. Appointment and powers of superior officers.—(1) The Central Government may appoint as person to be the Director-General of the Force and may appoint other persons to be Inspectors-General, Additional Inspectors-General, Deputy Inspectors-General, Assistant Inspectors-General, Senior Commandants, Commandants or Assistant Commandants of the Force.

(2) The Director-General and every other superior officer so appointed shall possess and exercise such powers and authority over the members of the Force under their respective commands as is provided by or under this Act.

5. Classes and ranks among members of the Force.—[Omitted by Railway Protection Force (Amendment) Act (60 of 1985), section 6 (w.e.f. 20-9-1985).]

6. Appointment of members of the Force.—The appointment of enrolled members of the Force shall rest with the Inspector-General, Additional Inspector-General or Deputy Inspector-General, who shall exercise that power in accordance with rules made under this Act:

Provided that the power of appointment under this section may also be exercised by other superior officer as the Inspector-General, Additional Inspector-General or Deputy Inspector-General concerned may, by order, specify in this behalf.

7. Certificates to members of the Force.—(1) Every member of the Force shall receive on his appointment a certificate in the form specified in the Schedule, under the seal of the Inspector-General, Additional Inspector-General or Deputy Inspector-General or such other superior officer as the Inspector-General, Additional Inspector-General or Deputy Inspector-General may specify in this behalf, by virtue of which the person holding such certificate shall be vested with the powers of a member of the Force.

(2) Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a member of the Force [* * *].

8. Superintendence and administration of the Force.—(1) The superintendence of the Force shall vest in the Central Government, and subject thereto and to the provisions of this Act and of any rules made hereunder, the command, supervision and administration of the Force shall vest in the Director-General.

(2) Subject to the provisions of sub-section (1), the administration of the Force, within such local limits in relation to a railway as may be prescribed shall be carried on by an Inspector-General, an Additional Inspector-General or a Deputy Inspector-General in accordance with the provisions of this Act and of any rules made hereunder and they shall, subject to any direction that may be given by the Central Government or the Director-General in this behalf discharge his functions under the general supervision of the General Manager of the Railway.

9. Dismissal, removal, etc., of members of the Force.—(1) Subject to the provisions of article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may—

(i) dismiss, suspend or reduce in rank any enrolled member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself until for the discharge thereof, namely:—

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen days with or without punishment, drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument.

(2) Any enrolled member of the Force aggrieved by an order made under sub-section (1) may, within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed:

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) In disposing of the appeal, the prescribed authority shall follow such procedure as may be prescribed:

Provided that no order imposing an enhanced penalty under sub-section (2) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

10. Officers and members of the Force to be deemed to be railway servants.—Director-General and every member of the Force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890 (9 of 1890), other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act.

11. Duties of members of the Force.—It shall be the duty of every superior officer and member of the Force—

(a) promptly to execute all orders lawfully issued to him by his superior authority;

(b) to protect and safeguard railway property, passenger area and passengers;

(c) to remove any obstruction in the movement of railway property or passenger area; and

(d) to do any other act conducive to the better protection and security of railway property passenger area and passengers.

12. Power to arrest without warrant.—Any member of the Force may, without an order from a Magistrate and without a warrant, arrest—

(i) any person who voluntarily causes hurt to, or attempts voluntarily to cause hurt to, or wrongfully restrains or attempts wrongfully to restrain, or assaults, threatens to assault, or uses, or threatens or attempts to use, criminal force to him or any other member of the Force in the execution of his duty as such member, or with intent to prevent or to deter him from discharging his duty as such member, or in consequence of anything done or attempted to be done by him in the lawful discharge of his duty as such member; or

(ii) any person who has been concerned in, or against whom a reasonable suspicion exists of his having been concerned in, or who is found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence which relates to railway property, passenger area and passengers; or

(iii) any person found taking precautions to conceal his presence within the railway limits under circumstances which afford reason to believe that he is taking such precautions with a view to committing theft of, or damage to, railway property railway property, passenger area and passengers; or

(iv) any person who commits or attempts to commit a cognizable offence which involves or which is likely to involve imminent danger to the life of any person engaged in carrying on any work relating to railway property railway property, passenger area and passengers.

13. Power to search without warrant.—(1) Whenever [* * *] any member of the Force, not below the rank of a Senior Rakshak, has reason to believe that any such offence as is referred to in section 12 has been or is being committed 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 detain him and search his person and belongings forthwith and, if he thinks proper, arrest any person whom he has reason to believe to have committed the offence.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches under that Code shall, so far as may be, apply to searches under this section.

14. Procedure to be followed after arrest.—Any [* * *] member of the Force making an arrest under this Act, shall, without unnecessary delay, make over the person so arrested to a police officer together with a detailed report of the circumstances leading to the arrest of such person, or, in the absence of a police officer, take such person or cause him to be taken to the nearest police station.

15. Officers and members of the Force to be considered always on duty and liable to be employed in any part of the Railways.—(1) Every member of the Force shall, for the purposes of this Act, be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India.

(2) No [* * *] member of the Force shall engage himself in any employment or office other than his duties under this Act.

15-A. Restrictions respecting right to form association, etc.—(1) No member of the Force shall, without the previous sanction in writing of the Central Government or of the prescribed authority,—

(a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations; or

(b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the *bona fide* discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

Explanation.—If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(2) No member of the Force shall participate in, or address, any meeting or take part in any demonstration organized by any body of persons for any political purposes or for such other purposes as may be prescribed.

16. Responsibilities of members of the Force during suspension.—A member of the Force shall not by reason of his suspension from office cease to be a member of the Force; and he shall, during that period, be subject to the same responsibilities, discipline and penalties to which he would have been subject if he were on duty.

16-A. Surrender of certificate, arms, etc., by persons ceasing to be members of the Force.—(1) Every person who for any reason ceases to be a member of the Force, shall forthwith surrender to any superior officer empowered to receive the same, his certificate of appointment, the arms, accoutrements, clothing and other articles which have been furnished to him for the performance of his duties as a member of the Force.

(2) Any person who wilfully neglects or refuses to surrender his certificate of appointment, the arms, accoutrements, clothing and other articles furnished to him, as required by sub-section (1), shall, on conviction, be punished with imprisonment for a term

which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

(3) Nothing in this section shall be deemed to apply to any article which, under the orders of the Director-General, has become the property of the person to whom the same was furnished.

17. Penalties for neglect of duty, etc.—(1) Without prejudice to the provisions contained in section 9, every enrolled member of the Force who shall be guilty of any violation of duty or wilful breach or neglect of any rule or lawful order made by a superior officer, or who shall withdraw from duties of his office without permission, or who, being absent on leave, fails, without reasonable cause, to report himself for duty on the expiration of the leave, or who engages himself without authority for any employment other than his duty as an enrolled member of the Force, or who shall be guilty of cowardice may be taken into Force custody and shall, on conviction, be punished with imprisonment which may extend to one year.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this section shall be cognizable and non-bailable.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government may invest Assistant Inspector-General, Senior Commandant or Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by an enrolled member of the Force and punishable under this Act, or any offence committed by an enrolled member of the Force against the person or property of another member of the Force:

Provided that—

(i) when the offender is on leave or absent from duty; or
(ii) when the offence is not connected with the offender's duties as an enrolled member of the Force; or

(iii) when it is a petty offence even if connected with the offender's duties as an enrolled member of the Force; or

(iv) when, for reasons to be recorded in writing, it is not practicable for the Commandant invested with the powers of a Magistrate to inquire into or to try the offence, the offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed so requires, be inquired into or tried by an ordinary criminal Court having jurisdiction in the matter.

(4) Nothing contained in this section shall be construed to prevent any enrolled member of the Force from being prosecuted under any other law for any offence made punishable by that law, or for being liable under any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

18. Application of Act XXII of 1922 to members of the Force.—The Police (Incitement to Disaffection) Act, 1922 (22 of 1922) shall apply to members of the Force as it applies to members of a police force.

19. Certain Acts not to apply to members of the Force.—Nothing contained in the Payment of Wages Act, 1936 (4 of 1936), or the Industrial Disputes Act, 1947 (14 of 1947) or the Factories Act, 1948 (63 of 1948), or any corresponding law relating to investigation and settlement of industrial dispute in force in a State shall apply to members of the Force.

20. Protection of acts of members of the Force.—(1) In any suit or proceeding against any [* * *] member of the Force for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority.

(2) Any such plea may be proved by the production of the order directing the Act, and if it is so proved, the [* * *] member of the Force shall thereupon be discharged from any liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any [* * *] member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provisions of this Act or the rules hereunder shall be commenced within three months after the act complained of shall have been committed and not otherwise;

and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding.

21. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

(a) regulating the classes and grades and the pay and remuneration of [* * *] members of the Force and their conditions of service in the Force;

(b) regulating the powers and duties of [* * *] members of the Force authorised to exercise any functions by or under this Act;

(c) fixing the period of service for [* * *] members of the Force;

(d) prescribing the description and quantity of arms, accoutrements, clothing and other necessary articles to be furnished to the members of the Force;

(e) prescribing the places of residence of the member of the Force;

(f) institution, management and regulation of any fund for any purpose connected with the administration of the Force;

(g) regulating the punishments and prescribing authorities to whom appeal shall be preferred from orders of punishment, or remission of fines, or other punishments and the procedure to be followed for the disposal of such appeals;

(h) regulating matters with respect to Force custody under this Act, including the procedure to be followed for taking persons into such custody;

(i) regulating matters with respect to disposal of cases relating to offences under this Act and specifying the places in which persons convicted under this Act may be confined;

(j) any other matter which has to be, or may be, imposed or in respect of which rules are required to be made under this Act.

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

THE RAILWAYS ACT, 1989

03/06/1989

CHAPTER I PRELIMINARY

1. Short title and commencement.—(1) This Act may be called THE RAILWAYS ACT, 1989.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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

(1) "authorised" means authorised by a railway administration;

(1-A) "Authority" means the Rail Land Development Authority constituted under section 4-A;

(2) "carriage" means the carriage of passengers or goods by a railway administration;

(3) "Claims Tribunal" means the Railway Claims Tribunal established under section 3 of the Railways Claims Tribunal Act, 1987;

(4) "classification" means the classification of commodities made under section 31 for the purpose of determining the rates to be charged for carriage of such commodities;

(5) "class rates" means the rate fixed for a class of commodity in the classification;

(6) "Commissioner" means the Chief Commissioner of Railway Safety or the Commissioner of Railway Safety appointed under section 5;

(7) "commodity" means a specific item of goods;

(8) "consignee" means the person named as consignee in a railway receipt;

(9) "consignment" means goods entrusted to a railway administration for carriage;

(10) "consignor" means the person, named in a railway receipt as consignor, by whom or on whose behalf goods covered by the railway receipt are entrusted to a railway administration for carriage;

(11) "demurrage" means the charge levied for the detention of any rolling stock after the expiry of free time, if any, allowed for such detention;

(12) "endorsee" means the person in whose favour an endorsement is made, and in the case of successive endorsements, the person in whose favour the last endorsement is made;

(13) "endorsement" means the signing by the consignee or the endorsee after adding a direction on a railway receipt to pass the property in the goods mentioned in such receipt to a specified person;

(14) "fare" means the charge levied for the carriage of passengers;

(15) "ferry" includes a bridge of boats, pontoons or rafts, a swing bridge, a fly-bridge and a temporary bridge and the approaches to, and landing places of, a ferry;

(16) "forwarding note" means the document executed under section 64;

(17) "freight" means the charge levied for the carriage of goods including transshipment charges, if any;

(18) "General Manager" means the General Manager of a Zonal Railway appointed under section 4;

(19) "goods" includes—

(i) containers, pallets or similar articles of transport used to consolidate goods; and

(ii) animals;

(20) "Government railway" means a railway owned by the Central Government;

(21) "in transit", in relation to the carriage of goods by railway, means the period between the commencement and the termination of transit of such goods, and unless otherwise previously determined—

(a) transit commences as soon as the railway receipt is issued or the consignment is loaded, whichever is earlier;

(b) transit terminates on the expiry of the free time allowed for unloading of consignment from any rolling stock and where such unloading has been completed within such free time, transit terminates on the expiry of the free time allowed, for the removal of the goods from the railway premises;

(22) "level crossing" means an inter-section of a road with lines of rails at the same level;

(23) "luggage" means the goods of a passenger either carried by him in his charge or entrusted to a railway administration for carriage;

(24) "lump sum rate" means the rate mutually agreed upon between a railway administration and a consignor for the carriage of goods and for any service in relation to such carriage;

(25) "non-Government railway" means a railway other than a Government railway;

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

(26-A) "officer authorised" means an officer authorised by the Central Government under sub-section (2) of section 179;

(27) "parcel" means goods entrusted to a railway administration for carriage by a passenger or a parcel train;

(28) "pass" means an authority given by the Central Government or a railway administration to a person allowing him to travel as a passenger, but does not include a ticket;

(29) "passenger" means a person travelling with a valid pass or ticket;

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

(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include—

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;

(32) "railway administration", in relation to—

(a) a Government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement;

(33) "railway receipt" means the receipt issued under section 65;

(32-A) "railway land" means any land in which a Government railway has any right, title or interest;

(34) "railway servant" means any person employed by the Central Government or by a railway administration in connection with the service of a railway including member of the Railway Protection Force appointed under clause (c) of sub-section (1) of section 2 of the Railway Protection Force Act, 1957 (23 of 1957);

(35) "rate" includes any fare, freight or any other charge for the carriage of any passenger or goods;

(36) "regulations" means the regulations made by the Railway Rates Tribunal under this Act;

(37) "rolling stock" includes locomotives, tenders, carriages, wagons, rail-cars, containers, trucks, trolleys and vehicles of all kinds moving on rails;

(38) "station to station rate" means a special reduced rate applicable to a specific commodity booked between specified stations;

(39) "traffic" includes rolling stock of every description, as well as passengers and goods;

(40) "Tribunal" means the Railway Rates Tribunal constituted under section 33;

(41) "wharfage" means the charge levied on goods for not removing them from the railway after the expiry of the free time for such removal;

(42) "Zonal Railway" means a Zonal Railway constituted under section 3.

CHAPTER XV

PENALTIES AND OFFENCES

137. Fraudulently travelling or attempting to travel without proper pass or ticket.—(1) If any person, with intent to defraud a railway administration,—

(a) enters or remains in any carriage on a railway or travels in a train in contravention of section 55, or

(b) uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of five hundred rupees.

(2) The person referred to in sub-section (1) shall also be liable to pay the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled, or where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or, in case of their having been examined more than once, were last examined.

(3) The excess charge referred to in sub-section (2) shall be a sum equal to the ordinary single fare referred to in that sub-section or two hundred and fifty rupees, whichever is more.

(4) Notwithstanding anything contained in section 65 of the Indian Penal Code (45 of 1860), the Court convicting an offender may direct that the person in default of payment of any fine inflicted by the Court shall suffer imprisonment for a term which may extend to six months.

138. Levy of excess charge and fare for travelling without proper pass or ticket or beyond authorised distance.—(1) If any passenger,—

(a) being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on a demand being made therefore under section 54, or

(b) travels in a train in contravention of the provisions of section 55, he shall be liable to pay, on the demand of any railway servant authorised in this behalf, the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or in the case of their having been examined more than once, were last examined.

(2) If any passenger,—

(a) travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket; or

(b) travels in or on a carriage beyond the place authorised by his pass or ticket, he shall be liable to pay, on the demand of any railway servant authorised in this behalf, any difference between the fare paid by him and the fare payable in respect of the journey he has made and the excess charge referred to in sub-section (3).

(3) The excess charge shall be a sum equal to the amount payable under sub-section (1) or sub-section (2), as the case may be, or two hundred and fifty rupees, whichever is more:

Provided that if the passenger has with him a certificate granted under sub-section (2) of section 55, no excess charge shall be payable.

(4) If any passenger liable to pay the excess charge and the fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on a demand being made therefore under one or other of these sub-sections, as the case may be, any railway servant authorised by the railway administration in this behalf may apply to any Metropolitan Magistrate or a Judicial Magistrate of the first or second class, as the case may be, for the recovery of the sum payable as if it were a fine, and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month but not less than ten days.

(5) Any sum recovered under sub-section (4) shall, as and when it is recovered, be paid to the railway administration.

139. Power to remove persons.—Any person failing or refusing to pay the fare and the excess charge referred to in section 138 may be removed by any railway servant authorised in this behalf who may call to his aid any other person to effect such removal:

Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket:

Provided further that a woman or a child if unaccompanied by a male passenger, shall not be so removed except either at the station from where she or he commences her or his journey or at a junction or terminal station or station at the headquarters of a civil district and such removal shall be made only during the day.

140. Security for good behaviour in certain cases.—(1) When a Court convicting a person of an offence under section 137 or section 138 finds that he has been habitually committing or attempting to commit that offence and the Court is of the opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such Court may, at the time of passing the sentence on the person, order him to execute a bond with or without sureties, for such amount and for such period not exceeding three years as it deems fit.

(2) An order under sub-section (1) may also be made by an appellate Court or by the High Court when exercising its powers of revision.

141. Needlessly interfering with means of communication in a train.—If any passenger or any other person, without reasonable and sufficient cause, makes use of, or interferes with, any means provided by a railway administration in a train for communication between passengers and the railway servant in charge of the train, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, where a passenger, without reasonable and sufficient cause, makes use of the alarm chain provided by a railway administration, such punishment shall not be less than—

(a) a fine of five hundred rupees, in the case of conviction for the first offence; and

(b) imprisonment for three months in case of conviction for the second or subsequent offence.

142. Penalty for transfer of tickets.—(1) If any person not being a railway servant or an agent authorised in this behalf—

(a) sells or attempts to sell any ticket or any half of a return ticket; or

(b) parts or attempts to part with the possession of a return ticket against which reservation of a seat or berth has been made or any half of a return ticket or a season ticket, in order to enable any other person to travel therewith, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and shall also forfeit the ticket which he sells or attempts to sell or parts or attempts to part.

(2) If any person purchases any ticket referred to in clause (a) of sub-section (1) or obtains the possession of any ticket referred to in clause (b) of that sub-section from any person other than a railway servant or an agent authorised in this behalf, he shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees and if the purchaser or holder of any ticket aforesaid travels or attempts to travel therewith, he shall forfeit the ticket which he so purchased or obtained and shall be deemed to be travelling without a proper ticket and shall be liable to be dealt with under section 138:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the punishment under sub-section (1) or sub-section (2) shall not be less than a fine of two hundred and fifty rupees.

143. Penalty for unauthorized carrying on of business of procuring and supplying of railway tickets.—(1) If any person, not being a railway servant or an agent authorised in this behalf,—

(a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or

(b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person,

he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he so procures, supplies, purchases, sells or attempts to purchase or sell:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.

(2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence.

144. Prohibition on hawking, etc., and begging.—(1) If any person canvasses for any custom or hawks or exposes for sale any article whatsoever in any railway carriage or upon any part of a railway, except under and in accordance with the terms and conditions of a licence granted by the railway administration in this behalf, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of one thousand rupees.

(2) If any person begs in any railway carriage or upon a railway station, he shall be liable for punishment as provided under sub-section (1).

(3) Any person referred to in sub-section (1) or sub-section (2) may be removed from the railway carriage or any part of the railway or railway station, as the case may be, by any railway servant authorised in this behalf or by any other person whom such railway servant may call to his aid.

145. Drunkenness or nuisance.—If any person in any railway carriage or upon any part of a railway—

(a) is in a state of intoxication; or

(b) commits any nuisance or act of indecency or uses abusive or obscene language; or

(c) wilfully or without excuse interferes with any amenity provided by the railway administration so as to affect the comfortable travel of any passenger, he may be removed from the railway by any railway servant and shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months and with fine which may extend to five hundred rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than—

(a) a fine of one hundred rupees in the case of conviction for the first offence; and

(b) imprisonment of one month and a fine of two hundred and fifty rupees, in the case of conviction for second or subsequent offence.

146. Obstructing railway servant in his duties.—If any person wilfully obstructs or prevents any railway servant in the discharge of his duties, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

147. Trespass and refusal to desist from trespass.—(1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of five hundred rupees.

(2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.

148. Penalty for making a false statement in an application for compensation.—If in any application for compensation under section 125, any person makes a statement which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

149. Making a false claim for compensation.—If any person requiring compensation from a railway administration for loss, destruction, damage, deterioration or non-delivery of any consignment makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

150. Maliciously wrecking or attempting to wreck a train.—(1) Subject to the provisions of sub-section (2), if any person unlawfully,—

(a) puts or throws upon or across any railway, any wood, stone or other matter or thing; or

(b) takes up, removes, loosens or displaces any rail, sleeper or other matter or things belonging to any railway; or

(c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway; or

(d) makes or shows, or hides or removes, any signal or light upon or near to any railway; or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent or with knowledge that he is likely to endanger the safety of any person travelling on or being upon the railway, he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, where a person is punishable with rigorous imprisonment, such imprisonment shall not be less than—

(a) three years, in the case of a conviction for the first offence; and

(b) seven years, in the case of conviction for the second or subsequent offence.

(2) If any person unlawfully does any act or thing referred to in any of the clauses of sub-section (1)—

(a) with intent to cause the death of any person and the doing of such act or thing causes the death of any person; or

(b) with knowledge that such act or thing is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of such person, he shall be punishable with death or imprisonment for life.

151. Damage to or destruction of certain railway properties.—(1) If any person, with intent to cause, or knowing that he is likely to cause damage or destruction to any property of a railway referred to in sub-section (2), causes by fire, explosive substance or otherwise, damage to such property or destruction of such property, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) The properties of a railway referred to in sub-section (1) are railway track, bridges, station buildings and installations, carriages or wagons, locomotives, signalling, telecommunications, electric traction and block equipments and such other properties as the Central Government being of the opinion that damage thereto or destruction thereof is likely to endanger the operation of a railway, may, by notification, specify.

152. Maliciously hurting or attempting to hurt persons travelling by railway.—If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

153. Endangering safety of persons travelling by railway by wilful act or omission.—If any person by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling on or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punishable with imprisonment for a term which may extend to five years.

154. Endangering safety of persons travelling by railway by rash or negligent act or omission.—If any person in a rash and negligent manner does any act, or omits to do

what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year or with fine, or with both.

155. Entering into a compartment reserved or resisting entry into a compartment not reserved.—(1) If any passenger—

(a) having entered a compartment wherein no berth or seat has been reserved by a railway administration for his use, or

(b) having unauthorizedly occupied a berth or seat reserved by a railway administration for the use of another passenger,

refuses to leave it when required to do so by any railway servant authorised in this behalf, such railway servant may remove him or cause him to be removed, with the aid of any other person, from the compartment, berth or seat, as the case may be, and he shall also be punishable with fine which may extend to five hundred rupees.

(2) If any passenger resists the lawful entry of another passenger into a compartment not reserved for the use of the passenger resisting, he shall be punishable with fine which may extend to two hundred rupees.

156. Travelling on roof, step or engine of a train.—If any passenger or any other person, after being warned by a railway servant to desist, persists in travelling on the roof, step or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both and may be removed from the railway by any railway servant.

157. Altering or defacing pass or ticket.—If any passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

158. Penalty for contravention of any of the provisions of Chapter XIV.—Any person under whose authority any railway servant is employed in contravention of any of the provisions of Chapter XIV or of the rules made hereunder, shall be punishable with fine which may extend to five hundred rupees.

159. Disobedience of drivers or conductors of vehicles to directions of railway servant, etc.—If any driver or conductor of any vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

160. Opening or breaking a level crossing gate.—(1) If any person, other than a railway servant or a person authorised in this behalf, opens any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to three years.

(2) If any person breaks any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to five years.

161. Negligently crossing unmanned level crossing.—If any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable with imprisonment which may extend to one year.

Explanation.—For the purposes of this section, “negligence” in relation to any person driving or leading a vehicle in crossing an unmanned level crossing means the crossing of such level crossing by such person—

(a) without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or

(b) even while an approaching rolling stock is in sight.

162. Entering carriage or other place reserved for females.—If a male person knowing or having reason to believe that a carriage, compartment, berth or seat in a train or room or other place is reserved by a railway administration for the exclusive use of females, without lawful excuse,—

(a) enters such carriage, compartment, room or other place, or having entered such carriage, compartment, room or place, remains therein; or

(b) occupies any such berth or seat having been required by any railway servant to vacate it,

he shall, in addition to being liable to forfeiture of his pass or ticket, be punishable with fine which may extend to five hundred rupees and may also be removed by any railway servant.

163. Giving false account of goods.—If any person required to furnish an account of goods under section 66, gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall, without prejudice to his liability to pay any freight or other charge under any provision of this Act, be punishable with fine which may extend to five hundred rupees for every quintal or part thereof of such goods.

164. Unlawfully bringing dangerous goods on a railway.—If any person, in contravention of section 67, takes with him any dangerous goods or entrusts such goods for carriage to the railway administration, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees or with both and shall also be liable for any loss, injury or damage which may be caused by reason of bringing such goods on the railway.

165. Unlawfully bringing offensive goods on a railway.—If any person, in contravention of section 67, takes with him any offensive goods or entrusts such goods for carriage to the railway administration, he shall be punishable with fine which may extend to five hundred rupees and shall also be liable for any loss, injury or damage which may be caused by reason of bringing such goods on the railway.

166. Defacing public notices.—If any person without lawful authority—

(a) pulls down or wilfully damages any board or document set up or posted by the order of a railway administration on a railway or any rolling stock; or

(b) obliterates or alters any letters or figures upon any such board or document or upon any rolling stock,

he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

167. Smoking.—(1) No person in any compartment of a train shall, if objected to by any other passenger in that compartment, smoke therein.

(2) Notwithstanding anything contained in sub-section (1), a railway administration may prohibit smoking in any train or part of a train.

(3) Whosoever contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with fine which may extend to one hundred rupees.

168. Provision with respect to commission of offence by the children of acts endangering safety of person travelling on railway.—(1) If a person under the age of twelve years is guilty of any of the offences under sections 150 to 154, the Court convicting him may require the father or guardian of such person to execute, within such time as the Court may fix, a bond for such amount and for such period as the Court may direct for the good conduct of such person.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be punishable with fine which may extend to fifty rupees.

169. Levy of penalty on non-Government railway.—If a non-Government railway fails to comply with, any requisition made, decision or direction given, by the Central Government, under any of the provisions of this Act, or otherwise contravenes any of the provisions of this Act, it shall be open to the Central Government, by order, to levy a penalty not exceeding two hundred and fifty rupees and a further penalty not exceeding one hundred and fifty rupees for every day during which the contravention continues:

Provided that no such penalty shall be levied except after giving a reasonable opportunity to the non-Government railway to make such representation as it deems fit.

170. Recovery of penalty.—Any penalty imposed by the Central Government under section 169, shall be recoverable by a suit in the District Court having jurisdiction in the place where the head office of the non-Government railway is situated.

171. Section 169 or 170 not to preclude Central Government from taking any other action.—Nothing in section 169 or 170 shall preclude the Central Government from resorting

to any other action to compel a non-Government railway to discharge any obligation imposed upon it by or under this Act.

172. Penalty for intoxication.—If any railway servant is in a state of intoxication while on duty, he shall be punishable with fine which may extend to five hundred rupees and when the performance of any duty in such state is likely to endanger the safety of any person travelling on or being upon a railway, such railway servant shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

173. Abandoning train, etc., without authority.—If any railway servant, when on duty, is entrusted with any responsibility connected with the running of a train, or of any other rolling stock from one station or place to another station or place, and he abandons his duty before reaching such station or place without authority or without properly handing over such train or rolling stock to another authorised railway servant, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

174. Obstructing running of train, etc.—If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway,—

(a) by squatting or picketing or during any *rail roko* agitation or *bandh*; or

(b) by keeping without authority any rolling stock on the railway; or

(c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise,
he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

175. Endangering the safety of persons.—If any railway servant, when on duty, endangers the safety of any person—

(a) by disobeying any rule made under this Act; or

(b) by disobeying any instruction, direction or order under this Act or the rules made hereunder; or

(c) by any rash or negligent act or omission,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

176. Obstructing level crossing.—If any railway servant unnecessarily—

(a) allows any rolling stock to stand across a place where the railway crosses a public road on the level; or

(b) keeps a level crossing closed against the public,

he shall be punishable with fine which may extend to one hundred rupees.

177. False returns.—If any railway servant required to furnish a return by or under this Act, signs and furnishes a return which is false in any material particular or which he knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

178. Making a false report by a railway servant.—If any railway servant who is required by a railway administration to inquire into a claim for loss, destruction, damage, deterioration or non-delivery of any consignment makes a report which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

179. Arrest for offences under certain sections.—(1) If any person commits any offence mentioned in sections 150 to 152, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head constable.

(2) If any person commits any offence mentioned in sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176, he may be arrested, without warrant or other written authority, by the officer authorised by a notified order of the Central Government.

(3) The railway servant or the police officer or the officer authorised, as the case may be, may call to his aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be.

(4) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate.

180. Arrest of persons likely to abscond, etc.—(1) If any person who commits any offence under this Act, other than an offence mentioned in sub-section (2) of section 179, or is liable to pay any excess charge or other sum demanded under section 138, fails or refuses to give his name and address or there is reason to believe that the name and address given by him are fictitious or that he will abscond, the officer authorised may arrest him without warrant or written authority.

(2) The officer authorised may call to his aid any other person to effect the arrest under sub-section (1).

(3) Any person arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate unless he is released earlier on giving bail or if his true name and address are ascertained on executing a bond without sureties for his appearance before the Magistrate having jurisdiction to try him for the offence.

(4) The provisions of the Chapter XXIII of the Code of Criminal Procedure, 1973 (2 of 1974), shall so far as may be, apply to the giving of bail and the execution of bonds under this section.

180-A. Inquiry by officer authorised to ascertain commission of offence.—For ascertaining facts and circumstances of a case, the officer authorised may make an inquiry into the commission of an offence mentioned in sub-section (2) of section 179 and may file a complaint in the competent Court if the offence is found to have been committed.

180-B. Powers of officer authorised to inquire.—While making an inquiry, the officer authorised shall have power to,—

(i) summon and enforce the attendance of any person and record his statement;

(ii) require the discovery and production of any document;

(iii) requisition any public record or copy thereof from any office, authority or person;

(iv) enter and search any premises or person and seize any property or document which may be relevant to the subject-matter of the inquiry.

180-C. Disposal of persons arrested.—Every person arrested for an offence punishable under sub-section (2) of section 179 shall, if the arrest was made by a person other than the officer authorised, be forwarded, without delay, to such officer.

180-D. Inquiry how to be made against arrested person.—(1) When any person is arrested by the officer authorised for an offence punishable under this Act, such officer shall proceed to inquire into the charge against such person.

(2) For this purpose, the officer authorised may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), when investigating a cognizable case:

Provided that—

(a) if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer authorised that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer authorised may direct, to appear, if and when so required, before the Magistrate having jurisdiction.

180-E. Search, seizure and arrest how to be made.—All searches, seizures and arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating respectively to searches and arrests made under that Code.

180-F. Cognizance by Court on a complaint made by officer authorised.—No Court shall take cognizance of an offence mentioned in sub-section (2) of section 179 except on a complaint made by the officer authorised.

180-G. Punishment for certain offences in relation to inquiry.—Whoever intentionally insults or causes any interruption in the inquiry proceedings or deliberately makes a false statement before the inquiring officer shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

181. Magistrate having jurisdiction under the Act.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence under this Act.

182. Place of trial.—(1) Any person committing an offence under this Act or any rule made hereunder shall be triable for such offence in any place in which he may be or which the State Government may notify in this behalf, as well as in any other place in which he is liable to be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the Official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at such railway stations as the State Government may direct.

THE REGISTRATION OF FOREIGNERS ACT, 1939

08/04/1939

1. Short title and extent.—(1) This Act may be called THE REGISTRATION OF FOREIGNERS ACT, 1939.

(2) It extends to the whole of India [* * *].

2. Definitions.—In this Act,—

(a) “foreigner” means a person who is not a citizen of India;

[* * *]

(b) “prescribed” means prescribed by rules made under this Act.

3. Power to make rules.—(1) The Central Government may, after previous publication, by notification in the Official Gazette, make rules with respect to foreigners for any or all of the following purposes, that is to say,—

(a) for requiring any foreigner entering, or being present in, India to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in India to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave India to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from India, to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;

(e) for requiring any person having the management of any hotel, boarding house, sarai or any other premises of like nature to report the name of any foreigner residing therein or whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from India, in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act.

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

4. Burden of proof.—If any question arises with reference to this Act or any rule made hereunder, whether any person is or is not a foreigner, or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

5. Penalties.—Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees.

6. Power to exempt from application of Act.—The Central Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner:

Provided that a copy of every such order shall be placed on the table of [* * *] Parliament as soon as may be after its promulgation.

7. Protection to persons acting under this Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

8. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1946 and any other law for the time being in force.

9. Application of Act to Part B States.—*[Repealed by the Part B States (Laws) Act, 1951 (3 of 1951), section 3 and Schedule.]*

THE RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988

01/09/1988

1. Short title, extent and commencement.—(1) This Act may be called THE RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 26th day of May, 1988.

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

(a) “ammunition” shall have the same meaning as in clause (b) of sub-section (1) of section 2 of the Arms Act, 1959 (54 of 1959);

(b) “arms” shall have the same meaning as in clause (c) of sub-section (1) of section 2 of the Arms Act, 1959 (54 of 1959);

(c) “manager”, in relation to a religious institution, means every person, including any religious functionary (by whatever name called), who, for the time being, either alone or in association with other persons, administers, manages or otherwise controls the affairs of that institution, its functions or properties;

(d) “political activity” includes any activity promoting or propagating the aims or objects of a political party or any cause, issue or question of a political nature by organizing meetings, demonstrations, processions, collection or disbursement of funds, or by the issue of directions or decrees, or by any other means, and includes also such activity by or on behalf of a person seeking election as a candidate for any election to Parliament, any State Legislature or any local authority;

(e) "political party" means an association or body of persons—

(i) which is, or is deemed to be, registered, with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force for the time being; or

(ii) which has set up candidates for election to any Legislature, but is not registered, or deemed to be registered, as a political party, under the Election Symbols (Reservation and Allotment) Order, 1968; or

(iii) organized to carry on any political activity or to acquire or exercise political power through election or otherwise;

(f) "religious institution" means an institution for the promotion of any religion or persuasion, and includes any place or premises used as a place of public religious worship, by whatever name or designation known.

3. Prohibition of use of religious institutions for certain purposes.—No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution—

(a) for the promotion or propagation of any political activity; or

(b) for the harbouring of any person accused or convicted of an offence under any law for the time being in force; or

(c) for the storing of any arms or ammunition; or

(d) for keeping any goods or articles in contravention of any law for the time being in force; or

(e) for erecting or putting up of any construction or fortification, including basements, bunkers, towers or walls without a valid licence or permission under any law for the time being in force; or

(f) for the carrying on of any unlawful or subversive act prohibited under any law for the time being in force or in contravention of any order made by any Court; or

(g) for the doing of any act which promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(h) for the carrying on of any activity prejudicial to the sovereignty, unity and integrity of India; or

(i) for the doing of any act in contravention of the provisions of the Prevention of Insults to National Honour Act, 1971 (69 of 1971).

4. Restrictions on carrying arms and ammunition into a religious institution.—No religious institution or manager thereof shall allow the entry of any arms or ammunition or of any person carrying any arms or ammunition into the religious institution:

Provided that nothing in this section shall apply to—

(a) the wearing and carrying of a kirpan by any person professing the Sikh religion; or

(b) any arms which are used as part of any religious ceremony or ritual of the institution as established by custom or usage.

5. Prohibition of use of funds of religious institutions for certain activities.—No religious institution or manager thereof shall use or allow the use of any funds or other properties belonging to, or under the control of, the institution for the benefit of any political party or for the purpose of any political activity or for the commission of any act which is punishable as an offence under any law.

6. Prohibition of religious fora for propagating political ideas.—No religious institution or manager thereof shall allow any ceremony, festival, congregation, procession or assembly organized or held under its auspices to be used for any political activity.

7. Penalties.—Where any religious institution or manager thereof contravenes the provisions of section 3, section 4, section 5 or section 6, the manager and every person connected with such contravention shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

8. Disqualification of persons convicted or charge-sheeted under this Act.—(1) Any manager or other employee of a religious institution shall, upon conviction for an offence under this Act, stand removed from his office or post and shall, notwithstanding anything to

the contrary contained in any other law, be disqualified for appointment in any religious institution as manager or in any other capacity for a period of six years from the date of his conviction.

(2) Where any manager or other employee of a religious institution is accused of an offence under this Act and a charge-sheet for the prosecution of such person is filed in any Court and the Court is of the opinion, after considering the charge-sheet and after hearing the prosecution and the accused, that a *prima facie* case exists, it shall pass an order or direction restraining the person from exercising the powers or discharging the duties of his office or post pending trial.

(3) Where any manager or other employee has been removed under sub-section (1), or restrained under sub-section (2), the vacancy arising out of such removal or restraint may be filled in the manner provided in the law applicable to the said religious institution.

9. Certain persons bound to give information to police.—Every manager or other employee of a religious institution shall be bound to give information to the officer incharge of the police station within whose local jurisdiction the religious institution is situate of any contravention or any impending contravention of the provisions of this Act and any failure to do so shall be punishable under section 176 of the Indian Penal Code (45 of 1860).

10. Repeal and saving.—(1) The Religious Institutions (Prevention of Misuse) Ordinance, 1988 (Ord. 3 of 1988), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE REPATRIATION OF PRISONERS ACT, 2003

28/09/2003

1. Short title and commencement.—(1) This Act may be called THE REPATRIATION OF PRISONERS ACT, 2003.

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

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

(a) “contracting State” means a Government of any country or place outside India in respect of which arrangement has been made by the Central Government with the Government of such country or place through a treaty or otherwise for transfer of prisoners from India to such country or place and *vice versa* and includes any other Government of such country or place specified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 3;

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

(c) “prisoner” means a person undergoing a sentence of imprisonment under an order passed by a Criminal Court including the Courts established under the law for the time being in force in contracting States;

(d) “warrant” means a warrant issued under sub-section (1) of section 7 or sub-section (2) of section 12, as the case may be;

(e) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

3. Application of Act.—(1) The Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall apply to a country or place outside India as may be specified in the notification.

(2) If the notification under sub-section (1) relates to a country or place outside India with which a treaty has been entered into by India for the transfer of prisoners between that country and India, then, such notification shall also set out the full text of the said treaty and shall in no case remain in force longer than the period of the said treaty.

(3) If the Central Government is of the opinion that, with respect to a country or place outside India, provisions of this Act require to be modified to give effect to a treaty in relation to such country, it may, by notification in the Official Gazette, direct that the application of this

Act to such country shall be subject to such conditions, exceptions and modifications specified in the notification.

4. Application for transfer by a prisoner.—Any prisoner who is a citizen of a contracting State may make an application to the Central Government for transfer of his custody from India to that contracting State:

Provided that if a prisoner is not able to make an application himself because of his ill health, mental condition, old age or being a minor, then, the application may be made by any other person entitled to act on his behalf.

5. Consideration of request by Central Government.—(1) On receipt of the application under section 4, the Central Government shall direct the officer-in-charge of the prison, where the prisoner is confined, to furnish such information which in the opinion of that Government is relevant for the purpose of transfer.

(2) On receipt of the information under sub-section (1), if the Central Government is satisfied that—

- (a) no inquiry, trial or any other proceeding is pending against the prisoner;
 - (b) death penalty has not been awarded to the prisoner;
 - (c) the prisoner has not been convicted for an offence under the martial law; and
 - (d) transfer of custody of the prisoner to the contracting State shall not be prejudicial to the sovereignty, security or any other interest of India,
- it shall pass an order for forwarding the application of the prisoner to the contracting State.

6. Comments of contracting State.—(1) The application of the prisoner shall be forwarded by the Central Government through prescribed means to the Government of the contracting State to deal with such application along with the following information, namely:—

- (a) a copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the prisoner;
- (b) the nature, duration and date of commencement of the sentence of the prisoner;
- (c) medical report or any other report regarding the antecedents and character of the prisoner, where it is relevant for the disposal of his application or for deciding the nature of his confinement; and
- (d) any other information which the Central Government may consider necessary.

(2) Where any application of a prisoner forwarded by the Central Government has been accepted by the contracting State, the Central Government may seek from such contracting State, all or any of the following information or documents before taking decision to transfer the prisoner to the contracting State, namely:—

- (a) a statement or document indicating that the prisoner is a citizen of the contracting State;
- (b) a copy of the relevant law of the contracting State constituting the act or omission as the offence, on account of which the sentence has been passed in India, as if such act or omission was an offence under the law of that State;
- (c) a statement of the fact or any law or regulation relating to the duration and enforcement of the sentence of the prisoner in the contracting State upon his transfer;
- (d) the willingness of the contracting State to accept the transfer of the prisoner and an undertaking to administer the remaining part of the sentence of the prisoner;
- (e) an undertaking to comply with the conditions, if any, specified by the Central Government; and
- (f) any other information or document which the Central Government may consider necessary.

7. Consideration of request by Central Government.—(1) If the Central Government, on receipt of a communication from the concerned contracting State,—

- (a) expressing its willingness to accept the transfer of the prisoner; and
 - (b) undertaking to comply with the conditions specified in the warrant,
- is satisfied that the prisoner should be transferred to the said State, the Central Government may, notwithstanding anything contained in any other law for the time being in force, issue a warrant in accordance with the provisions of section 8 in such form as may be prescribed.

(2) Where a warrant is issued under sub-section (1), the Central Government shall inform the contracting State accordingly and request that State to specify the person to whom and the place within India where custody of the prisoner shall be delivered.

8. Provision to issue warrant for transfer.—(1) The Central Government shall authorize an officer not below the rank of a Joint Secretary to a State Government, within the limits of whose jurisdiction the place of imprisonment of the prisoner is situated, to issue a warrant on behalf of the Central Government under sub-section (1) of section 7 directing the officer-in-charge of the prison therein to deliver the custody of the prisoner to the person authorised by the contracting State to which the prisoner is to be transferred, presenting such person a copy of the warrant together with all the records relating to the prisoner and the personal effects taken from the prisoner at the time of his admission in the prison.

(2) Upon the presentation of a warrant referred to in sub-section (1), the officer-in-charge of the prison shall forthwith comply with the warrant and obtain thereon the signature of the person to whom delivery of the prisoner, records and the personal effects relating to the prisoner to be removed from the prison is given.

(3) After delivery of the prisoner to the person authorised by the contracting State under sub-section (2), the officer-in-charge of the prison transferring the prisoner shall forward a copy of the warrant to the Court which committed the prisoner to the prison, along with a statement that the prisoner has been delivered to the person authorised by the contracting State under sub-section (1).

(4) The delivery of the prisoner in compliance of the warrant issued under sub-section (1) shall discharge the officer-in-charge of the prison from the responsibility of keeping the prisoner in his custody.

9. Operation of warrant and retaking prisoner.—It shall be lawful for the person authorised by the contracting State to whom the custody of a prisoner is delivered under the provisions of sub-section (2) of section 8 to receive and hold in custody such prisoner and to convey him out of India and if the prisoner escapes from such custody within India, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the officer-in-charge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code (45 of 1860) and shall also be liable for such sentence of imprisonment in India which he would have to undergo if the delivery of custody of such prisoner had not been made under section 8.

10. Transfer of record.—Where a prisoner is or is to be transferred to a contracting State under the provisions of this Act, the Central Government may requisition the records of any proceeding, including judicial proceedings relating to that prisoner from any Court or office, and may direct that such records shall be sent to the Government of the contracting State.

11. Power of Court and Central Government shall not be affected.—The transfer of a prisoner from India to a contracting State shall not affect the power of the Court which passed the judgment to review its judgment and power of the Central Government or State Government to suspend, remit or commute the sentence in accordance with any law for the time being in force.

12. Transfer into India.—(1) The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and that State.

(2) If the Central Government accepts the request for a transfer under sub-section (1), then, notwithstanding anything contained in any other law for the time being in force, it may issue a warrant to detain the prisoner in prison in accordance with the provisions of section 13 in such form as may be prescribed.

13. Determination of prison and issue of warrant for receiving transfer in India.—(1) The Central Government shall, in consultation with a State Government, determine the prison situated within the jurisdiction of such State Government where the prisoner with respect to whom a warrant has been issued under sub-section (2) of section 12, shall be lodged and the officer who shall receive and hold him in custody.

(2) The Central Government shall authorize any officer not below the rank of a Joint Secretary to that Government to issue a warrant under sub-section (2) of section 12 and to direct the officer referred to in sub-section (1) to receive and hold the prisoner, with respect to whom the warrant is issued, in custody.

(3) It shall be lawful for the officer referred to in sub-section (1) to receive and hold in custody any prisoner delivered to him under the direction made in the warrant issued under sub-section (2) of section 12 and to convey such prisoner to any prison determined under sub-section (1) for being dealt with in accordance with the said warrant and if the prisoner escapes from such custody, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the officer-in-charge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code (45 of 1860) and shall also be liable to be dealt with in accordance with the said warrant.

(4) A warrant under sub-section (2) of section 12 shall provide for—

(a) the bringing of the prisoner into India from a contracting State or a place outside India;

(b) the taking of such prisoner in any part of India being a place at which effect may be given to the provisions contained in the warrant;

(c) the nature and duration of imprisonment of the prisoner in accordance with the terms and conditions referred to in sub-section (1) of section 12 and the imprisonment of such prisoner in India in such manner as may be contained in the warrant; and

(d) any other matter which may be prescribed.

(5) Notwithstanding anything contained in any other law for the time being in force, the imprisonment of a prisoner in compliance with a warrant issued under sub-section (2) of section 12 shall be deemed to be imprisonment under a sentence of a Court competent to pass such a sentence of imprisonment in India.

(6) If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India:

Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State to the prisoner and such adapted sentence shall not aggravate the punishment, by its nature, duration or both relating to the sentence imposed in the contracting State.

14. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the means through which an application may be forwarded under sub-section (1) of section 6;

(b) the form in which a warrant may be issued under sub-section (1) of section 7;

(c) the form in which a warrant may be issued under sub-section (2) of section 12; and

(d) any other matter which may be prescribed under clause (d) of sub-section (4) of section 13.

15. Laying of rules, etc.—Every notification issued under sub-sections (1) and (3) of section 3 and every rule made under section 14 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

16. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

11/09/1990

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) "atrocities" means an offence punishable under section 3;

(b) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(c) "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 336 of the Constitution;

(d) "Special Court" means a Court of Session specified as a Special Court in section 14;

(e) "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15;

(f) words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code (45 of 1860).

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II

OFFENCES OF ATROCITIES

3. Punishments for offences of atrocities.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

4. Punishment for neglect of duties.—Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

5. Enhanced punishment for subsequent conviction.—Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

6. Application of certain provisions of the Indian Penal Code.—Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter V-A, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code (45 of 1860).

7. Forfeiture of property of certain persons.—(1) Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

(2) Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

8. Presumption as to offences.—In a prosecution for an offence under this Chapter, if it is proved that—

(a) the accused rendered any financial assistance to a person accused of, or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

9. Conferment of powers.—(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,—

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made hereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

CHAPTER III

EXTERMENT

10. Removal of person likely to commit offence.—(1) Where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in "Scheduled Areas" or "Tribal Areas" as

referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

11. Procedure on failure of person to remove himself from area and enter thereon after removal.—(1) If a person to whom a direction has been issued under section 10 to remove himself from any area—

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order,

otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under section 10 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission, the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

12. Taking measurements and photographs, etc., of persons against whom order under section 10 is made.—(1) Every person against whom an order has been made under section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.

(2) If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken resists or refuses to allow his taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.

(3) Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).

(4) Where an order under section 10 is revoked, all measurements or photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

13. Penalty for non-compliance of order under section 10.—Any person contravening an order of the Special Court made under section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

CHAPTER IV

SPECIAL COURTS

14. Special Court.—For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

15. Special Public Prosecutor.—For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER V

MISCELLANEOUS

16. Power of State Government to impose collective fine.—The provisions of section 10-A of the Protection of Civil Rights Act, 1955 (22 of 1955) shall, so far as may be, apply for the purposes of imposition and realisation of collective fine and for all other matters connected therewith under this Act.

17. Preventive action to be taken by the law and order machinery.—(1) A District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquillity and may take preventive action.

(2) The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1).

(3) The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

18. Section 438 of the Code not to apply to persons committing an offence under the Act.—Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

19. Section 360 of the Code or the provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act.—The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

20. Act to override other laws.—Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

21. Duty of Government to ensure effective implementation of the Act.—(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,—

(i) the provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;

(ii) the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act;

(iii) the provision for the economic and social rehabilitation of the victims of the atrocities;

(iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;

(vi) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;

(vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1).

(4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

22. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

23. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

THE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976

25/01/1976

1. Short title, extent and commencement.—(1) This Act may be called THE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 5th day of November, 1975.

2. Application.—(1) The provisions of this Act shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely:—

(a) every person—

(i) who has been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), of an offence in relation to goods of a value exceeding one lakh of rupees; or

(ii) who has been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), of an offence, the amount or value involved in which exceeds one lakh of rupees; or

(iii) who having been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), has been convicted subsequently under either of those Acts; or

(iv) who having been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), has been convicted subsequently under either of those Acts;

(b) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12-A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12-A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12-A, of that Act; or

(iv) such order of detention has not been set aside by a Court of competent jurisdiction;

(c) every person who is a relative of a person referred to in clause (a) or clause (b);

(d) every associate of a person referred to in clause (a) or clause (b);

(e) any holder (hereafter in this clause referred to as the present holder) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

Explanation 1.—For the purposes of sub-clause (i) of clause (a), the value of any goods in relation to which a person has been convicted of an offence shall be the wholesale price of the goods in the ordinary course of trade in India as on the date of the commission of the offence.

Explanation 2.—For the purposes of clause (c), “relative”, in relation to a person, means—

(i) spouse of the person;

(ii) brother or sister of the person;

(iii) brother or sister of the spouse of the person;

(iv) any lineal ascendant or descendant of the person;

(v) any lineal ascendant or descendant of the spouse of the person;

(vi) spouse of a person referred to in clause (ii), clause (iii), clause (iv) or clause (v);

(vii) any lineal descendant of a person referred to in clause (ii) or clause (iii).

Explanation 3.—For the purposes of clause (d), “associate”, in relation to a person, means—

(i) any individual who had been or is residing in the residential premises (including outhouses) of such person;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956 (1 of 1956), of which such person had been or is a member, partner or director;

(iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (iii) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or a private company;

(v) any person who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii);

(vi) the trustee of any trust, where,—

(a) the trust has been created by such person; or

(b) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent. of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person.

Explanation 4.—For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.

2-A. Act not to apply to certain persons.—On and from the commencement of the provisions of Chapter V-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the provisions of this Act shall not apply to persons in relation to whom any order, the proceeding, may be made or taken under that Chapter.

3. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) “Appellate Tribunal” means the Appellate Tribunal for Forfeited Property constituted under section 12;

(b) “competent authority” means an officer of the Central Government authorised by it under sub-section (1) of section 5 to perform the functions of a competent authority under this Act;

(c) “illegally acquired property”, in relation to any person to whom this Act applies, means,—

(i) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property;

and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings there from;

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

(e) “property” includes any interest in property, movable or immovable;

(f) “trust” includes any other legal obligation.

(2) Any reference in this Act to any law which is not in force in any areas shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

(3) Any reference in this Act to any officer or authority shall, in relation to any area in which there is no officer or authority with the same designation, be construed as a reference

to such officer or authority as may be specified by the Central Government by notification in the Official Gazette.

4. Prohibition of holding illegally acquired property.—(1) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act.

5. Competent authority.—(1) The Central Government may, by order published in the Official Gazette, authorize as many officers of the Central Government (not below the rank of a Joint Secretary to the Government), as it thinks fit, to perform the functions of the competent authority under this Act.

(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.

6. Notice of forfeiture.—(1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

7. Forfeiture of property in certain cases.—(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

8. Burden of proof.—In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected.

9. Fine in lieu of forfeiture.—(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 7 and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the

competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation.—For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be,—

(a) in the case of any part of income or earning, the amount of such part of income or earnings;

(b) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 7 and thereupon such property shall stand released.

10. Procedure in relation to certain trust properties.—In the case of any person referred to in clause (vi) of *Explanation* 4 to sub-section (2) of section 2, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 6 and all the other provisions of this Act shall apply accordingly.

Explanation.—For the purposes of this section “illegally acquired property”, in relation to any property held in trust, includes—

(i) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(ii) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

11. Certain transfers to be null and void.—Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 7, then, the transfer of such property shall be deemed to be null and void.

12. Constitution of Appellate Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government), as the Central Government thinks fit, to be appointed by that Government for hearing appeals against the orders made under section 7, sub-section (1) of section 9 or section 10.

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

(4) Any person aggrieved by an order of the competent authority made under section 7, sub-section (1) of section 9 or section 10, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) On receipt of an appeal under sub-section (4), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further enquiry as it deems fit, confirm, modify or set aside the order appealed against.

(6) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(6-A) Notwithstanding anything contained in sub-section (6), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(7) The Appellate Tribunal may regulate its own procedure.

(8) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in this behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.

13. Notice or order not to be invalid for error in description.—No notice issued or served, no declaration made, and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

14. Bar of jurisdiction.—No order passed or declaration made under this Act shall be appealable except as provided therein and no Civil Court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

15. Competent authority and Appellate Tribunal to have powers of Civil Court.—The competent authority and the Appellate Tribunal shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for examination of witnesses or documents;

(f) any other matter which may be prescribed.

16. Information to competent authority.—(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Act.

(2) Any officer of the Income-tax Department, the Customs Department or the Central Excise Department or any officer of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973), may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Act.

17. Certain officers to assist competent authority and Appellate Tribunal.—For the purposes of any proceedings under this Act, the following officers are hereby empowered and required to assist the competent authority and the Appellate Tribunal, namely:—

(a) officers of the Customs Department;

(b) officers of the Central Excise Department;

- (c) officers of the Income-tax Department;
- (d) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973);
- (e) officers of police;
- (f) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

18. Power of competent authority to require certain officers to exercise certain powers.—(1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters.

(2) For the purposes referred to in sub-section (1), the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.

(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation or survey required to be conducted under sub-section (2), may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorize the exercise of any power) which may be exercised by him for any purpose under the Income-tax Act, 1961 (43 of 1961), and the provisions of the said Act shall, so far as may be, apply accordingly.

19. Power to take possession.—(1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of section 9 within the time allowed therefore under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist the competent authority and it shall be the duty of such officer to comply with such requisition.

20. Rectification of mistakes.—With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

21. Findings under other laws not conclusive for proceedings under this Act.—No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

22. Service of notices and orders.—Any notice or order issued or made under this Act shall be served—

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made, or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

23. Protection of action taken in good faith.—No suit, prosecution or other proceeding shall lie against the Central Government or any officer of the Central or State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or the rules made hereunder.

24. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

25. Provisions of the Act not to apply to certain properties held in trust.—Nothing contained in this Act shall apply in relation to any property held by a trust or an institution created or established wholly for public, religious or charitable purposes if—

(i) such property has been so held by such trust or institution from a date prior to the commencement of this Act; or

(ii) such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

26. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under sub-section (3) of section 12;

(aa) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining a certified copy of any part thereof under sub-section (8) of section 12;

(b) the powers of a Civil Court that may be exercised by the competent authority and the Appellate Tribunal under clause (f) of section 15;

(c) any other matter which has to be, or may be, prescribed.

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

27. Repeal and saving.—(1) The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 (20 of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (RECEIPT, MANAGEMENT AND DISPOSAL OF FORFEITED PROPERTY) RULES, 2006

CHAPTER I PRELIMINARY

1. Short title and commencement.—(1) These rules may be called THE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (RECEIPT, MANAGEMENT AND DISPOSAL OF FORFEITED PROPERTY) RULES, 2006.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) “Act” means the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976);

(b) “competent authority” means an officer of the Central Government authorised by it under sub-section (1) of section 5;

(c) “Form” means form annexed to these rules;

(d) “godown” means godown for storage of property forfeited under section 7 of the Act;

(e) “public auction” means the auction as described in the manner as laid down in Second Schedule of the Income-tax Act, 1961 (43 of 1961);

(f) “sealed tender” means the tenders covered with envelopes stamped with seal;

(g) the words and expressions used but not defined in these rules shall have the same meanings respectively assigned to them in the Act.

CHAPTER II

ASSISTANCE TO THE COMPETENT AUTHORITY

3. Assistance to the competent authority.—The Central Government may provide from time to time such members of staff and other persons as it thinks fit to assist the competent authority in performing the functions under these rules.

CHAPTER III

DESIGNATION OF GODOWNS, RECEIPTS AND MANAGEMENT OF PROPERTY

4. Designation of godowns.—(1) The competent authority shall designate as many godowns as may be necessary for the storage of property mentioned in the orders made under section 7 of the Act.

(2) The competent authority shall select godowns referred to in sub-rule (1), keeping in view the security of the premises, storage capacity, nature of property and other relevant factors.

(3) Each designated godown shall have a godown keeper and a godown-in charge to assist the competent authority.

5. Proper accounting of properties.—The competent authority shall, at the time of receiving properties, ensure proper identification of such property with reference to its particulars mentioned in the order made under section 7 of the Act.

6. Godown register.—The competent authority shall cause a register in Form I for recording entries in respect of property other than the properties referred to in rule 7, to be maintained.

7. Godown register for valuables.—The competent authority shall cause a register in Form II for recording entries in respect of property, namely, gold and gold jewellery, diamonds, precious and semi-precious stones (hereinafter called “valuables”) to be maintained.

8. Storage of property.—(1) The competent authority shall ensure that the packages containing valuables are kept in the godown in an iron safe and vault, under double lock system, one key remaining with the godown-keeper and the other to be retained by the godown-in-charge.

(2) Where, for any valid reasons, it is found that the packages containing valuables may not be kept in godown, such packages shall be kept in lockers obtaining exclusively for this purpose, either with any branch of the Reserve Bank of India or of any nationalised bank.

(3) The packages referred to in sub-rules (1) and (2) shall be stored systematically case-wise, serial-wise, year-wise and with proper identification marks to facilitate re-check and inspection.

9. Management of land and building.—The competent authority may authorize any officer referred to in section 17 of the Act to take possession of land or building in respect of which an order under section 7 has been passed or where the person affected has failed to pay the fine under sub-section (1) of section 9 within the time allowed under that section.

10. Record of land or building.—The competent authority shall maintain a record of land or building in Form III.

11. Storage of property other than valuables.—(1) The movable property other than valuables shall be stored in almirahs and racks.

(2) Each almirah and rack shall have a stock-card indicating the case number and full description of the property.

12. Placement of stock-cards.—The godown-in-charge shall ensure that the racks or almirahs or any other thing used for storage of property, display stock-cards indicating the case number and full description of the property stored.

13. Opening and re-sealing of the packages.—(1) Where any package is to be opened for any reason, the same shall be opened in the presence of the owner and the concerned godown-in-charge after obtaining the order of the competent authority in this respect.

(2) The packages shall be re-sealed immediately after the purpose for which such packages were opened is fulfilled, in the presence of the owner and the concerned godown-in-charge.

(3) At the time of re-sealing, the owner and the concerned godown-in-charge shall affix their seals.

14. Maintenance of forfeited conveyances.—Conveyances, such as aircraft, vessel, motor vehicle and any other mode of conveyance shall be properly maintained by the godown-in-charge till its disposal.

CHAPTER IV

DISPOSAL OF PROPERTY

15. Disposal of livestock, perishable, etc.—Subject to the sale proceeds being credited into the account of the Central Government, the competent authority shall dispose of the livestock and property which is perishable in nature or prone to decay in the manner deemed fit.

16. Disposal of valuables.—Subject to the sale proceeds being credited into the account of the Central Government, the competent authority shall dispose of the valuables mentioned below in the following manner, namely:—

(1) *Gold, gold jewellery, silver and silver jewellery*—The valuables, namely, gold, gold jewellery, silver and silver jewellery shall be deposited in the Government of India Mints which shall credit the value of such property to the Central Government.

(2) Diamonds and precious and semi-precious stones shall be sold by public auction failing which by tender after valuation by Government approved valuer.

17. Deposit of currency.—(1) Indian and foreign currency shall be deposited with the Reserve Bank of India or any nationalised bank.

(2) The amount so deposited shall be credited into the account of the Central Government.

18. Disposal of conveyance.—Subject to the sale proceeds being credited into the account of the Central Government, conveyances, such as aircrafts, vessels, vehicles and other modes of conveyance shall be sold by public auction failing which by tender.

19. Disposal of land or building.—Subject to the relevant provisions of any law relating to the acquisition or disposal of immovable property and also subject to the sale proceeds being credited into the account of the Central Government, land or building shall be disposed of in the following manner, namely:—

(1) The disposal of land or building shall be done simultaneously through open tender, public auction and e-auction. Bids shall be invited through advertisements in local newspapers and through the website of the department. After the sealed tenders are received, the property shall be put to public auction. Simultaneously, the department shall advertise through internet inviting bids through e-auction. The property shall be sold to the highest bidder in all the three methods, namely, sealed tender, public auction and e-auction, provided the price obtained is not less than the reserve price fixed at by the department.

(2) In case the property is not disposed of in the manner prescribed under sub-rule (1) of rule 19 in two attempts, the same shall be disposed of by inviting sealed tenders:

(a) the property shall be advertised in the local newspapers indicating the reserve price and inviting tenders. The highest bidder (subject to the reserve price) shall be entitled to buy the property.

(b) if the property cannot be sold in the first attempt as provided in clause (a), the sale of the property through sealed tender shall be advertised again with a proviso that the competent authority reserves the right to sell the property to the highest bidder who offers to buy the property for a price which is up to fifteen per cent. less than the reserve price.

(c) if the property remains unsold even after the attempts as provided in clause (a) and clause (b), the sale of the property shall be advertised again with a proviso that the competent authority reserves the right to sell the property to the highest bidder who offers to buy the property for a price which is up to thirty per cent. less than the reserve price.

(3) If the property remains unsold even after attempts as provided in sub-rule (1) and sub-rule (2), it shall be disposed of through a negotiated sale upto fifty per cent. below the reserve price to any of the following entities, namely:—

(a) Central and State Government.

(b) Public Sector Undertakings.

(c) Local bodies.

(4) If the property is not sold by any of the above methods, it may be disposed of by the Central Government in the manner as deemed fit.

20. Disposal of other property.—Subject to the sale proceeds being credited into the account of the Central Government, property other than those mentioned in rules 15 to 19 shall be disposed of by public auction failing which by tender.

CHAPTER V

MISCELLANEOUS

21. Periodical reports.—The godown-in-charge shall submit, every month, a report to the competent authority of the property received or disposed of during that period.

22. Periodical inspection.—The competent authority with a view to ensuring safety, security, proper accounting and management of all properties in the godowns, conduct physical inspection and verification with the help of such officers as deemed fit.

23. Record of receipt and disposal.—The competent authority shall maintain a record of receipt and disposal of all properties received and disposed of under these rules. He shall also maintain an account of all income received and expenditure incurred on receipt, management and disposal of such property.

THE SPECIAL COURTS ACT, 1979

17/05/1979

1. Short title and extent.—(1) This Act may be called THE SPECIAL COURTS ACT, 1979.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(b) "declaration" in relation to an offence, means a declaration made under section 5 in respect of such offence;

(c) "special Court" means a Special Court established under section 3;

(d) words and expressions used but not defined in this Act but defined in the Code shall have the same meanings as in the Code.

3. Establishment of Special Courts.—(1) The Central Government shall, by notification in the Official Gazette, establish an adequate number of Courts to be called Special Courts.

(2) A Special Court shall consist of a sitting Judge of a High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India.

Explanation.—Any reference to a High Court or to Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be.

4. Cognizance of cases by Special Courts.—A Special Court shall take cognizance of or try such cases as are instituted before it or transferred to it as hereinafter provided.

5. Declaration by Central Government of cases to be dealt with under this Act.—

(1) If the Central Government is of opinion that there is *prima facie* evidence of the commission of an offence alleged to have been committed by a person who held high public or political office in India and that in accordance with the guidelines contained in the Preamble here to the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is the aforesaid opinion.

(2) Such declaration shall not be called in question in any Court.

6. Effect of declaration.—On such declaration being made in respect of any offence, notwithstanding anything in the Code, any prosecution in respect of such offence shall be instituted only in a Special Court designated by the Central Government and any prosecution in respect of such offence pending in any Court shall stand transferred to a Special Court designated by the Central Government.

7. Pending appeal or revision to be transferred to Supreme Court.—If at the date of the declaration in respect of any offence an appeal or revision against any judgment or order in a prosecution in respect of such offence, whether pending or disposed of, is itself pending in any Court of Appeal or Revision, the same shall stand transferred for disposal to the Supreme Court.

8. Jurisdiction of Special Courts as to joint trials.—A Special Court shall have jurisdiction to try any person concerned in the offence in respect of which a declaration has been made, either as principal, conspirator or abettor and all other offences and accused persons as can be jointly tried therewith at one trial in accordance with the Code.

9. Procedure and powers of Special Courts.—(1) A Special Court shall in the trial of such cases follow the procedure prescribed by the Code, for the trial of warrant cases before a Magistrate.

(2) A Special Court may, with a view to obtaining evidence of any person suspected to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal, conspirator or abettor in the commission thereof and any pardon so tendered shall for the purposes of section 308 of the Code be deemed to have been tendered under section 307 thereof;

(3) Save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purposes of the said provisions of the Code a Special Court shall be deemed to be a Court of Session and shall have all the powers of a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be public prosecutor.

(4) A Special Court may pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted.

10. Power of Supreme Court to transfer cases.—(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of a State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

11. Appeal.—Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of any judgment, sentence or order of a Special Court:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

12. Power to make rules.—The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

13. Notifications under section 3 and declarations under section 5 to be laid before Parliament.—Every notification made under sub-section (1) of section 3 and every declaration made under sub-section (1) of section 5 shall be laid, as soon as may be after it is made, before each House of Parliament.

THE STANDARDS OF WEIGHTS AND MEASURES ACT, 1976

08/04/1976

PART I

PROVISIONS APPLICABLE TO EVERY PART

1. Short title, extent and commencement.—(1) This Act may be called THE STANDARDS OF WEIGHTS AND MEASURES ACT, 1976.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different—

- (a) provisions of this Act,
- (b) areas,
- (c) classes of undertakings,
- (d) classes of goods,
- (e) classes of weights and measures, or
- (f) classes of users of weights and measures,

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision in such areas, or in respect of such classes of undertakings, goods, weights and measures or users of weights and measures in relation to which this Act has been brought into force:

Provided that the provisions of this Act (including the standards established by or under this Act) shall come into force in the State of Sikkim on such date, not being later than five years from the passing of this Act, as the Central Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act or for different areas or for different classes of undertakings or for different classes of goods, or for different classes of weights and measures or for different classes of users of weights and measures.

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

(a) “calibration” means all the operations which are necessary for the purpose of determining the values of the errors of a weight or measure and, if necessary, to determine the other metrological properties of such weight or measure, and includes the actual fixing of the positions of the gauge-marks or scale-marks of a weight or measure, or in some cases, of certain principal marks only, in relation to the corresponding values of the quantity to be measured.

Explanation.—Calibration may also be carried out with a view to permitting the use of a weight or measure as a standard;

(b) “commodity in packaged form” means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail;

(c) “dealer”, in relation to any weight or measure, means a person who, or a firm or a Hindu undivided family which, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes—

(i) a commission agent who carries on such business on behalf of any principal,

(ii) an importer who sells, supplies, distributes or otherwise delivers any weight or measure to any user, manufacturer, repairer, consumer or any other person, but does not include a manufacturer who sells, supplies, distributes or otherwise delivers any weight or measure to any person or category of persons referred to in this clause.

Explanation.—For the removal of doubts, it is hereby declared that a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure to any person other than a dealer, shall be deemed to be a dealer;

(d) “Director” means the Director of Legal Metrology appointed under section 28;

(e) “export”, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(f) “false package” means any package which does not conform to the provisions of this Act or any rule or order made hereunder in relation to such package;

(g) "false weight or measure" means any weight or measure which does not conform to the standards established by or under this Act in relation to that weight or measure;

(h) "General Conference on Weights and Measures" means the Conference General des Poids et Mesures established under the Convention du Metre;

(i) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(j) "International Bureau of Weights and Measures" means the Bureau International des Poids et Mesures, established under the Convention du Metre, at Sevres in France;

(k) "International Organisation of Legal Metrology" means the Organisation Internationale de Metrologie Legale established under the Convention Instituant Une Organisation Internationale de Metrologie Legale;

(l) "International prototype of the kilogram" means the prototype sanctioned by the First General Conference on Weights and Measures held in Paris in 1889, and deposited at the International Bureau of Weights and Measures;

(m) "inter-State trade or commerce", in relation to any weight or measure or other goods which are bought, sold, supplied, distributed or delivered by weight, measure or number, means the purchase, sale, supply, distribution or delivery which—

(i) occasions the movement of such weight, measure or other goods from one State to another, or

(ii) is effected by a transfer of documents of title to such weight, measure or other goods during its movement from one State to another.

Explanation I.—Where any such weight or measure is, or other goods are, delivered to a carrier or other bailee for transmission, the movement of such weight, measure or other goods shall, for the purposes of sub-clause (ii), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation II.—Where the movement of any such weight, measure or other goods commences and terminates in the same State, it shall not be deemed to be a movement of such weight, measure or other goods from one State to another merely by reason of the fact that in the course of such movement it passes through the territory of any other State;

(n) "label" means any written, marked, stamped, printed, or graphic matter affixed to, or appearing upon, any commodity or package containing any commodity;

(o) "manufacturer", in relation to any weight or measure, means a person who, or a firm or a Hindu undivided family which,—

(i) makes or manufactures such weight or measure,

(ii) makes or manufactures one or more parts, and acquires the other parts, of such weight or measure and, after assembling those parts, claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,

(iii) does not make or manufacture any part of such weight or measure but assembles parts thereof made or manufactured by others and claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,

(iv) puts, or causes to be put, his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself or itself, as the case may be.

Explanation.—Where any manufacturer despatches any weight or measure or any part thereof to any branch office maintained by him or it, such branch office shall not be deemed to be a manufacturer even though the parts so despatched to it are assembled at such branch office;

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

(q) "person" includes—

(i) every department or office,

(ii) every organisation established or constituted by Government,

(iii) every local authority within the territory of India,

(iv) every co-operative society,

(v) every other society registered under the Societies Registration Act, 1860 (21 of 1860);

(r) "premises" includes—

(i) a place where any business, industry, production or trade is carried on by a person, whether by himself or through an agent, by whatever name called,

(ii) a warehouse, godown or other place where any weight, measure or other goods are stored or exhibited,

(iii) a place where any books of account or other documents pertaining to any trade or transaction are kept,

(iv) a dwelling house, if any part thereof is used for the purpose of carrying on any business, industry, production or trade.

Explanation.—"Place" includes a vehicle or vessel or any other mobile device, with the help of which any trade or business is carried on, and also includes any measuring instrument mounted on a vehicle, vessel or other mobile device;

(s) "prescribed" means prescribed by rules made under this Act and "prescribed authority" means such authority as may be specified by such rules;

(t) "reference standard" means the set of standard weight or measure which is made or manufactured by or on behalf of the Central Government for the verification of any secondary standard;

(u) "repairer" includes a person who adjusts, cleans, lubricates or paints any weight or measure or renders any other service to such weight or measure to ensure that such weight or measure conforms to the standards established by or under this Act;

(v) "sale", with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods;

(w) "seal" means a device or process by which a stamp is made, and includes any wire or other accessory which is used for ensuring the integrity of any stamp;

(x) "secondary standard" means the set of standard weight or measure which is made or manufactured by or on behalf of the Central or State Government for the verification of any working standard;

(y) "stamp" means a mark, which is made on, or in relation to, any weight or measure with a view to—

(i) certifying that such weight or measure conforms to the standard specified by or under this Act; or

(ii) indicating that any mark which was previously made thereon certifying that such weight or measure conforms to the standards specified by or under this Act, has been obliterated.

Explanation.—A stamp may be made by impressing, casting, engraving, etching, branding or any other process;

(z) "transaction" means—

(i) any contract, whether for sale, purchase, exchange or any other purpose, or

(ii) any assessment of royalty, toll, duty or other dues, or

(iii) the assessment of any work done, wages due or services rendered;

(za) "unverified weight or measure" means a weight or measure which, being required to be verified and stamped under this Act, has not been so verified and stamped;

(zb) "verification", with its grammatical variations and cognate expressions, includes, in relation to any weight or measure, the process of comparing, checking, testing or adjusting such weight or measure with a view to ensuring that such weight or measure conforms to the standards established by or under this Act, and also includes re-verification and calibration;

(zc) "weighing or measuring instrument" means any object, instrument, apparatus or device, or any combination thereof, which is, or is intended to be, used, exclusively or

additionally, for the purpose of making any weightment or measurement, and includes any appliance, accessory or part associated with any such object, instrument, apparatus or device;

(zd) "weight or measure" means a weight or measure specified by or under this Act, and includes a weighing or measuring instrument;

(ze) "working standard" means the set of standard weight or measure which is made or manufactured by or on behalf of Government for the verification of any standard weight or measure, other than a national prototype or national reference or secondary standard.

3. Provisions of this Act to override the provisions of any other law.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

PART II

ESTABLISHMENT OF STANDARDS OF WEIGHTS AND MEASURES

CHAPTER I

STANDARD UNITS

4. Units of weight or measure to be based on metric system.—(1) Every unit of weight or measure shall be based on the units of the metric system.

(2) For the purposes of sub-section (1),—

(a) the international system of units as recommended by the General Conference on Weights and Measures, and

(b) such additional units as may be recommended by the International Organisation of Legal Metrology,
shall be the units of the metric system.

5. Base unit of length.—(1) The base unit of length shall be the metre.

(2) The "metre" is the length equal to 1650 763.73 wave lengths in vacuum of the radiation corresponding to the transition between the levels $2p_{10}$ and $5d_5$ of the krypton-86 atom.

6. Base unit of mass.—(1) The base unit of mass shall be the kilogram.

(2) The "kilogram" is the unit of mass; it is equal to the mass of the international prototype of the kilogram.

7. Base unit of time.—(1) The base unit of time shall be the second.

(2) The "second" is the duration of 9 192 631 770 periods of the radiation corresponding to the transition between the two hyper-fine levels of the ground state of the caesium-133 atom.

8. Base unit of electric current.—(1) The base unit of electric current shall be the ampere.

(2) The "ampere" is that constant current which if maintained in two straight parallel conductors of infinite length, of negligible circular cross-section, and placed one metre apart in vacuum, would produce between these conductors a force equal to 2×10^{-7} newton per metre of length.

9. Base unit of thermodynamic temperature.—(1) The base unit of thermodynamic temperature shall be the kelvin.

(2) The "kelvin" is the fraction $1/273.16$ of the thermodynamic temperature of the triple point of water.

(3) The kelvin shall also be used for expressing the interval or difference of temperature.

(4) Zero degree Celsius corresponds to 273.15 kelvin.

(5) The degree Celsius may also be used for expressing the interval or difference of temperature, unit degree Celsius being equal to unit kelvin.

10. Base unit of luminous intensity.—(1) The base unit of luminous intensity shall be the candela.

(2) The "candela" is the luminous intensity, in the perpendicular direction, of a surface of $1/600,000$ square metre of a black body at the temperature of freezing platinum under a pressure of 101 325 newtons per square metre.

11. Base unit of amount of substance.—(1) The base unit of amount of substance shall be the mole.

(2) The “mole” is the amount of substance of a system which contains as many elementary entities as there are atoms in 0.012 kilogram of carbon 12.

(3) When the mole is used, the elementary entities shall invariably be specified and may be atoms, molecules, ions, electrons, other particles, or specified groups of such particles.

12. Supplementary, derived, special and other units of weight or measure—their symbols, definitions, etc.—(1) The Central Government may, by rules made in this behalf, specify, in relation to the base units of weight or measure, such supplementary, derived, or other units or standard symbols or definitions as the General Conference on Weights and Measures or the International Organisation of Legal Metrology may recommend.

Explanation.—“Derived unit” means a unit which is derived from the base, or supplementary, units, or both.

(2) The Central Government may, by rules made in this behalf, specify, such multiples and sub-multiples of, and physical constants, and ratios or co-efficients in relation to, units of weight or measure as the General Conference on Weights and Measures or the International Organisation of Legal Metrology may recommend.

(3) The Central Government may, by notification, declare, for such period as it may consider necessary such special units of weight or measure as the General Conference on Weights and Measures or the International Organisation of Legal Metrology may recommend.

13. Base unit of numeration.—(1) The base unit of numeration shall be the unit of the international form of Indian numerals.

(2) Every numeration shall be made in accordance with the decimal system.

(3) The decimal multiples and sub-multiples of the numerals shall be of such denominations and be written in such manner as the Central Government may, after previous publication, specify by rules made in this behalf:

Provided that no such rule shall be made before the expiry of six months from the date on which the draft of the proposed rules was first published in the Official Gazette.

14. Standard unit of weight or measure.—(1) The base unit of mass specified in section 6 and base unit of measures specified in sections 5 and sections 7 to 11 (both inclusive) and the supplementary and other units specified by rules made under section 12, shall be the standard units of weight or measure, as the case may be.

(2) The units of numeration specified by or under section 13 shall be the standard units of numeration.

CHAPTER II

PHYSICAL REPRESENTATION OF STANDARD UNITS

15. National prototypes.—(1) For the purpose of deriving the value of the kilogram, the Central Government shall cause to be prepared a national prototype of the kilogram and shall cause its accuracy to be certified by the International Bureau of Weights and Measures in terms of the international prototype of the kilogram and shall deposit the same in such custody and at such place as that Government may think fit.

(2) For the purpose of deriving the value of the metre, the Central Government may cause to be prepared a national prototype of the metre and, where such prototype is caused to be made, shall also cause its accuracy to be certified by the International Bureau of Weights and Measures and deposit the same in such custody and at such place as that Government may think fit.

16. National standards.—(1) For the purpose of deriving the value of the base units, other than the base unit of mass, the Central Government shall cause to be prepared such objects or equipments, or both, as may be necessary for the purpose and shall cause the accuracy of such objects or equipments, or both, to be certified by the International Bureau of Weights and Measures at such periodical intervals as may be prescribed, and, shall, after such certification, deposit such objects or equipments, or both, in such custody and at such place as that Government may think fit.

(2) For the purpose of deriving the value of the supplementary and other units specified under section 12, the Central Government shall cause to be prepared such objects or

equipments, or both as may be necessary for the purpose and shall cause the accuracy of such objects or equipments, or both, to be certified at such periodical intervals and by such authority as may be prescribed, and, shall after certification, deposit such objects or equipments, or both, in such custody and at such place as that Government may think fit.

17. National prototype and national standard how to be kept.—Every national prototype specified in section 15 and every object or equipment, or both, referred to in section 16, shall be kept in such manner and under such conditions as may be prescribed.

18. Reference, secondary and working standards.—(1) Every—

- (a) reference standard,
- (b) secondary standard, and
- (c) working standard,

shall conform to the standards established by or under this Act and be verified and authenticated at such periodical intervals and in such manner as may be prescribed.

(2) Every reference standard, every secondary standard and every working standard shall be kept in such manner and under such conditions as may be prescribed.

19. Power of Central Government to prescribe physical characteristics, etc., of weights and measures.—(1) The Central Government shall, in relation to any weight or measure, prescribe the physical characteristics, configuration, constructional details, materials, equipment, performance, tolerances, methods or procedures of tests in accordance with the recommendations made by the International Organisation of Legal Metrology:

Provided that where no such recommendation has been made, the Central Government shall prescribe such physical characteristics, configuration, constructional details, materials, equipment, performance, tolerances, methods or procedures of tests in relation to any weight or measure as it may think fit.

(2) Where it is not reasonably practicable to give effect to any recommendation made by the International Organisation of Legal Metrology, the Central Government may make such changes of a minor nature in the recommendation of the International Organisation of Legal Metrology as may appear to it to be necessary.

CHAPTER III

STANDARD WEIGHTS AND MEASURES

20. Standard weight or measure.—(1) Any weight or measure which conforms to the standard unit of such weight or measure and also conforms to such of the provisions of sections 15 to 19 (both inclusive) as are applicable to it shall be the standard weight or measure.

(2) Any numeral which conforms to the provisions of section 13 shall be the standard numeral.

21. Use of non-standard weight or measure prohibited.—No weight, measure or numeral, other than the standard weight, measure or numeral, shall be used as a standard weight, measure or numeral.

22. Manufacture of non-standard weight or measure prohibited.—No weight or measure shall be made or manufactured unless it conforms to the standards of weight or measure established by or under this Act:

Provided that the Central Government may permit the making or manufacturing of any weight or measure which does not conform to the standards established by or under this Act, if such weight or measure is made or manufactured exclusively for the purpose of any scientific investigation or research or for export and is made or manufactured under such conditions and restrictions as may be prescribed.

23. Prohibition with regard to inscriptions, etc.—No weight, measure or other goods shall bear thereon any inscription or indication of weight, measure or number except in accordance with the standard unit of such weight, measure or numeration established by or under this Act:

Provided that in relation to any weight, measure or other goods which are manufactured for scientific investigation or research or for export, inscription or indication thereon of any weight, measure or number may also be made in accordance with any other system of weight, measure or numeration if such inscription or indication is demanded by the person by whom

such scientific investigation or research is to be made or by the person to whom the export is to be made.

CHAPTER IV

CUSTODY AND VERIFICATION OF STANDARD EQUIPMENTS

24. Supply, etc., of reference standards.—(1) The Central Government shall cause to be prepared, for the purposes of this Act, as many sets of reference standards as it may think necessary and shall supply to each State Government as many sets of reference standards as it may think fit.

(2) The Central Government shall keep in its custody, for the purposes of this Act, such number of reference standards as may be necessary.

(3) Every reference standard referred to in sub-section (2) shall be kept at such place and in such custody as may be prescribed and no such reference standard shall be deemed to be a reference standard and shall be used as such unless it has been verified and authenticated in accordance with the rules made under this Act.

25. Preparation and custody of secondary or working standards.—The Central Government shall cause to be prepared, for the purposes of this Act, as many sets of secondary standard or working standard as it may think necessary and shall keep such sets of secondary standard or working standard at such place and in such custody as may be prescribed.

26. Verification, stamping, etc., of secondary or working standards.—(1) Every secondary standard referred to in section 25 shall be verified with the reference standard by such authority as may be prescribed and shall, if found on such verification to conform to the standards established by or under this Act, be stamped by that authority.

(2) Every working standard referred to in section 25 shall be verified with the secondary standard which has been stamped in accordance with the provisions of sub-section (1), by such authority as may be prescribed and shall, if found on such verification to conform to the standards established by or under this Act, be stamped by that authority.

(3) Where any secondary standard or working standard is stamped in accordance with the provisions of sub-section (1), or sub-section (2), as the case may be, a certificate shall be separately given showing the date on which such weight or measure was stamped.

(4) Every secondary standard or working standard which is not verified and stamped in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, shall not be deemed to be a secondary standard or working standard and shall not be used as such.

27. Secondary or working standard which may be stamped.—Where the Central Government is of opinion that by a reason of the size or nature of any secondary standard or working standard referred to in section 25, it is not desirable or practicable to put a stamp thereon, it may direct that instead of putting a stamp on such secondary standard or working standard, a certificate may be issued to the effect that such secondary standard or working standard conforms to the standards established by or under this Act and every secondary standard or working standard so certified shall be deemed to have been duly stamped under this Act on the date on which such certificate was issued.

PART III

APPOINTMENT AND POWERS OF DIRECTOR AND OTHER STAFF

28. Appointment of Director and other staff.—(1) The Central Government may, by notification, appoint a Director of Legal Metrology and as many Additional, Joint, Deputy or Assistant Directors and other officers and staff as may be necessary for exercising the powers and efficiently discharging the duties conferred or imposed on them by or under this Act.

(2) Every Additional, Joint, Deputy or Assistant Director and other officer, appointed under sub-section (1), shall exercise such powers, and discharge such functions of the Director as the Central Government may, by notification, authorise in this behalf.

(3) The Director may, by general or special order, define the local limits within which each Additional, Joint, Deputy or Assistant Director or other officer, appointed under sub-section (1), shall exercise his powers and discharge the duties conferred or imposed on him by or under this Act.

(4) Subject to the provisions of this Act, every Additional, Joint, Deputy or Assistant Director and every other officer, appointed under sub-section (1), shall exercise his powers

and discharge the duties of his office under the general superintendence, direction and control of the Director and shall exercise those powers and discharge those duties in the same manner and with the same effect as if they had been conferred or imposed on him directly by this Act and not by way of authorization.

(5) The Director and every Additional, Joint, Deputy and Assistant Director and every other officer authorised to perform any duty by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(6) No suit, prosecution or other legal proceeding shall lie against the Director, Additional, Joint, Deputy or Assistant Director or any other officer authorised to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made hereunder.

(7) The Central Government may, with the consent of the State Government and subject to such conditions, limitations and restrictions as it may specify in this behalf, delegate such of the powers of the Director under this Act as it may think fit to the person for the time being holding the office of the Controller of Legal Metrology, in the State, and such Controller may, if he is of opinion that it is necessary or expedient in the public interest so to do, delegate such of the powers delegated to him as he may think fit to any officer subordinate to him, not being an officer below the rank of an Inspector, and where any such delegation of powers is made by such Controller, the person to whom such powers are delegated shall exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by way of delegation.

(8) Where any delegation of powers is made under sub-section (7), the powers so delegated shall be exercised under the general superintendence, direction and guidance of the Director.

29. Power of inspection, etc.—(1) The director, or any person authorised to exercise the powers or discharge the functions of the Director, may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any inter-State trade or commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation from one State to another,—

(a) enter at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which inter-State trade or commerce has taken place, or is intended to take place, and any record, register or other document relating thereto;

(b) seize any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under this Act has been, or is likely to be, committed in the course of, or in relation to, any inter-State trade or commerce.

(2) Where any goods seized under sub-section (1) are subject to speedy or natural decay, the Director or the authorised person may dispose of such goods in such manner as may be prescribed.

(3) Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures made under that Code.

30. Forfeiture.—Every false or unverified weight or measure, and every false package, used in the course of, or in relation to, any inter-State trade or commerce and seized under section 29, shall be liable to be forfeited to the Central Government:

Provided that such unverified weight or measure shall not be forfeited to Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed.

PART IV**INTER-STATE TRADE OR COMMERCE IN WEIGHT, MEASURE OR OTHER GOODS**

CHAPTER I

APPLICABILITY OF THIS PART

31. Part IV to apply to inter-State trade or commerce only.—The provisions of this Part shall apply to—

- (a) every weight or measure which is, or is intended to be,—
 - (i) made or manufactured for the purpose of inter-State trade or commerce;
 - (ii) used, sold, distributed, delivered or otherwise transferred in the course of inter-State trade or commerce;
- (b) goods which are, or are intended to be, sold, distributed, delivered or otherwise transferred by weight, measure or number in the course of inter-State trade or commerce;
- (c) every service which is rendered by weight, measure or number in relation to, or in the course of, inter-State trade or commerce.

CHAPTER II

GENERAL

32. Use of weights only or measures only in certain cases.—(1) The Central Government may, by rules made in this behalf, direct that in respect of the class of goods or undertakings or users specified therein, no transaction, dealing or contract shall be made or had except by such weight, measure or number as may be specified in the said rules.

(2) Any rule made under sub-section (1) shall take effect in such area, from such future date and subject to such conditions, if any, as may be specified therein.

33. Prohibition of quotations, etc., otherwise than in terms of standard units of weights, measures or numeration.—No person shall, in relation to any goods, thing or service to which this part applies,—

- (a) quote, or make announcement of, whether by word of mouth or otherwise, any price or charge; or
- (b) issue or exhibit any price list, invoice, cash memo or other document; or
- (c) prepare or publish any advertisement, poster or other document; or
- (d) indicate the contents of any package either on itself or on any label, carton or other thing; or
- (e) indicate the contents on any container; or
- (f) express any quantity or dimension,

otherwise than in accordance with the standard unit of weight, measure or numeration.

34. Any custom, usage, etc., contrary to standard weight, measure or numeration to be void.—Any custom, usage, practice or method of whatever nature which permits a person to demand, receive, or cause to be demanded or received, any quantity of article, thing or service (to which this Part applies) in excess of, or less than, the quantity specified by weight, measure or number in the contract or other agreement in relation to the said article, thing or service, shall be void.

35. Manufacturers, etc., to maintain records and registers.—(1) Every person who—

(a) makes, manufactures, sells, distributes or otherwise disposes of any weight or measure or other goods which are sold, delivered or distributed by weight, measure or number, or

(b) repairs any weight or measure,

to which this Part applies, shall maintain such records and registers as may be prescribed and if required so to do by the Director, shall produce such records and registers before the Director or such other officer as the Director may authorise in this behalf, for inspection.

(2) Notwithstanding anything contained in sub-section (1), if the Director is of opinion that having regard to the nature or volume of the business carried on by any maker, manufacturer, dealer or repairer, it is necessary so to do, he may, by order exempt such maker, manufacturer, dealer or repairer from the operation of that sub-section.

CHAPTER III

APPROVAL OF MODELS

36. Approval of models.—(1) Save as otherwise provided in this section, this Chapter shall not apply to—

(a) any weight or measure which, being subject to verification and stamping under the State law as in force immediately before the commencement of this Act, is in use of such commencement;

(b) any cast iron, brass, bullion, or carat weight or any beamscale, except those specified by rule made in this behalf;

(c) length measures (not being measuring tapes) ordinarily used in retail trade for measuring textiles or timber;

(d) capacity measures, not exceeding twenty litres in capacity, which are ordinarily used in retail trade for measuring kerosene, milk or potable liquors;

(e) any weighing or measuring instrument or device which is made or manufactured exclusively for domestic use:

Provided that such instrument or device is not intended for the use of any member of the medical profession in the course of such profession.

(2) Where any officer of the Central or State Government charged with the duty of implementing the law relating to weights and measures has any reason to believe that the model of any weight or measure referred to in sub-section (1) requires a test by the prescribed authority, he may acquire one such weight or measure from the market and forward it to the prescribed authority for test, the fees for which shall be payable by the Government employing the officer by whom such weight or measure has been forwarded for test.

(3) Every person shall, before making or manufacturing any weight or measure to which this Part applies, submit for approval of the prescribed authority, such number of models, drawings and other information relating to such weight or measure as may be prescribed:

Provided that in relation to any weight or measure, to which this Part applies, which has already been made or manufactured, or which is in the process of being made or manufactured, at the commencement of this Part, models of such weight or measure shall be submitted to the prescribed authority from out of the weights or measures which have already been, or which are in the process of being, made or manufactured:

Provided further that in the case of a weight or measure the model whereof cannot be submitted, whether by reason of its nature or otherwise, it shall be sufficient if the drawings and other prescribed information about the weight or measure is submitted to the prescribed authority and thereupon that authority shall test the models of such weight or measure at the place where it is made or manufactured or at such other place as may be specified by the Director:

Provided also that the prescribed authority may, if it is satisfied that the model of any weight or measure which has been approved in a country outside India conforms to the standards established by or under this Act, approve such model without any test or after such test as it may deem fit.

(4) The prescribed authority shall levy and collect such fees for the testing of any model, submitted under this section for approval, as may be prescribed.

(5) The prescribed authority shall test the models submitted to it with a view to—

(a) ascertaining whether such models conform to the standards established by or under this Act;

(b) finding out the ability of such models to maintain accuracy over periods of sustained use; and

(c) determining the performance of such models under such varied conditions as may be prescribed.

(6) The prescribed authority shall submit to the Central Government a detailed report on the performance of the model submitted to it together with its recommendations with regard to the desirability or otherwise of issuing a certificate of approval in respect of that model.

(7) The Central Government may, if it is satisfied after considering the report submitted to it by the prescribed authority that the aforesaid model is in conformity with the provisions

of this Act or any rule made hereunder and is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions, issue a certificate of approval in respect of that model.

(8) Every certificate of approval of a model shall be published in the Official Gazette and shall also be published in such other manner as the Central Government may think fit.

(9) The Central Government may, if it is satisfied that the product made or manufactured in accordance with the model which was approved by it has failed to render the expected performance or to conform to the standards established by or under this Act, revoke the certificate of approval issued by it under sub-section (7):

Provided that no such revocation shall be made except after giving the manufacturer of such weight or measure a reasonable opportunity of being heard:

Provided further that where the Central Government is satisfied that as a result of the alteration made by the manufacturer in the model of the weight or measure, such model has become fit for approval, it may vacate the order of revocation of the certificate of approval issued by it.

(10) If for any reason any material of the approved model of a weight or measure to which this Part applies becomes non-available in India, the manufacturer may continue the manufacture of such weight or measure with such substitute materials as may be, in his opinion, most suitable for the manufacture of such weight or measure but where the manufacturer does so, he shall send such substitute materials to the prescribed authority for test.

(11) If the prescribed authority is of opinion that the substitute material referred to in sub-section (10) is not suitable and that there is available in India any other material which is more suitable, that authority shall intimate its findings to the Central Government and also to the manufacturer, and thereupon the manufacturer shall not manufacture the weight or measure with any material other than the material recommended by the prescribed authority, until the material which was originally approved by the prescribed authority becomes available in India:

Provided that where, in the opinion of the prescribed authority, the substitute material referred to in sub-section (10) is not suitable and no other suitable material is also available in India, the approval in relation to the model shall stand suspended until a suitable material become available in India.

(12) Where the model of any weight or measure to which this Part applies has been approved, the models of different denominations of such weight or measure shall not require any approval if such denominations are manufactured in accordance with the same principles according to which, and the same materials with which, the approved model has been manufactured.

37. Licence to manufacture weights or measures when to be issued.—(1) Before issuing a licence to make or manufacture any weight or measure to which this Part applies, the State Government shall satisfy itself that a certificate of approval of the model of such weight or measure has been granted by the Central Government under section 36.

(2) Where any certificate of approval of any model has been revoked by the Central Government, the licence issued by the State Government for the making or manufacturing of any weight or measure in accordance with such model shall stand suspended:

Provided that such suspension shall stand vacated if such model is subsequently approved by the Central Government.

38. Weight or measure to contain number of the approved model, etc.—Every weight or measure to which this Part applies and for which a model has been approved shall bear thereon, in such manner as may be prescribed, the number of the approved model and the number of the certificate by or under which such model was approved:

Provided that where the Central Government is of opinion that inclusion of any such particulars on any weight or measure is not possible by reason of its size or nature, that Government may exempt the inclusion of such particulars on such weight or measure.

CHAPTER IV

COMMODITIES IN PACKAGED FORM INTENDED TO BE SOLD OR DISTRIBUTED IN THE COURSE OF INTER-STATE TRADE OR COMMERCE

39. Quantities and origin of commodities in packaged form to be declared.—(1) No person shall—

- (a) make, manufacture, pack, sell, or cause to be packed or sold; or
- (b) distribute, deliver, or cause to be distributed or delivered; or
- (c) offer, expose or possess for sale,

any commodity in packaged form to which this Part applies unless such package bears thereon or on a label securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of—

- (i) the identity of the commodity in the package;
- (ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;
- (iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;
- (iv) the unit sale price of the commodity in the package; and
- (v) the sale price of the package.

Explanation.—In this sub-section, the expression “unit sale price” means the price according to such unit of weight, measure or number as may be prescribed.

(2) Every package to which this Part applies shall bear thereon the name of the manufacturer and also of the packer or distributor.

(3) Where the package of a commodity to which this Part applies or the label thereon bears a representation as to the number of servings, of the commodity contained therein, such package or label shall also bear a statement as to the net quantity (in terms of weight, measure or number) of each such serving.

(4) The statement on a package or label as to the net weight, measure or number of the contents thereof shall not include any expression which tends to qualify such weight, measure or number:

Provided that the Central Government may, by rules, specify the commodities, the weight or measure of which is likely to increase or decrease beyond the prescribed tolerance limits by reason of climatic variations; and it shall be lawful for the manufacturer or packer of the commodity so specified to qualify the statement as to the net content of such commodity by the use of the words “when packed”.

Explanation.—The words “when packed” shall not be used in any case except a case to which the proviso to sub-section (4) applies.

(5) Where the Central Government has reason to believe that there is undue proliferation of weight, measure or number in which any commodity is, or reasonably comparable commodities are, being packed for sale, distribution or delivery and such undue proliferation impairs, in the opinion of that Government, the reasonable ability of the consumer to make a comparative assessment of the prices after considering the net quantity or number of such commodity, that Government may direct the manufacturers and also the packers or distributors to sell, distribute or deliver such commodity in such standard quantities or number as may be prescribed.

(6) Wherever the retail price of a commodity in packaged form to which this Chapter applies is stated in any advertisement, there shall be included in the advertisement, a conspicuous declaration as to the net quantity or number of the commodity contained in the package and retail unit sale price thereof.

(7) No person shall sell, distribute or deliver for sale a package containing a commodity which is filled less than the prescribed capacity of such package except where it is proved by such person that the package was so filled with a view to—

- (a) giving protection to the contents of such package, or
- (b) meeting the requirements of machines used for enclosing the contents of such package.

(8) The Central Government may, by rules, specify such reasonable variations in the net contents of the commodity in a package as may be caused by the method of packing or the ordinary exposure which may be undergone by such commodity after it has been introduced in trade or commerce.

(9) The Central Government may, by rules, specify the classes of commodities or packages in relation to which all or any of the provisions of this section shall not apply or shall apply with such exceptions or modifications as may be specified therein.

CHAPTER V

VERIFICATION AND STAMPING OF WEIGHTS AND MEASURES SENT FROM ONE STATE TO ANOTHER

40. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “Controller” means the person appointed as such by the State Government under the State law;

(b) “Inspector” means the person appointed as such by the State Government under the State law;

(c) “local Inspector” means an Inspector within the local limits of whose jurisdiction any weight or measure is made, manufactured, received, delivered or kept for sale or use;

(d) “State law” means the law enacted by the Legislature of a State, and for the time being in force in that State, with regard to the enforcement of the standards of weight or measure established by or under this Act;

(e) “transferee State” means the State in which any weight or measure is delivered or received for sale or use therein from any other State;

(f) “transferor State” means the State from which any weight or measure made or manufactured therein, or kept therein for sale or use, is sent to, or delivered in any other State.

41. Verification and stamping of weights and measures sent from one State to another.—(1) Where any weight or measure, sent from a transferor State for delivery, sale or use in a transferee State, is such that—

(a) it is not required to be dismantled before its despatch to the transferee State and is not likely to loss its accuracy by reason of such despatch, it shall be known, for the purposes of this Chapter, as a weight or measure of the first category;

(b) it is required to be dismantled before its despatch to the transferee State and re-assembled and installed for use in the transferee State, it shall be known, for the purposes of this Chapter, as a weight or measure of the second category.

(2) Subject to the provisions of sub-section (1), the Central Government may specify, by rules made in this behalf, the classes of weights or measures which would fall in the first category or the second category, and may, from time to time, if the circumstances so require, alter the category in which any class of weight or measure has been specified.

(3) Weight or measure of the first category shall, before it is despatched to any transferee State, be produced before the local Inspector in the transferor State and if such Inspector is, after verification of such weight or measure, satisfied that such weight or measure conforms to the standards established by or under this Act, stamp the same with such special seal as may be specified by rules made under this Act.

(4) A weight or measure of the second category shall not be verified and stamped in the transferor State but shall be verified and stamped, after its re-assembly and installation for use, by the local Inspector in the transferee State.

(5) The fees for the verification and stamping of every weight or measure of—

(a) the first category shall be levied and collected by the transferor State;

(b) the second category shall be levied and collected by the transferee State, in accordance with such scales as may be specified by rules made under this Act.

(6) A weight or measure, whether of the first or second category, shall not require periodical re-verification if it is exclusively intended for domestic use and is not used by any number of the medical profession in the course of such profession.

(7) No weight or measure, whether of the first or of the second category, shall be verified and stamped unless fees for such verification and stamping have been paid in accordance with the scales specified under sub-section (5).

42. Weight or measure of the first category to be presumed to be correct throughout the territory of India.—(1) Every weight or measure of the first category which is stamped with the special seal referred to in sub-section (3) of section 41 shall be presumed

to be correct throughout the territory of India and shall not be required, until its re-verification in the transferee State becomes due by efflux of time, to be verified or stamped in the transferee State:

Provided that where the local Inspector in the transferee State has any reason to believe that any weight or measure of the first category has lost its accuracy in transit or has, for any other reason, ceased to conform to the standards of weight or measure established by or under this Act, he may, for reasons to be recorded by him in writing, and communicated to the Controller of the transferor State, through the Controller of the transferee State,—

(a) verify such weight or measure; and

(b) if, on verification, such weight or measure is found to be inaccurate,—

(i) cause such adjustment as is necessary to be made so as to make it conform to the standards established by or under this Act, or

(ii) where he is of opinion that such adjustment is not possible, reject it and obliterate the stamp thereon:

Provided further that where any verification, adjustment or obliteration is made in exercise of the powers conferred by the foregoing proviso, no fee shall be charged for such verification, adjustment or obliteration.

(2) In computing the time when the re-verification of a weight or measure of the first category shall become due in the transferee State, the period during which such weight or measure remains unsold or undistributed in the transferee State, shall be excluded.

43. Weight or measure of the first category not to be sold or used in any State unless it is stamped in the transferor State.—No weight or measure of the first category shall be used, sold, purchased, delivered or otherwise transferred in any transferee State unless such weight or measure bears thereon the stamp made with the special seal referred to in sub-section (3) of section 41.

44. Weights or measures of the second category received from transferor State to be produced before the local Inspector of the transferee State.—(1) Every person in a transferee State who receives or delivers for sale or use therein any weight or measure of the second category shall, after its re-assembly and installation for use, have such weight or measure verified and stamped by the local Inspector in the transferee State.

(2) The local Inspector in the transferee State shall verify every weight or measure of the second category and shall if he is satisfied that such weight or measure conforms to the standards established by or under this Act, stamp the same with the seal prescribed by or under the State law in force in the transferee State.

(3) For the avoidance of doubt, it is hereby declared that where any weight or measure of the second category is delivered or received in a State from any other State, not for the purpose of sale or use therein but for the transmission of such weight or measure to any other State, then, such other State shall be deemed, for the purposes of this Chapter, to be the transferee State in relation to such weight or measure and the provisions of sub-section (1) and sub-section (2) shall apply accordingly.

45. Procedure when any weight or measure is transferred from a transferee State to another State.—Where any weight or measure, which being in use in a transferee State, is sent to, or delivered in, any other State for sale or use in such other State, then, such other State shall also be deemed to be the transferee State in relation to such weight or measure and the provisions of this Chapter shall, so far as may be, apply to the weight or measure sent to, or delivered in, such other State.

46. Manufacturers, etc., who send any weight or measure to any other State to submit return to the Controller.—Every manufacturer, dealer or other person in a transferor State, who sends to, or delivers in, any transferee State any weight or measure, whether of the first or of the second category, shall—

(a) submit such periodical returns as may be prescribed, to the Controller of the transferor State with regard to such despatch, delivery or transfer and specify in such returns the particulars of the weight or measure which has been sent to, or delivered in, the transferee State;

(b) specify in such periodical returns the particulars of the person to whom such weight or measure has been sent, or delivered in the transferee State; and

(c) forward a copy of such periodical returns to the Controller of the transferee State.

PART V

IMPORT AND EXPORT OF WEIGHTS AND MEASURES

CHAPTER I

REGISTRATION OF EXPORTERS AND IMPORTERS

47. Persons exporting or importing any weight or measure to get themselves registered.—(1) No dealer or manufacturer shall export or import any weight or measure unless he is registered under this section as such exporter or importer, as the case may be.

(2) Every person who intends to commence or continue business as an exporter or importer of any weight or measure shall make, within such time from the commencement of this Act as may be prescribed, an application for the inclusion of his name in the register to be maintained for the purpose.

(3) The application referred to in sub-section (2) shall be made to the Director and every such application shall be made in such form, in such manner and on payment of such fees, not exceeding ten rupees, as may be prescribed.

(4) On receipt of an application referred to in sub-section (2), the Director shall, if he is satisfied after such inquiry as he may think fit, that it is expedient in the public interest so to do, include the name of the applicant in the register referred to in sub-section (2) and issue to the applicant a certificate to the effect that his name has been so included and send a copy of the said certificate to the Controller of Legal Metrology in the State in which such exporter or importer is carrying on his business.

(5) A certificate granted under sub-section (4) shall be valid for the period specified therein and may be renewed, from time to time, for such further period as may be prescribed.

CHAPTER II

EXPORT AND IMPORT OF WEIGHTS, MEASURES AND COMMODITIES IN PACKAGED FORM

48. Conditions under which export of non-standard weights and measures and other goods may be made.—(1) Subject to such conditions, limitations and restrictions as may be prescribed, the Central Government may allow the export of any weight or measure which has been made or manufactured exclusively for export with the previous permission of that Government notwithstanding that such weight or measure does not conform to the standards established by or under this Act.

(2) Where any commodity in packaged form is exported and the person to whom such export is to be made so requires, the exporter may, in addition to specifying the net contents of such package in terms of the standards unit of weight or measure established by or under this Act, also specify the weight or the net contents thereof in terms of such units of weight or measure as may be specified by the person to whom such commodity is to be exported.

(3) Notwithstanding anything contained elsewhere in this Act, in relation to any goods which are exported—

- (a) quotation of any price;
- (b) issue of any price list, invoice or cash memo;
- (c) indication of the weight or measure or number of net contents of any package on any label, carton or other thing;
- (d) expression of any dimension,

may be made in accordance with any other system of weight, measure or numeration if the person to whom the export is to be made so requires.

49. Non-metric weight or measure not to be imported.—(1) Save as otherwise provided in sub-section (2), no weight or measure, whether singly or as a part or component or any machine or machinery, shall be imported unless it conforms to the standards of weight or measure established by or under this Act.

(2) Where any commodity, machinery or any part or component of any machinery is imported from a country in which the metric system of weight or measure is not in force, or in which such system being in force, such commodity, machinery, part or component of any machinery has not been made or manufactured in accordance with such system, the importer shall, before making such import, make an endeavour to obtain, on such commodity, machinery, part or component, and also on the drawings thereof, the weight or measurement

thereof expressed in terms of the standard unit of weight or measure established by or under this Act:

Provided that where any weight or measure has not been expressed in terms of the standard unit of weight or measure established by or under this Act, on any commodity, machinery, part or component or on any drawings thereof the importer shall, within six months from the date of import, get the weight or measure thereof expressed on such commodity, machinery, part or component and on the drawings thereof in terms of the standard unit of weight or measure established by or under this Act.

PART VI

OFFENCES AND THEIR TRIAL

50. Penalty for use of non-standard weights or measures.—Whoever uses any weight or measure or makes any numeration otherwise than in accordance with the standards of weight or measure or the standards of numeration, as the case may be, established by or under this Act, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to two years and also with fine.

51. Penalty for contravention of section 18.—Whoever tampers with, or alters, in any way, any reference standard, secondary standard, or working standard except where such alteration is made for the correction of any error noticed therein on verification, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

52. Penalty for contravention of section 22.—Except where any weight or measure is made or manufactured, with the permission of the Central Government, exclusively for export, every person who makes or manufactures any weight or measure which does not conform to the standards of weight or measure established by or under this Act, shall, where such offence is not punishable under any other law relating to weights and measures for the time being in force, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence with imprisonment for a term which may extend to three years and also with fine.

53. Penalty for contravention of section 23.—Except where any weight or measure is made or manufactured, with the permission of the Central Government, exclusively for export, every person who makes or manufactures any weight or measure which bears thereon any inscription of weight, measure or number which does not conform to the standards of weight or measure or numeration established by or under this Act, shall, where such offence is not punishable under any other law relating to weights and measures for the time being in force, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

54. Penalty for contravention of section 29.—Whoever obstructs the Director or any person authorised to exercise the powers or discharge the functions of the Director (hereafter, in this Part, referred to as the "authorised officer") in the exercise of his powers or discharge of his functions as such Director or authorised officer, or with intent to prevent or deter the Director or such authorised officer from exercising his powers or discharging his functions, or in consequence of anything done or attempted to be done by the Director or such authorised officer in the lawful exercise of his powers or discharge of his functions as such, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years.

55. Penalty for contravention of section 32.—Whoever in the course of any inter-State trade or commerce, makes any transaction, deal or contract in contravention of the provisions of section 32 shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

56. Penalty for contravention of section 33.—Whoever, in the course of any inter-State trade or commerce, contravenes the provisions of section 33 shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

57. Penalty for contravention of section 34.—Whoever, in the course of any inter-State trade or commerce,—

(i) sells, delivers, or causes to be sold or delivered, to the purchaser any quantity or number of any article or thing, less than the quantity or number contracted for or paid for; or

(ii) renders any service by weight, measure or number, less than the service contracted for or paid for; or

(iii) demands, or causes to be demanded, or receives, or causes to be received, while buying any article or thing, any quantity or number of goods in excess of the quantity or number contracted for or paid for; or

(iv) obtains any service in excess of the service contracted for or paid for,

shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

58. Penalty for contravention of section 35.—Whoever, being required by or under this Act so to do, without any reasonable excuse, omits or fails to maintain any record or register, or being required by the Director or the authorised officer, to produce any record or register for his inspection, omits or fails, without any reasonable excuse, so to do, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.

59. Penalty for contravention of section 36.—Whoever, being required by section 36 to submit the model of any weight or measure for approval, omits, or fails, without any reasonable excuse, so to do, shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

60. Penalty for manufacture of weights or measures unless approval of model is in force.—(1) Whoever makes or manufactures any weight or measure which is, or is intended to be, sold, distributed, delivered or otherwise transferred in the course of inter-State trade or commerce, shall, unless a certificate of approval of the model of such weight or measure granted under section 36 is in force, be punished with imprisonment for a term which may extend to two years and shall also be liable to fine, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(2) Whoever, without any reasonable excuse, manufactures any weight or measure in accordance with an approved model with any material other than the material approved or recommended by the prescribed authority, shall be punished with imprisonment for a term which may extend to five years and also with fine.

61. Penalty for contravention of section 38.—Whoever makes or manufactures any weight or measure without complying with the requirements of section 38 shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

62. Penalty for sale, etc., of unverified weights or measures in the course of inter-State trade or commerce.—Whoever, in the course of inter-State trade or commerce, sells, distributes, delivers or otherwise transfers any weight or measure which does not conform to the standards of weight or measure established by or under this Act or which has not been duly verified under any other law relating to weights and measures for the time being in force, shall be punished with fine which may extend to ten thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to seven years and also with fine.

63. Penalty for contravention of section 39.—Whoever, in the course of inter-State trade or commerce, sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred any commodity in a packaged form which does not conform to the provisions of this Act or any rule made hereunder, shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

64. Penalty for contravention of section 47.—Whoever exports or imports any weight or measure without being registered under this Act shall be punished with fine which may

extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.

65. Penalty for contravention of section 48.—Every person who exports any weight or measure or commodity in packaged form which does not conform to the standards of weight or measure established by or under this Act, shall, except where such export has been made with the previous approval of the Central Government, be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

66. Penalty for contravention of section 49.—Whoever contravenes, without any reasonable excuse, the provisions of section 49, shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

67. Penalty where no specific penalty is provided.—Whoever contravenes any provisions of this Act for the contravention of which no punishment has been separately provided in any of the provisions of this Act, shall be punished with fine which may extend to two thousand rupees.

68. Presumption to be made in certain cases.—(1) If any person, in the course of inter-State trade or commerce, uses, or causes to be used, sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred, any false or unverified weight or measure, it shall be presumed, until the contrary is proved, that he had done so with the knowledge that the weight or measure was a false or unverified weight or measure.

(2) If any person makes or manufactures or has in his possession, custody or control any false or unverified weight or measure in such circumstances as to indicate that such weight or measure is likely to be used in the course of inter-State trade or commerce, it shall be presumed, until the contrary is proved, that such false or unverified weight or measure was made, manufactured, possessed, held or controlled by such person with the knowledge that the same would be, or is intended to be, used in the course of inter-State trade or commerce.

69. Penalty for personation of officials.—Whoever personates, in any way, the Director, or any authorised officer, shall be punished with imprisonment for a term which may extend to three years.

70. Penalty for giving false information or false returns.—(1) Whoever gives information to the Director or the authorised officer which he may require or ask for in the course of his duty and which such person either knows or has reason to believe to be false shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being required by or under this Act so to do, submits a return which is false in material particulars, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

71. Vexatious actions.—(1) An authorised officer who knows that there are no reasonable grounds for so doing, and yet—

- (a) searches, or causes to be searched, any house, conveyance or place; or
- (b) searches any person; or
- (c) seizes any weight, measure or other movable property,

shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

(2) If a local Inspector, as defined in section 40,—

(a) without any reasonable cause verifies any weight or measure of first category, within the meaning of section 41,

(b) without any reasonable cause obliterates any stamp on any such weight or measure,

in contravention of the provisions of the first proviso to section 42, he shall, for every such offence be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

72. Cognizance of offences, etc.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no Court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by—

(i) the Director;

(ii) any other authorised officer;

(iii) any person aggrieved; or

(iv) a recognised consumer association whether the person aggrieved is a member of such association or not.

Explanation.—For the purposes of this clause “recognised consumer association” means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;

(b) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(c) an offence punishable under section 50, section 52, section 53, section 56, section 58, section 60, section 61, section 63, section 64, section 65, or section 66, may be tried summarily by a Magistrate and no sentence of imprisonment for a term exceeding one year shall be passed in the case of any conviction for an offence which is summarily tried under this section.

73. Compounding of offences.—(1) Any offence punishable under section 50, section 55, section 56, section 57, section 58, section 59, section 60, section 63, section 64, section 65, section 66 or section 67 may, either before or after the institution of the prosecution, be compounded by the Director or such other officer as may be specially authorised by him in this behalf, on payment for credit to the Government of such sum as the Director or such other officer may specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.—For the purposes of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be discharged forthwith.

(4) No offence under this Act shall be compounded except as provided by this section.

74. Offences by companies and power of Court to publish name, place of business, etc., of companies convicted.—(1) If an offence under this Act is committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

(3) Where any company is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the Court may consider to be

appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the Court may direct.

(4) No publication under sub-section (3) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal having been preferred, has been disposed of.

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

Explanation.—For the purposes of this section—

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

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

75. Provisions of Indian Penal Code not to apply to any offence punishable under this Act.—The provisions of the Indian Penal Code (45 of 1860), in so far as such provisions relate to offences with regard to weights and measures, shall not apply to any offence which is punishable under this Act.

PART VII

TRAINING INSTITUTE

76. Establishment of a training institute and provisions for training thereat.—

(1) There shall be established by the Central Government, at such place as it may think fit, an Institute to be known as the “Indian Institute of Legal Metrology” (hereafter referred to as the “Institute”) for imparting training in legal metrology and other allied branches of knowledge.

(2) The management and control of the Institute, which shall vest in the Central Government, shall be carried on in accordance with such regulations as may be made by the Central Government.

(3) The Central Government shall provide the Institute with such teaching staff and other employees, and with such equipments and other facilities as it may think fit to enable the Institute to function effectively as an Institution for imparting adequate training in legal metrology and other allied branches of knowledge.

(4) The courses and curricula for training at the Institute and the period for which the training may be imparted thereat for each course shall be such as may be prescribed.

(5) The Central Government shall prescribe the minimum qualifications which a person shall possess in order to be eligible for admission to the Institute for receiving training thereat and different qualifications may be prescribed for different courses of training imparted at the Institute.

(6) The Central Government and every State Government may depute, in such batches as may be convenient to the Institute, employees of, or above, the rank of an Inspector for receiving training at the Institute and the Central Government may also arrange for the training, at the Institute, of such other persons as it may think fit.

(7) The Institute may,—

(a) carry out such researches in legal metrology and other allied branches of knowledge as may be entrusted to it by the Central Government, and

(b) hold such seminars, meetings or other gatherings as it may think fit.

77. Training at other places.—Where the Central Government is of opinion that in addition to the training imparted at the Institute, it is necessary to impart to an employee, not below the rank of an Inspector, further specialised training which is not provided for at the Institute, it may send such employee to such other place, authority or institution as it may think fit for receiving such specialised training.

PART VIII

MISCELLANEOUS

78. Survey and statistics.—The Central Government shall make, or cause to be made, such surveys and collect, or cause to be collected, such statistics as it may consider necessary with a view to ascertaining the extent to which any standard of weight, measure or numeration established by or under this Act has been implemented in any area or in relation to any class of undertakings, users or goods and it shall be the duty of every person using weight or measure or making any numeration to render such assistance as the person making such survey or collecting such statistics may require.

79. Conversion of non-metric weights and measures into standard units of weights or measures.—(1) The value expressed in terms of any unit of weight or measure other than in terms of the standard units of weight or measure may be converted into the value expressed in terms of a standard unit of weight or measure at the rate specified in the Schedule.

(2) All references in any enactment or in any notification, rule or order made under any enactment, or in any contract, deed or other instrument, for the time being in force, to a value expressed in terms of any unit of weight, measure or numeration other than that of a standard unit of weight, measure or numeration shall be construed as references to that value expressed in terms of standard units of weight, measure or numeration, as the case may be, converted at the rates specified in the Schedule.

80. Non-metric weight or measure not to be mentioned in any document, etc., or to form the basis of any contract after the commencement of this Act.—(1) No unit of weight, measure or numeration shall, after the commencement of this Act, be stated in any enactment, notification, rule, order, contract, deed or other instrument in terms of any unit of weight, measure or numeration other than that of a standard unit of weight, measure or numeration.

(2) On and from the commencement of this Act, no weight, measure or number other than the standard weight, measure or number shall be used in, or form the basis of, any contract or other agreement in relation to any inter-State or international trade or commerce:

Provided that in relation to any goods which are exported, the weight, measure or number of such goods may be indicated thereon, or in any contract, in addition to the standard units of weight, measure or numeration, in accordance with any other system of weight, measure or numeration if the person to whom the export is to be made so requires.

(3) Any contract or other agreement in contravention of the provisions of sub-section (2) shall be void.

(4) No written record of the results of any measurement shall be maintained in any unit other than the standard unit of weight, measure or numeration established by or under this Act.

81. Appeals.—(1) Subject to the provisions of sub-section (2), any person aggrieved by an order made under section 30 or section 36 may prefer an appeal against such order to the Director, or where the order has been made by the Director, to the Central Government.

(2) Every such appeal shall be preferred within sixty days from the date on which the impugned order was made:

Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, permit the appellant to prefer the appeal within a further period of sixty days.

(3) On receipt of any such appeal, the appellate authority shall, after giving the parties to the appeal a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying or reversing the order appealed against or may send back the case with such direction as it may think fit for a fresh order after taking additional evidence, if necessary.

(4) Every appeal shall be preferred on payment of such fee, as may be prescribed.

(5) The Central Government may, on its own motion or otherwise, call for and examine the record of any proceeding (including a proceeding in appeal) in which any decision or order has been made, for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it may think fit:

Provided that no decision or order shall be varied under this sub-section so as to prejudicially affect any person unless such person has been given a reasonable opportunity of showing cause against the proposed action.

82. Levy of fees.—(1) The Central Government may, by rules made under section 83, specify such fees, not exceeding—

(a) five thousand rupees, for the approval of the model of any weight or measure intended to be made or manufactured for sale, purchase, distribution or delivery in the course of any inter-State trade or commerce;

(b) one thousand rupees, for the verification and stamping of a weight or measure of the first category within the meaning of section 41;

(c) five thousand rupees, for the verification and stamping of a weight or measure of the second category, within the meaning of section 41;

(d) one rupee for every 100 words or less, for the grant of copies of any document, not being a document of a confidential nature;

(e) ten rupees, for the registration of exporters or importers of weights and measures;

(f) twenty-five rupees for any appeal preferred under this Act.

(2) No approval, verification or stamping shall be made, copy granted, registration made or appeal entertained unless the fee prescribed therefore under sub-section (1) has been paid.

83. Power to make rules.—(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) supplementary, derived special or other units of weight or measure, standard symbols or definitions, as recommended by the General Conference on Weights and Measures or the International Organisation of Legal Metrology;

(b) multiples and sub-multiples of, and physical constants, ratios or co-efficients in relation to units of weight or measure, as recommended by the General Conference on Weights and Measures or the International Organisation of Legal Metrology;

(c) denominations of decimal multiples and sub-multiples of numerals and the manner in which they shall be written;

(d) periodical intervals at which the accuracy of the objects or equipments referred to in sub-section (1) or sub-section (2) of section 16 shall be certified;

(e) the manner in which and the conditions under which every national prototype, referred to in section 15, and every object or equipment referred to in section 16, shall be kept;

(f) the manner in which and the conditions under which every reference standard, secondary standard or working standard shall be kept;

(g) the place at which, the authority by which, the manner in which, and the periodical intervals at which, every reference standard, secondary standard and working standard shall be verified and authenticated;

(h) the custody in which every reference standard, secondary standard or working standard shall be kept;

(i) the physical characteristics, configuration, constructional details, materials, equipment, performance, tolerances, methods or procedures of tests, in relation to weights or measures;

(j) the conditions, limitations and restrictions under which non-standard weights or measures may be manufactured for export or may be exported;

(k) the manner of disposal of any commodity which is subject to speedy or natural decay;

(l) class of goods or undertakings in relation to which, or class of users in relation to whom, no transaction, dealing or contract shall be made or had except by specified weight, measure or number;

(m) registers and records to be maintained by persons referred to in section 35;

(n) the authority to whom models are to be submitted for approval;

(o) the number of models, drawings and other information which are to be submitted for the approval of the model;

(p) the conditions under which the performance of any model is to be tested;

(q) the manner in which the number of model and certificate shall be inscribed on every weight or measure;

(r) the manner of declaration of the contents of a package and specification of the unit of weight, measure or number in accordance with which the retail sale price shall be declared on the package;

(s) the standard quantities or number in which commodities may be packed;

(t) the capacity up to which a package shall be filled;

(u) the reasonable variations in the net contents of a packaged commodity which may be caused by the method of packing or ordinary exposure;

(v) the classes of weights or measures which would fall in the first category or the second category;

(w) the special seal by which weights or measures of the first category shall be stamped;

(x) periodical returns to be submitted by every manufacturer, dealer or other person in a transferor State;

(y) the form and manner in which, and the time within which, applications for inclusion of a name in the register of exporters and importers of weights and measures shall be made;

(z) the period for which certificate of registration of an exporter or importer of weights or measures may be renewed;

(za) the courses and curricular for, and the period of, training at the institute;

(zb) the minimum qualifications for admission to the institute;

(zc) the scales in accordance with which fees may be collected under section 82;

(zd) any other matter which is required to be, or may be, prescribed.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to two thousand rupees.

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

84. Continuance of certain weights and measures during transitional period.—

(1) Notwithstanding that this Act has come into force in respect of any area or class of goods or undertakings or class of weights and measures or users of weights and measures in the State of Sikkim, the Central Government may, by notification, permit the continuance of the use, after such commencement, in respect of that area or class of goods or undertakings, or for classes of users of weights and measures, of such weights and measures, in addition to the standard weights or measures, and for such period, not exceeding five years, as may be specified in the notification.

(2) Nothing in sub-section (1) shall be deemed to empower the Central Government to issue any notification in respect of any weight or measure which was not in use in the State of Sikkim immediately before the commencement of this Act.

85. Repeal and savings.—(1) The Standards of Weights and Measures Act, 1956 (89 of 1956), is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897), with respect to repeals, any notification, rule or order made under the Standards of Weights and Measures Act, 1956 (89 of 1956), shall, if in force, at the commencement of this Act, continue to be in force and have effect as if made under the corresponding provision of this Act.

THE STANDARDS OF WEIGHTS AND MEASURES (ENFORCEMENT)

ACT, 1985

04/09/1985

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE STANDARDS OF WEIGHTS AND MEASURES (ENFORCEMENT) ACT, 1985.

(2) It extends to the whole of India.

(3) It shall come into force in a State on such date as the State Government may, by notification, appoint, and different dates may be appointed for different provisions thereof, in or in relation to, different—

- (a) areas in the State; or
 - (b) classes of undertakings in the State; or
 - (c) classes of goods produced, sold, distributed, marketed or transferred in the State;
- or
- (d) classes of services rendered in the State; or
 - (e) classes of weights and measures manufactured, sold, distributed, marketed, transferred, repaired or used in the State; or
 - (f) classes of users of weights and measures in the State,

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of this Act, or, as the case may be, of that provision, in such areas or in respect of such classes of undertakings, goods, services, classes of weights and measures or classes of users of weights and measures, in relation to which, or whom, this Act has been brought into force.

2. Act not to apply to inter-State trade or commerce.—Nothing in this Act shall apply to any inter-State trade or commerce in—

- (a) any weight or measure, or
- (b) any other goods which are sold, delivered or distributed by weights, measure or number.

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

- (a) “Additional Controller” includes a Joint Controller, Deputy Controller and an Assistant Controller appointed under section 5;
- (b) “authorised seal or stamp” means a seal or stamp made under, and in accordance with, the provisions of this Act;
- (c) “Controller” means the Controller of Legal Metrology appointed under section 5;
- (d) “counterfeit”, in relation to a seal or stamp, means a seal or stamp which is so made as to resemble an authorised seal or stamp, as the case may be, intending by that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation I.—It is not essential that the resemblance of the counterfeit seal or stamp to the authorised seal or stamp should be exact.

Explanation II.—When a person causes a counterfeit seal or stamp to resemble an authorised seal or stamp and the resemblance is such that if a person relies on such seal or stamp, he might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the seal or stamp to resemble the authorised seal or stamp intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised;

(e) “heap” means any unit of a commodity for sale where such sale is intended to be made without any weighment or measurement or, where the sale is made by number, without counting the number;

(f) “Inspector” means a person who is appointed as such under section 5, by whatever name called;

(g) “mint” means a mint of the Central Government;

(h) “notification” means a notification published in the Official Gazette;

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

(j) “protection” means the utilisation of any weight or measure, or any reading obtained with the help of any weight or measure, for the purpose of determining whether or not any step is required to be taken to safeguard the well-being of any human being or animal, or to protect any commodity, vegetation or thing, whether individually or collectively;

(k) “Standards Act” means the Standards of Weights and Measures Act, 1976 (60 of 1976);

(l) “standard weight or measure” means a weight, measure or number which conforms to the standards established in relation thereto by or under the Standards Act;

(m) "State Act" means the Act enacted by the Legislature of a State for the enforcement of the standards established by or under the Standards of Weights and Measures Act, 1956 (89 of 1956);

(n) "State Government", in relation to a Union territory, means the Administrator thereof;

(o) words and expressions used in this Act and not defined but defined in the Standards Act shall have the meanings respectively assigned to them in that Act.

CHAPTER III

GENERAL PROVISIONS IN RELATION TO STANDARD WEIGHTS AND MEASURES

9. Prohibition of use of weights and measures other than standard weights and measures.—(1) Notwithstanding any custom, usage or method of whatever nature, no weight or measure, other than the standard weight or measure, shall be used or kept in any premises in such circumstances as to indicate that such weight or measure is intended, or is likely to be used, for any weighing or measurement.

(2) On and from the commencement of this Act, no weight, measure or number, other than the standard weight or measure shall be used in, or form the basis of, any contract or other agreement in relation to any trade, commerce, production or protection.

(3) Any contract or other agreement, which contravenes the provisions of sub-section (2), shall be void.

11. Prohibition of quotations, etc., otherwise than in terms of standard weight or measure.—Except where he is permitted under the Standards Act so to do, no person shall, in relation to any goods or things which are sold, transferred, distributed or delivered, or any service rendered—

(a) quote, or make announcement of, whether by word of mouth or otherwise, any price or charge, or

(b) issue or exhibit any price list, invoice, cash memo or other document, or

(c) mention any weight or measure in any advertisement, poster or other document, or

(d) indicate the weight, measure or number of the net contents of any package on the package itself or on any label, carton or other thing, or

(e) express, in relation to any transaction, industrial production or protection, any quantity or dimension,

otherwise than in accordance with the standard weight or measure.

CHAPTER V

REGISTRATION OF USERS OF WEIGHT AND MEASURES

17. Procedure of registration.—(1) Every person, who intends to commence, or carry on, the use of any weight or measure in any transaction or for industrial production or for protection, shall make, within such time and containing such particulars as may be prescribed, an application for the inclusion of his name in a register to be maintained for the purpose (hereinafter in this section referred to as the "Register of Users").

(2) The Register of Users shall be maintained in such form and in such manner as may be prescribed.

(3) The application referred to in sub-section (1) shall be made to the Controller or to such other person as the Controller may, by general or special order in writing, authorise in this behalf and every such application shall be made in such form, in such manner and on payment of such fee as may be prescribed.

(4) On receipt of the application referred to in sub-section (1), the Controller or the person authorised by him shall include the name of such person in the Register of Users and issue to the applicant a certificate to the effect that his name has been so included.

(5) A certificate issued under sub-section (4) shall be valid for the period specified therein and may be renewed from time to time for such further period and on payment of such fee as may be prescribed.

18. Punishment for non-registration.—Whoever uses, after the expiry of the period prescribed under sub-section (1) of section 17, any weight or measure in any transaction or for industrial production or for protection shall, unless he is registered in accordance with the

provisions of this Chapter, be punishable with fine which may extend to five hundred rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine, or with both.

CHAPTER VIII

INSPECTION, SEARCH, SEIZURE AND FORFEITURE

27. Power to inspect.—(1) An Inspector may, within the local limits of his jurisdiction, inspect and test at all reasonable times, any weight or measure which—

- (i) is in the possession, custody or control of any person, or
- (ii) is in or on any premises,

in such circumstances as to indicate that such weight or measure is being, or is intended or likely to be, used in any transaction or for industrial production or for protection, and may also verify whether such weight or measure is in conformity with the standards established by or under the Standards Act.

(2) For the purpose of ascertaining the correctness of any weight or measure used in any transaction, an Inspector may also test the weight or measure of the article sold or delivered to any person in the course of such transaction.

28. Power of Inspector to require production of weight or measure or records for inspection.—(1) An Inspector may, if he has any reasonable cause to believe that an offence punishable under this Act has been, or is likely to be, committed in respect of any weight or measure or that any weight or measure does not conform to the standards established by or under the Standards Act, require, at all reasonable times, the person having the custody or control of such weight or measure to produce before him for inspection every such weight or measure which,—

- (i) is used by such person or is caused by such person to be used by any other person, or
- (ii) is in the possession, custody or control of such person for use, or
- (iii) is kept in or on any premises for use, in any transaction or for industrial production or for protection.

(2) The Inspector may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person having the custody of such weight or measure shall comply with such requisition.

(3) On inspection, whether under section 27 or under this section, the Inspector shall obliterate the stamp on—

- (a) any weight or measure which, being due for verification, has not been submitted for such verification;
- (b) any weight or measure which, since the last verification and stamping, has been repaired or re-adjusted, and does not, after such repair or re-adjustment, conform to the standards established by or under the Standards Act;
- (c) any weight or measure which does not admit of proper adjustment by reason of its being broken, indented or otherwise defective;
- (d) any weight or measure other than those specified in clause (b) or clause (c) which does not, or cannot be made to, conform to the standards established by or under the Standards Act:

Provided that where the Inspector is of opinion that the defect or error in such weight or measure is not such as to require immediate obliteration of the stamp, he shall serve a notice on the user of such weight or measure informing him of the defect or error found in the weight or measure and calling upon him to remove the defect or error within such time, not exceeding eight days, as he may specify, and shall—

- (i) if the user fails to remove the defect or error within that period, obliterate the stamp, or
- (ii) if the defect or error is so removed as to make the weight or measure conform to the standards established by or under the Standards Act, verify such weight or measure and put his stamp thereon.

Explanation.—The obliteration of the stamp on any weight or measure shall not take away or abridge the power of the Inspector to seize such weight or measure in accordance with the provisions of this Act.

29. Power of Inspector to enter premises.—An Inspector may, if he has any reason to believe, whether from any information given to him by any person and taken down by him in writing or from personal knowledge or otherwise, that an offence punishable under this Act has been, or is likely to be, committed in relation to any weight, measure or other goods which are sold, delivered or distributed by weight, measure or number, enter, at all reasonable times, into any premises—

(i) where such weight or measure is—

(a) made manufactured, repaired, or sold, or

(b) used, or kept or believed to be kept for use, in any transaction or for industrial production or for protection;

(ii) where such goods are manufactured, packed, distributed or sold or kept or offered for sale in packaged form,

and inspect or verify any weight or measure or the net contents, by weight, measure or number, of any package, and may also examine any document or other record relating thereto.

30. Power to search.—(1) Where the Controller has reason to believe that any weight or measure, liable to be seized under this Act, or any document or thing in relation to any weight or measure, will be, in his opinion, useful for or relevant to, any proceeding under this Act, is secreted in any place, he may search or authorise any officer, not below the rank of an Inspector, to search for, and seize, such weight or measure, document or thing, and the provisions of sections 100 and 102 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to every such search.

(2) Every authorization made by the Controller under sub-section (1) shall be deemed to be a warrant referred to in section 93 of the Code of Criminal Procedure, 1973 (2 of 1974).

31. Power of Inspector to seize any weight or measure.—(1) An Inspector may seize and detain any weight or measure in relation to which an offence under this Act is being, or appears to have been, committed, or which is intended or likely to be used in the commission of such offence, and may also seize and detain any goods sold or delivered, or cause to be sold or delivered, by such weight or measure:

Provided that where any goods seized under this sub-section are subject to speedy or natural decay, the Inspector may dispose of such goods in such manner as may be prescribed.

(2) Where any weight, measure or any article is seized and detained under sub-section (1), the Inspector may also seize and detain any document or other record relating to such weight, measure or article.

(3) The provisions of section 102 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to every seizure made under this section.

32. Forfeiture.—Every false or unverified weight or measure (other than those referred to in section 30 of the Standards Act) seized under the provisions of this Act shall be liable to be forfeited to Government:

Provided that such unverified weight or measure shall not be forfeited to the Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed.

CHAPTER X

PROVISIONS WITH REGARD TO ANY CUSTOM OR USAGE RELATING TO THE SALE OF ANY COMMODITY, WHETHER BY QUANTITY OR NUMBER, AND SALE OF COMMODITIES BY HEAPS

34. Custom or usage requiring delivery of additional quantities to cease.—(1) Any custom, usage, practice or method of whatever nature which permits a person to demand, receive, or cause to be demanded or received, any quantity of article, thing or service in excess of, or less than, the quantity specified by weight, measure or number in any contract or other agreement in relation to the said article, thing or service, shall be void.

(2) Where, in relation to any commodity sold by number there is a custom or usage of delivering a fixed number of such commodity in addition to the number of commodities paid for, such custom or usage shall, on and from the commencement of this Act, cease.

35. Sale by heaps.—(1) Where any commodity is sold by heaps, the approximate weight, measure or number of the commodity contained in each heap shall be conspicuously announced by the seller or his agent if any, either by word of mouth or by a written notice placed on each heap:

Provided that no such announcement shall be necessary in the case of a heap where the total price of the commodity contained in such heap does not exceed two rupees.

(2) Where, on weighment, measurement or counting of any commodity sold by heap, it is found that the weight, measure or number, determined by such weighment, measurement or counting, is less than the approximate weight, measure or number announced by the seller or his agent and the deficiency is more than five per cent. of such announced weight, measure or number, the seller shall be deemed to have used a false weight or measure.

CHAPTER XI

OFFENCES AND PENALTIES

36. Penalty for manufacturing, etc., of non-standard weights or measures.—Whoever,—

(a) makes or manufactures, or causes to be made or manufactured (except where he is permitted under the Standards Act so to do), any weight or measure in accordance with any standards other than the standards established by or under the Standards Act, or

(b)(i) sells or otherwise transfers, or causes to be sold or otherwise transferred, or

(ii) lets, or causes to be let, on hire,

any weight or measure which has been manufactured in accordance with any standards other than the standards established by or under the Standards Act, shall be punished with imprisonment for a term which shall not be less than three months but which may extend to one year, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than six months, but which may extend to three years, and also with fine.

37. Penalty for counter-feiting of seals, etc.—(1) Whoever,—

(i) counterfeits any seal specified by or under this Act or the Standards Act, or

(ii) sells or otherwise disposes of any counterfeit seal, or

(iii) possesses any counterfeit seal, or

(iv) counterfeits any stamp, specified by or under this Act or the Standards Act or any rule made under either of those Acts, or

(v) removes any stamp made, whether under this Act or the Standards Act or any rule made under either of those Acts, or tampers with any stamp so made, or

(vi) removes any stamp made, whether under this Act or the Standards Act or any rule made under either of those Acts, and affixes the stamp so removed on, or inserts the same into, any other weight or measure, or

(vii) increases or diminishes or alters in any way any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby,

shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.

(2) Whoever obtains, by unlawful means, possession of any seal specified by or under this Act or the Standards Act and uses, or causes to be used, any such seal for making any stamp on any weight or measure with a view to representing that the stamp made by such seal is authorised by or under this Act or the Standards Act, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.

(3) Whoever, being in lawful possession of a seal specified by or under this Act or the Standards Act uses, or causes to be used, such seal without any lawful authority for such use, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.

(4) Whoever sells, or offers or exposes for sale or otherwise disposes of any weight or measure which, he knows or has reason to believe, bears thereon a counterfeit stamp, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to five years and also with fine.

38. Penalty for sale or delivery of commodities, etc., by non-standard weight or measure.—(1) Except where he is permitted under the Standards Act so to do, whoever sells, or causes to be sold, delivers, or causes to be delivered, any commodity, article or thing by any weight, measure or number other than the standard weight or measure shall be punished with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than three months but which may extend to one year and also with fine.

(2) Whoever renders, or causes to be rendered, any service in terms of any weight, measure or number other than the standard weight or measure, shall be punished with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than three months but which may extend to one year and also with fine.

39. Penalty for keeping non-standard weights or measures for use and for other contraventions.—(1) Whoever keeps any weight or measure other than the standard weight or measure in any premises in such circumstances as to indicate that such weight or measure is being, or is likely to be, used for any—

(a) weighment or measurement, or

(b) transaction or for industrial production or for protection, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

(2) Whoever,—

(i) in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for and paid for, or

(ii) in rendering any service by weight, measure or number, renders that service less than the service contracted for and paid for, or

(iii) in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for and paid for, or

(iv) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for and paid for, shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(3) Whoever enters, after the commencement of this Act, into any contract or other agreement (not being a contract or other agreement for export) in which any weight, measure or number is expressed in terms of any standard other than the standard weight or measure, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

40. Penalty for contravention of section 10.—Whoever, in relation to any specified class of goods, services, undertakings or users of weights or measures, uses in any transaction or for industrial production or for protection, any weight, measure or number, other than the weight, measure or number specified by rules made under section 10, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

41. Penalty for contravention of section 11.—Except where he is permitted under the Standards Act so to do, whoever, in relation to any goods or things which are sold, transferred, distributed or delivered, or any service rendered,—

(a) quotes any price or charge, or makes any announcement with regard to the price or charge, or

(b) issues or exhibits any price list, invoice, cash memo, or other document, or

(c) mentions any weight or measure in any advertisement, poster or other document, or

(d) indicates the weight, measure or number of the net contents of any package or on any label, carton or other thing, or

(e) expresses, in relation to any transaction, industrial production or protection, any quantity or dimension,

otherwise than in accordance with the standard weight or measure, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

42. Penalty for contravention of section 19.—Whoever, being required to obtain a licence under this Act, makes, manufactures, repairs or sells or offers, exposes or possesses for repair or sale, any weight or measure, without being in possession of a valid licence empowering him to do so, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

43. Penalty for contravention of section 20.—A licensee who after the suspension or cancellation of the licence issued to him or renewed or continued under this Act, omits or fails to stop functioning as a licensee under this Act, shall be punished with imprisonment for a term which may extend to one year.

44. Penalty for contravention of section 21.—Except where he is permitted under the Standards Act so to do, whoever makes or manufactures any weight or measure which,—

(a) though ostensibly purports to conform to the standards established by or under that Act, does not actually conform to the said standards, or

(b) bears thereon any indication of weight or measure which is not in conformity with the standards of weight or measure established by or under that Act, whether such indication is or is not in addition to the indication of weight or measure in accordance with the said standards, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

45. Penalty for contravention of section 22.—Whoever,—

(a) sells, offers, exposes or possesses for sale, any weight or measure which has not been verified and stamped under this Act, or

(b) uses, or keeps for use, any weight or measure which, being required to be verified and stamped under this Act, has not been so verified and stamped, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine:

Provided that nothing in clause (b) shall apply, in relation to any weight or measure which is used for domestic purposes.

46. Penalty for contravention of section 23.—Whoever, being required by section 23 to maintain any record or register, omits or fails to do so, or being required by an Inspector to produce any records or registers for his inspection, omits or fails to do so, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

47. Penalty for contravention of section 24.—Whoever, being required by section 24 to present any weight or measure for verification or re-verification, omits or fails, without any reasonable cause to do so, shall be punished with fine which may extend to five hundred rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

48. Penalty for contravention of section 28.—Whoever, being required by an Inspector, or any person authorised by or under this Act to exercise the powers of an Inspector, to produce before him for inspection any weight or measure or any document or other record relating thereto, omits or fails, without any reasonable cause, to do so, shall be punished with

fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

49. Penalty for contravention of section 29.—Whoever obstructs the entry of an Inspector, or any person authorised by or under this Act to exercise the powers of an Inspector, into any premises for the inspection and verification of any weight or measure or any document or other record relating thereto or the net contents of any packaged commodity or for any other prescribed purpose, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years.

50. Penalty for contravention of sections 30 and 31.—Whoever prevents the Controller or any officer authorised by the Controller in this behalf, from searching any premises or prevents an Inspector from making any seizure of any weight, measure, packaged commodity, goods, document, record or label, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

51. Penalty for contravention of section 33.—(1) Whoever manufactures, distributes, packs, sells or keeps for sale or offers or exposes for sale, or has in his possession for sale, any commodity in packaged form, shall, unless each such package conforms to the provisions of the Standards Act and the Rules made hereunder, read with section 33, be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(2) Whoever manufactures, packs, distributes or sells, or causes to be manufactured, packed, distributed or sold, any commodity in packaged form, knowing or having reason to believe that the commodity contained in such package is lesser in weight, measure or number than the weight, measure or number, as the case may be, stated on the package or label thereon, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

Explanation.—In determining, for the purpose of this sub-section, whether the quantity contained in a package is lesser than the quantity declared on the package or label thereon, the maximum permissible error specified under the Standards Act in relation to the commodity contained in such package, shall be taken into account.

52. Penalty for contravention of section 35.—Whoever sells any commodity by heaps without complying with the provisions of section 35, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

53. Penalty for tampering with licence.—Whoever alters or otherwise tampers with any licence issued or renewed under this Act or any rule made hereunder, otherwise than in accordance with any authorization made by the Controller in this behalf, shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to one year, or with both.

54. Penalty for selling or delivering rejected weights and measures.—Whoever sells, delivers or disposes of, or causes to be sold, delivered or disposed of, any weight or measure which has been rejected on verification under this Act or the Standards Act, or any rule made under either of the said Acts, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both:

Provided that nothing in this section shall apply to the sale, as scrap, or any rejected weight or measure which has been defaced in the prescribed manner.

55. Penalty for personation of officials.—Whoever personates in any way the Controller, Additional Controller or an Inspector or any other officer authorised by the Controller, shall be punished with imprisonment for a term which may extend to three years.

56. Penalty for giving false information or maintaining false records or registers.—(1) Whoever gives information to a Controller, Additional Controller or an Inspector or any other officer authorised by the Controller, which he may require or ask for in the course of his duty and which such person either knows or has reason to believe to be false or does not

believe to be true, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being required by or under this Act so to do, submits a return or maintains any record or register which is false in any material particular, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

57. Wilful verification or disclosure in contravention of law.—(1) If any Inspector or any other officer exercising powers under this Act or any rule made hereunder wilfully verifies or stamps any weight or measure in contravention of the provisions of this Act or of any rule made hereunder, he shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

(2) If any Inspector or other officer who enters into any premises in the course of his duty wilfully discloses, except in the performance of such duty, to any person any information obtained by him from such premises with regard to any trade secret or any secret in relation to any manufacturing process, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

58. Vexatious search.—An Inspector or any other officer exercising powers under this Act or any rule or order made hereunder who knows that there are no reasonable grounds for so doing and yet—

- (a) searches, or causes to be searched, any house, conveyance or place, or
- (b) searches any person, or
- (c) seizes any weight, measure or other movable property,

shall, for every such offence, be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

59. Penalty for contraventions not separately provided for.—Whoever contravenes any provision of this Act for the contravention of which no punishment has been separately provided for in this Act, shall be punished with fine which may extend to two thousand rupees.

60. Presumption to be made in certain cases.—(1) If any person—

(a) makes or manufactures, or causes to be made or manufactured, any false weight or measure, or

(b) uses, or causes to be used, any false or unverified weight or measure in any transaction or for industrial production or for protection, or

(c) sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred, any false or unverified weight or measure,

it shall be presumed, until the contrary is proved, that he had done so with the knowledge that the weight or measure was a false or unverified weight or measure, as the case may be.

(2) If any person has in his possession, custody or control any false or unverified weight or measure in such circumstances as to indicate that such weight or measure is likely to be used in any transaction or for industrial production or for protection, it shall be presumed, until the contrary is proved, that such false or unverified weight or measure was possessed, held or controlled by such person with the intention of using the same in any transaction or for industrial production or for protection.

61. When employer to be deemed to have abetted an offence.—(1) Any employer, who knows or has reason to believe that any person employed by him has, in the course of such employment, contravened any provision of this Act or any rule made hereunder, shall be deemed to have abetted an offence against this Act:

Provided that no such abetment shall be deemed to have taken place if such employer has, before the expiry of seven days from the date on which—

- (a) he comes to know of the contravention, or
- (b) he has reason to believe that such contravention has been made,

intimated, in writing, to the Controller the name of the person by whom such contravention was made and the date and other particulars of such contravention.

(2) Whoever is deemed under sub-section (1) to have abetted an offence against this Act shall be punished with imprisonment for a term which may extend to one year, or with fine

which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

Explanation.—Dismissal or termination of service of an employee after the expiry of the period specified in the proviso to sub-section (1) shall not absolve any employer of his liability under this sub-section.

62. Offences by companies.—(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

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

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

63. Cognizance of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no Court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by—

(i) the Controller;

(ii) any other officer authorised in this behalf by the Controller by general or special order;

(iii) any person aggrieved; or

(iv) a recognised consumer association whether the person aggrieved is a member of such association or not.

Explanation.—For the purposes of this clause “recognised consumer association” means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force;

(b) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

64. Summary trial of certain offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 36, section 38, section 39, section 40, section 41, section 42, section 45, section 51, section 52 or sub-section (3) of section 72 may be tried summarily.

65. Compounding of offences.—(1) Any offence punishable under section 39, section 40, section 41, section 42, section 44, section 45, section 46, section 47, section 48, section 51, section 52, section 54 or section 59 or any rule made under sub-section (3) of section 72, may either before or after the institution of the prosecution, be compounded, by the Controller or such other officer as may be authorised in this behalf by the Controller, on payment, for credit to the State Government, of such sum as the Controller or such other officer may specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Nothing contained in sub-section (1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.—For the purpose of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender, in respect of the offence so compounded, and the offender, if in custody, shall be discharged forthwith.

(4) No offence punishable under this Act shall be compounded except as provided by this section.

66. Provisions of Indian Penal Code not to apply to any offence under this Act.—The provisions of the Indian Penal Code (45 of 1860), insofar as such provisions relate to offences with regard to weights or measures, shall not apply to any offence which is punishable under this Act.

THE TELEGRAPH WIRES (UNLAWFUL POSSESSION) ACT, 1950

28/12/1950

1. Short title, extent and commencement.—(1) This Act may be called THE TELEGRAPH WIRES (UNLAWFUL POSSESSION) ACT, 1950.

(2) It extends to the whole of India.

(3) It shall come into force in any State on such date as the Central Government may, by notification in the Official Gazette for such State, and different dates may be appointed for different States.

2. Definitions.—In this Act,—

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

(b) “telegraph wire” means any copper wire with the diameter of which in millimeters, is,—

(i) not less than 2.43 and not more than 2.53; or

(ii) not less than 2.77 and not more than 2.87; or

(iii) not less than 3.42 and not more than 3.52.

3. Duty to declare possession of telegraph wires.—Every person in possession of telegraph wires shall, within six months from the commencement of this Act, make a declaration in writing, in such form and to such authority as may be prescribed, stating the quantity of telegraph wires in his possession.

4. Duty to have telegraph wires converted or sold.—Every person in possession of telegraph wires which exceed ten pounds in weight shall, within one year from the commencement of this Act, have the whole of the quantity as is in excess of ten pounds converted into ingots:

Provided that it shall be open to any such person to sell the whole or any part of the telegraph wires in his possession at such price and to such authority as may be prescribed.

4-A. Prohibition of sale or purchase of telegraph wires.—No person shall, after the commencement of the Telegraph Wires (Unlawful Possession) (Amendment) Act, 1953, sell or purchase any quantity of telegraph wires except with the permission of such authority as may be prescribed.

5. Penalty for unlawful possession of telegraph wires.—Whoever is found or is proved to have been in possession of any quantity of telegraph wires shall unless he proves that the telegraph wires came into his possession lawfully, be punishable,—

(a) for the first offence, with imprisonment for a term which may extend to five years or with fine, or with both, and, in the absence of special and adequate reasons to be recorded in the judgment of the Court, the term of such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be recorded in the judgment of the Court, the term of such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees:

Provided that where a person has made a declaration under section 3 in relation to any quantity of telegraph wires, the burden of proving, in respect of the quantity so declared that it came into his possession lawfully, shall not be on such person.

6. Penalty for contravention of provisions of section 3 or section 4.—Any person who fails to make a declaration as required by section 3 or contravenes the provisions of section 4 or section 4-A, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

6-A. Powers of search and seizure.—(1) A Police Officer not below the rank of a Sub-Inspector may seize, or search any place and seize,—

(i) any telegraph wire;

(ii) any conveyance or animal used for the transport of such telegraph wire, if a reasonable suspicion exists that any provision of this Act has been, or is being, or is about to be, contravened in respect of such telegraph wire.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures shall, so far as may be, apply to searches and seizures made under this section.

6-B. Confiscation of telegraph wires, conveyances, etc.—Where any person has been convicted for the contravention of any of the provisions of this Act, the telegraph wires in relation to which the contravention has been made and any conveyance or animal used for the transport of such telegraph wires, shall be liable to confiscation by the Court unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use:

Provided that where any such conveyance or animal is used for the transport of goods or passengers for hire, the owner of the conveyance or animal shall be given an option to pay in lieu of the confiscation of the conveyance or animal, or fine not exceeding the market price of the conveyance or animal on the date of seizure thereof or the value of the telegraph wires in relation to which the contravention has been made, whichever is less:

Provided further that any telegraph wires, so seized and confiscated shall be handed over by the Court to such authority as may be specified by the Central Government.

7. Cognizance of offences.—(1) No Court shall take cognizance of any offence punishable under the Act, except on a report in writing of the facts constituting such offence made by a person who is a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class try and offence punishable under this Act.

8. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which, and the authorities to which, declarations under section 3 may be made;

(b) the authorities to which, and the prices at which, telegraph wires may be sold under section 4.

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

THE TERRORIST AFFECTED AREAS (SPECIAL COURTS) ACT, 1984

31/08/1984

BE it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called THE TERRORIST AFFECTED AREAS (SPECIAL COURTS) ACT, 1984.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 14th day of July, 1984.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(b) "High Court", in relation to a Special Court, means the High Court within the territorial limits of whose jurisdiction such Special Court is proposed to be, or is, established;

(c) "judicial zone" means a judicial zone constituted under sub-section (1) of section 3;

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

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 9 and includes any person acting under the directions of the Public Prosecutor;

(f) "scheduled offence" means an offence specified in the Schedule being an offence committed in a terrorist affected area;

(g) "Special Court" means a Special Court or an Additional Special Court established under section 4;

(h) "terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to,—

(i) putting the public or any section of the public in fear; or

(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(iii) coercing or overawing the Government established by law; or

(iv) endangering the sovereignty and integrity of India;

(i) "terrorist affected area" means an area declared as a terrorist affected area under section 3;

(j) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to the Code or any provision thereof shall, in relation to an area in which the Code or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

3. Declaration of terrorist affected area.—(1) If the Central Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Act, it may, by notification,—

(a) declare such area to be a terrorist affected area; and

(b) constitute such area into a single judicial zone or into as many judicial zones as it may deem fit.

(2) A notification issued under sub-section (1) in respect of an area shall specify the period during which the area shall, for the purposes of this Act, be a terrorist affected area, and where the Central Government is of the opinion that terrorists had been committing in that area, from a date earlier than the date of issue of the notification, offences of the nature specified in the Schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date:

Provided that—

(a) no period commencing from a date earlier than six months from the date of publication of the notification shall be specified therein; and

(b) so much of the period specified in such notification as is subsequent to the date of publication of the notification shall not, in the first instance, exceed six months, but the Central Government may, by notification, extend such period from time to time by any period not exceeding six months at any one time, if the Central Government, having regard to the activities of terrorists in such area, is of the opinion that it is expedient so to do.

Explanation.—For the avoidance of doubts, it is hereby declared that the period specified in a notification issued under this section may commence from a date earlier than the date of commencement of this Act.

4. Establishment of Special Courts.—(1) For the purpose of providing for speedy trial of scheduled offences committed in a judicial zone, the Central Government may establish, by notification, a Special Court in relation to such judicial zone,—

(a) within such judicial zone; or

(b) if the Central Government having regard to the exigencies of the situation prevailing in such judicial zone considers it expedient so to do, at any place outside such judicial zone but within the State in which such judicial zone is situated.

(2) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the State Government is of the opinion that it is expedient to establish in relation to a judicial zone, or in relation to two or more judicial zones, in the State, an Additional Special Court outside the State, for the trial of such scheduled offences committed in the judicial zone or judicial zones, the trial whereof within the State,—

(a) is not likely to be fair or impartial or completed with utmost dispatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or

(c) is not otherwise in the interests of justice,

the State Government may request the Central Government to establish in relation to such judicial zone or judicial zones an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification, such Additional Special Court at such place outside the State as may be specified in the notification.

5. Composition and appointment of Judges of Special Courts.—(1) A Special Court shall be presided over by a Judge to be appointed by the Central Government with the concurrence of the Chief Justice of the High Court.

(2) The Central Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise jurisdiction in a Special Court.

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

(4) For the removal of doubts, it is hereby provided that the attainment by a person, appointed as a Judge or an Additional Judge of a Special Court, of age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(5) Where any Additional Judge or Additional Judges is, or are, appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

6. Place of sitting.—A Special Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is established:

Provided that if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

7. Jurisdiction of Special Court.—(1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a terrorist affected area shall be triable, whether, during or after the expiry of such period, only by the Special Court established for such judicial zone in the State:

Provided that where the period specified under sub-section (2) of section 3 as the period during which an area declared by notification under sub-section (1) of that section to be a terrorist affected area commences from a date earlier than the date on which such notification is issued, then—

(a) nothing in the foregoing provisions of this sub-section shall apply to a scheduled offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and

(b) all other cases involving scheduled offences committed in such area and pending before any Court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time.

(2) Notwithstanding anything contained in sub-section (1), if in respect of a case involving a scheduled offence committed in any judicial zone in a State, the Central Government, having regard to the provisions of sub-section (2) of section 4 and the facts and circumstances of the case and all other relevant factors, is of the opinion that it is expedient that such offence should be tried by the Additional Special Court established in relation to such judicial zone outside the State, the Central Government may make a declaration to that effect:

Provided that no such declaration shall be made unless the State Government has forwarded to the Central Government a report in writing containing a request for making of such declaration.

Explanation.—Where an Additional Special Court is established in relation to two or more judicial zones, such Additional Special Court shall be deemed, for the purposes of this sub-section, to have been established in relation to each of such judicial zones.

(3) A declaration made under sub-section (2) shall not be called in question in any Court.

(4) Where any declaration is made in respect of any offence committed in a judicial zone in a State, any prosecution in respect of such offence shall be instituted only in the Additional Special Court established in relation to such judicial zone outside the State, and if any prosecution in respect of such offence is pending immediately before such declaration in any other Court, the same shall stand transferred to such Additional Special Court and such Additional Special Court shall proceed with such case from the stage at which it was pending at that time.

8. Powers of Special Courts with respect to other offences.—(1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

(2) If, in the course of any trial under this Act, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a Scheduled offence, convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

9. Public Prosecutors.—(1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

10. Procedure and powers of Special Courts.—(1) A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(5) Subject to the other provisions of this Act, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

11. Power of Supreme Court to transfer case.—Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

12. Protection of witnesses.—(1) Notwithstanding anything contained in the Code, all proceedings before a Special Court shall be conducted in camera:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open Court.

(2) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

- (a) the holding of the proceedings at a protected place;
- (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
- (c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under sub-section (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

13. Power to transfer cases to regular Courts.—Where after taking cognizance of any offence, a Special Court is of opinion that the offence is not a Scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

14. Appeal.—(1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

15. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every Scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving a Scheduled offence subject to the modifications that—

(a) the reference in sub-section (1) thereof to “Judicial Magistrate” shall be construed as a reference to “Judicial Magistrate or Executive Magistrate”;

(b) the references in sub-section (2) thereof to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “one year” and “one year”, respectively; and

(c) sub-section (2-A) thereof shall be deemed to have been omitted.

(3) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving a Scheduled offence subject to the modifications that the references to “Court of Session” and “High Court”, wherever occurring therein, shall be construed as references to “Special Court” and “Supreme Court”, respectively.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed a Scheduled offence in a terrorist affected area.

(5) Notwithstanding anything contained in the Code, no person accused of a Scheduled offence shall, if in custody, be released on bail or on his own bond unless—

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

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

(6) The limitations on granting of bail specified in sub-section (5) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

15-A. Abolition of certain Special Courts.—Where the area comprising a judicial zone has ceased to be a terrorist affected area and no cases are pending before a Special Court or an Additional Special Court established in relation to such judicial zone, the Central Government may, by notification in the Official Gazette, abolish such Special Court or Additional Special Court.

16. Overriding effect of Act.—(1) The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court; and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a Court of Session.

(2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the provisions of sections 326 and 475 of the Code shall, as far as may be, apply to the proceedings before a Special Court, and for this purpose any reference in those provisions to a Magistrate shall be construed as a reference to the Special Court.

17. Delegation.—The Central Government may, by notification, delegate, subject to such conditions as may be specified, all or any of the powers exercisable by it under this Act [except the power under sub-section (2) of section 4 and the power under sub-section (2) of section 7 to the State Government.

18. Power to make rules.—The Supreme Court may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

19. Saving.—(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under any law relating to the naval, military or air force or any other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a Court of ordinary criminal justice.

20. Amendment of Act 1 of 1872.—In the Indian Evidence Act, 1872 (1 of 1872), after section 111, the following section shall be inserted, namely:—

"111-A. Presumption as to certain offences.—(1) Where a person is accused of having committed any offence specified in sub-section (2), in—

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace, and it is shown that such person had been at a place in such area at a time when fire-arms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely:—

(a) an offence under section 121, section 121-A, section 122 or section 123 of the Indian Penal Code (45 of 1860);

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code (45 of 1860)."

21. Repeal and saving.—(1) The Terrorist Affected Areas (Special Courts) Ordinance, 1984 (9 of 1984), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987 **03/09/1987**

PART I **PRELIMINARY**

1. Short title, extent, application, commencement, duration and savings.—(1) This Act may be called THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987.

(2) It extends to the whole of India, and it applies also,—

(a) to citizens of India outside India;

(b) to persons in the service of the Government, wherever they may be; and

(c) to persons on ships and aircraft registered in India, wherever they may be.

(3) Sections 5, 15, 21 and 22 shall come into force at once and the remaining provisions of this Act, shall be deemed to have come into force on the 24th day of May, 1987.

(4) It shall remain in force for a period of eight years from the 24th day of May, 1987, but its expiry under the operation of this sub-section shall not effect,—

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made hereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made hereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

2. Definitions.—(1) In this Act, unless the context otherwise required,—

(a) "abet", with its grammatical variations and cognate expressions, includes,—

(i) the communication or association with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists;

(ii) the passing on, or publication of, without any lawful authority, any information likely to assist the terrorists or disruptionists and the passing on, or publication of, or distribution of, any document or matter obtained from terrorists or distributionists;

(iii) the rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists;

(b) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(c) "Designated Court" means a Designated Court constituted under section 9;

(d) "Disruptive activity" has the meaning assigned to it in section 4, and the expression "disruptionist" shall be construed accordingly;

(e) "High Court" means the High Court of the State in which a Judge or an Additional Judge of a Designated Court was working immediately before his appointment as such Judge or Additional Judge;

(f) "notified area" means such area as the State Government may, by notification in the Official Gazette, specify;

(g) "public prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 13, and includes any person acting under the directions of the Public Prosecutor;

(gg) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived or obtained from the terrorist Act and includes proceeds of terrorism;

(h) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;

(i) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

PART II

PUNISHMENTS FOR, AND MEASURES FOR COPING WITH, TERRORIST AND DISRUPTIVE ACTIVITIES

3. Punishment for terrorist acts.—(1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(2) Whoever commits a terrorist act, shall,—

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(5) Any person who is a member of a terrorists gang or a terrorists organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

4. Punishment for disruptive activities.—(1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,—

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section,—

(a) "cession" includes the admission of any claim of any foreign country to any part of India, and

(b) "secession" includes the assertion of any claim of determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which—

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptionist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

5. Possession of certain unauthorized arms, etc., in specified areas.—Where any person is in possession of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III(a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorized in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

6. Enhanced penalties.—(1) If any person with intent to aid any terrorist or disruptionist, contravenes any provision of, or any rule made under the Arms Act, 1959 (54 of 1959), the Explosives Act, 1884 (4 of 1884), the Explosive Substances Act, 1908 (6 of 1908) or the Inflammable Substances Act, 1952 (20 of 1952), he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made hereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

7. Conferment of powers.—(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the Central Government may, if it considers it necessary or expedient so to do,—

(a) for the prevention of, and for coping with, any offence under section 3 or section 4; or

(b) for any case or class or group of cases under section 3 or section 4;

in any State or part thereof, confer, by notification in the Official Gazette, on any officer of the Central Government, powers exercisable by a police officer under the Code in such State or part thereof or, as the case may be, for such case or class or group of cases and in particular, the powers of arrest, investigation and prosecution of persons before any Court.

(2) All officers of police and all officers of Government are hereby required and empowered to assist the officer of the Central Government, referred to in sub-section (1), in the execution of the provisions of this Act or any rule or order made hereunder.

(3) The provisions of the Code shall, so far as may be and subject to such modifications made in this Act, apply to the exercise of the powers by an officer under sub-section (1).

7-A. Powers of investigating officers.—If an officer investigating an offence committed under this Act has reason to believe that any property in relation to which an investigation is being conducted is a property derived or obtained from the commission of any terrorist act and includes proceeds of terrorism he shall, with the approval of the Superintendent of Police, make an order seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Court and a copy of such order shall be served on the persons concerned:

Provided that the investigating officer shall duly inform the Designated Court within forty-eight hours of the attachment of such property and the said Court shall either confirm or revoke the order of attachment so issued.

8. Forfeiture of property of certain persons.—(1) Where a person has been convicted of any offence punishable under this Act or any rule made hereunder, the Designated Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Government free from all encumbrances.

(2) Where any person is accused of any offence under this Act or any rule made hereunder, it shall be open to the Designated Court trying him to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial end in conviction, the properties so attached shall stand forfeited to the Government free from all encumbrances.

(3) (a) If upon a report in writing made by a police officer or an officer referred to in sub-section (1) of section 7, any Designated Court has reason to believe that any person, who has committed an offence punishable under this Act or any rule made hereunder, has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the date of publication of such proclamation.

(b) The Designated Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

(c) If, within six months from the date of the attachment, any person, whose property is, or has been, at the disposal of the Government under sub-section (2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Designated Court by

whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the time specified therein, such property or, if the same has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying there from all costs incurred in consequence of the attachment, be delivered to him.

(4) Where any shares in a company stand forfeited to the Government under this sub-section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association the company, forthwith register the Government as the transferee of such shares.

PART III

DESIGNATED COURTS

9. Designated Courts.—(1) The Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Designated Courts for such area or areas, or for such case or class or group of cases as may be specified in the notification.

(2) Where a notification constituting a Designated Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (1), and a notification constituting a Designated Court for the same area or areas or for the same case or class or group of cases has also been issued by a State Government under that sub-section, the Designated Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Designated Court by the State Government, shall have, and the Designated Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases, and all cases pending before any Designated Court constituted by the State Government shall stand transferred to the Designated Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Designated Court, it shall be referred to the Central Government whose decision thereon shall be final.

(4) A Designated Court shall be presided over by a Judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court Additional Judges to exercise jurisdiction in a Designated Court.

(6) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Designated Court unless he is, immediately before such appointment a Sessions Judge or an additional Sessions Judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment by a person appointed as a Judge or an Additional Judge of a Designated Court of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(8) Where any Additional Judge or Additional Judges is or are appointed in a Designated Court, the Judge of the Designated Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Designated Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

10. Place of sitting.—An Designated Court may, on its own motion or on an application made by the Public Prosecutor, and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Designated Court constituted by a State Government to any place outside that State.

11. Jurisdiction of Designated Courts.—(1) Notwithstanding anything contained in the Code every offence punishable under any provision of this Act or any rule made hereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed

or, as the case may be, by the Designated Court constituted for trying such offence under sub-section (1) of section 9.

(2) If, having regard to the exigencies of the situation prevailing in a State, the Central Government is of the opinion that,—

(a) the situation prevailing in such State is not conducive to a fair, impartial or speedy trial, or

(b) it is not likely to be feasible without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge of the Designated Court or any of them, or

(c) it is not otherwise in the interests of justice,

it may, with the concurrence of the Chief Justice of India (such concurrence to be obtained on a motion moved in that behalf by the Attorney-General), transfer any case pending before a Designated Court in that State to any other Designated Court within that State or in any other State.

(3) Where the whole or any part of the area within the local limits of the jurisdiction of a Designated Court has been declared to be, or forms part of, any area which has been declared to be a disturbed area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion that the situation prevailing in the State is not conducive to fair, impartial or speedy trial within the State, of offences under this Act or the rules made hereunder which such Designated Court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, specify, by notification in the Official Gazette, in relation to such Court (hereafter in this sub-section referred to as the local Court) a Designated Court outside the State (hereinafter in this section referred to as the specified Court), and thereupon,—

(a) it shall not be competent, at any time during the period of operation of such notification, for such local Court to exercise any jurisdiction in respect of, or try, any offence this Act or the rules made hereunder;

(b) the jurisdiction which would have been, but for the issue of such notification, exercisable by such local Court in respect of such offences committed during the period of operation of such notification shall be exercisable by the specified Court;

(c) all cases relating to such offences pending immediately before the date of issue of such notification before such local Court shall stand transferred on that date to the specified Court;

(d) all cases taken cognizance of by, or transferred to, the specified Court under clause (b) or clause (c) shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the jurisdiction of the specified Court or, as the case may be, transferred for trial to it under sub-section (2).

Explanation 1.—A notification issued under this sub-section in relation to any local Court shall cease to operate on the date on which the whole or, as the case may be, the aforementioned part of the area within the local limits of its jurisdiction, ceases to be a disturbed area.

Explanation 2.—For the purposes of this section “Attorney-General” means the Attorney-General of India or, in his absence, the Solicitor-General of India or, in the absence of both, one of the Additional Solicitors-General of India.

12. Power of Designated Courts with respect to other offences.—(1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made hereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

13. Public Prosecutors.—(1) For every Designated Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code and the provisions of the Code shall have effect accordingly.

14. Procedure and powers of Designated Courts.—(1) A Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Designated Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Designated Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Designated Court under sub-section (2) of section 11 shall be dealt with as if such case had been transferred under section 406 of the Code to such Designated Court.

(5) Notwithstanding anything contained in the Code, a Designated Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

15. Certain confessions made to police officers to be taken into consideration.—

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made hereunder:

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such

confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

16. Protection of witnesses.—(1) Notwithstanding anything contained in the Code, the proceedings under this Act may be held in *camera* if the Designated Court so desires.

(2) A Designated Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identify and address of any witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Designated Court may take under that sub-section may include,—

- (a) the holding of the proceedings at a place to be decided by the Designated Court;
- (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
- (c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;
- (d) that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

17. Trial by Designated Courts to have precedence.—The trial under this Act of any offence by a Designated Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Designated Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

18. Power to transfer cases to regular Courts.—Where, after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

19. Appeal.—(1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, not appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Designated Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

PART IV

MISCELLANEOUS

20. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act or any rule made hereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 21 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made hereunder subject to the modification that the reference to “the State Government” therein shall be construed as a reference to “the Central Government or the State Government”.

(3) Section 164 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made hereunder, subject to the modification that the reference in sub-section (1) thereof to “Metropolitan Magistrate or Judicial Magistrate” shall be

construed as a reference to "Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate".

(4) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made hereunder subject to the modifications that,—

(a) the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate of Executive Magistrate or Special Executive Magistrate";

(b) the reference in sub-section (2) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "sixty days," "one hundred and eighty days" and "one hundred and eighty days", respectively; and

(bb) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days;"

(c) sub-section (2-A) thereof shall be deemed to have been omitted.

(5) Section 268 of the Code shall apply in relation to a case involving and an offence punishable under this Act or any rule made hereunder subject to the modifications that,—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(6) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving an offence triable by a Designated Court subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Designated Court" and "Supreme Court", respectively.

(7) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act or any rule made hereunder.

(8) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made hereunder shall, if in custody, be released on bail or on his own bond unless—

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

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

(9) The limitations on granting of bail specified in sub-section (8) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

20-A. Cognizance of offence.—(1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No Court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police.

21. Presumption as to offences under section 3.—(1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved,—

(a) that the arms or explosives or any other substances specified in section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence.

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(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.

22. Identification of accused.—Where a person has been declared a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade.

23. Saving.—(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Designated Court shall be deemed to be a Court of ordinary criminal justice.

24. Saving as to orders.—Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872 (1 of 1872), presume that such order was so made by that authority.

25. Overriding effect.—The provisions of this Act or any rule made hereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

26. Protection of action taken under this Act.—No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act or any rules made hereunder, for anything which is in good faith done or purported to be done in pursuance of this Act or any rules made hereunder or any order issued under any such rule.

27. Power of the Supreme Court to make rules.—The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the provisions of this Act relating to Designated Court.

28. Power to make rules.—(1) Without prejudice to the powers of the Supreme Court to make rules under section 27, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of,—

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever,

reasonably suspected of being used for committing the offender referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon,—

(i) the Central Government;

(ii) a State Government;

(iii) an Administrator of a Union territory under article 239 of the Constitution;

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(v) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or cope with terrorist acts or disruptive activities;

(d) the arrest and trial of persons contravening any of the rules or any order hereunder;

(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made hereunder with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;

(f) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any Court or by any other authority.

29. Rules to be laid before Houses of Parliament.—Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Repeal and saving.—(1) The Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE TRADE MARKS ACT, 1999

30/12/1999

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE TRADE MARKS ACT, 1999.

(2) It extends to the whole of India.

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

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions and interpretation.—(1) In this Act, unless the context otherwise requires,—

(a) "Appellate Board" means the Appellate Board established under section 83;

(b) "assignment" means an assignment in writing by act of the parties concerned;

(c) "associated trade marks" means trade marks deemed to be, or required to be, registered as associated trade marks under this Act;

(d) "Bench" means a Bench of the Appellate Board;

(e) "certification trade mark" means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and remittable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person;

(f) "Chairman" means the Chairman of the Appellate Board;

(g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons [not being a partnership within the meaning of the

Indian Partnership Act, 1932 (9 of 1932) which is the proprietor of the mark from those of others;

(h) "deceptively similar",—A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;

(i) "false trade description" means—

(I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied; or

(II) any alteration of a trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect; or

(III) any trade description which denotes or implies that there are contained, as regards the goods to which it is applied, more yards or metres than there are contained therein standard yards or standard metres; or

(IV) any marks or arrangement or combination thereof when applied—

(a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are;

(b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person, whose services they really are; or

(V) any false name or initials of a person applied to goods or services in such manner as if such name or initials were a trade description in any case where the name or initials—

(a) is or are not a trade mark or part of a trade mark; and

(b) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorised the use of such name or initials; and

(c) is or are either the name or initials of a fictitious person or some person not *bona fide* carrying on business in connection with such goods or services, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

(j) "goods" means anything which is the subject of trade or manufacture;

(k) "Judicial Member" means a Member of the Appellate Board appointed as such under this Act, and includes the Chairman and the Vice-Chairman;

(l) "limitations" (with its grammatical variations) means any limitation of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode or area of use within India or outside India;

(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;

(n) "Member" means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairman and the Vice-Chairman;

(o) "name" includes any abbreviation of a name;

(p) "notify" means to notify in the Trade Mark Journal published by the Registrar;

(q) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(r) "permitted use", in relation to a registered trade mark, means the use of trade mark—

(i) by a registered user of the trade mark in relation to goods or services—

(a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) for which he is registered as registered user; and

(d) which complies with any conditions or limitations to which the registration of registered user is subject; or

(ii) by a person other than the registered proprietor and registered user in relation to goods or services—

(a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) by consent of such registered proprietor in a written agreement; and

(d) which complies with any conditions or limitations to which such user is subject and to which the registration of the trade mark is subject;

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

(t) "register" means the Register of Trade Marks referred to in sub-section (1) of section 6;

(u) "registered" (with its grammatical variations) means registered under this Act;

(v) "registered proprietor", in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark;

(w) "registered trade mark" means a trade mark which is actually on the register and remaining in force;

(x) "registered user" means a person who is for the time being registered as such under section 49;

(y) "Registrar" means the Registrar of Trade Marks referred to in section 3;

(z) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(za) "trade description" means any description, statement or other indication, direct or indirect,—

(i) as to the number, quantity, measure, gauge or weight of any goods; or

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade; or

(iii) as to fitness for the purpose, strength, performance or behaviour of any goods, being "drug" as defined in the Drugs and Cosmetics Act, 1940 (23 of 1940), or "food" as defined in the Prevention of Food Adulteration Act, 1954 (37 of 1954); or

(iv) as to the place or country in which or the time at which any goods or services were made, produced or provided, as the case may be; or

(v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided; or

(vi) as to the mode of manufacture or producing any goods or providing services; or

(vii) as to the material of which any goods are composed; or

(viii) as to any goods being the subject of an existing patent, privilege or copyright, and includes,—

(a) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters;

(b) the description as to any imported goods contained in any bill of entry or shipping bill;

(c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters;

(zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a

connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

(zc) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;

(zd) "Technical Member" means a Member who is not a Judicial Member;

(ze) "tribunal" means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned is pending;

(zf) "Vice-Chairman" means a Vice-Chairman of the Appellate Board;

(zg) "well-known trade mark", in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

(2) In this Act, unless the context otherwise requires, any reference—

(a) to "trade mark" shall include reference to "collective mark" or "certification trade mark";

(b) to the use of a mark shall be construed as a reference to the use of printed or other visual representation of the mark;

(c) to the use of a mark,—

(i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;

(ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;

(e) to the Trade Marks Registry shall be construed as including a reference to any office of the Trade Marks Registry.

(3) For the purposes of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services.

(4) For the purposes of this Act, "existing registered trade mark" means a trade mark registered under the Trade and Merchandise Marks Act, 1958 (43 of 1958) immediately before the commencement of this Act.

CHAPTER XII

OFFENCES, PENALTIES AND PROCEDURE

101. Meaning of applying trade marks and trade descriptions.—(1) A person shall be deemed to apply a trade mark or mark or trade description to goods or services who—

(a) applies it to the goods themselves or uses it in relation to services; or

(b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or

(c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a trade mark or mark or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any manner reasonably likely to lead to the belief that the goods or services in connection with which it is used are designated or described by that trade mark or mark or trade description; or

(e) in relation to the goods or services uses a trade mark or trade description in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and goods are delivered or services are rendered to a person in pursuance of a request or order made by reference to the trade mark or trade description as so used.

(2) A trade mark or mark or trade description shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

102. Falsifying and falsely applying trade marks.—(1) A person shall be deemed to falsify a trade mark who, either,—

(a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods or services a trade mark who, without the assent of the proprietor of the trade mark—

(a) applies such trade mark or a deceptively similar mark to goods or services or any package containing goods;

(b) uses any package bearing a mark which is identical with or deceptively similar to the trade mark of such proprietor, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the proprietor of the trade mark.

(3) Any trade mark falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false trade mark.

(4) In any prosecution for falsifying a trade mark or falsely applying a trade mark to goods or services, the burden of proving the assent of the proprietor shall lie on the accused.

103. Penalty for applying false trade marks, trade descriptions, etc.—Any person who—

(a) falsifies any trade mark; or

(b) falsely applies to goods or services any trade mark; or

(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or

(d) applies any false trade description to goods or services; or

(e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or

(f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or

(g) causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

104. Penalty for selling goods or providing services to which false trade mark or false trade description is applied.—Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves,—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of the goods or services; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

105. Enhanced penalty on second or subsequent conviction.—Whoever having already been convicted of an offence under section 103 or section 104 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

106. Penalty for removing piece goods, etc., contrary to section 81.—If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from any premises referred to in section 81 or sells or exposes for sale or has in his possession for sale or for any purpose of trade or manufacture piece goods or cotton yarn or cotton thread which is not marked as required by that section, every such piece and every such bundle of yarn and all such thread and everything used for the packing thereof shall be forfeited to Government and such person shall be punishable with fine which may extend to one thousand rupees.

107. Penalty for falsely representing a trade mark as registered.—(1) No person shall make any representation—

(a) with respect to a mark, not being a registered trade mark, to the effect that it is a registered trade mark; or

(b) with respect to a part of a registered trade mark, not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not in fact registered; or

(d) to the effect that registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) For the purposes of this section, the use in India in relation to a trade mark of the word “registered”, or of any other expression, symbol or sign referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside India and in relation solely to goods to be exported to that country or in relation to services for use in that country.

108. Penalty for improperly describing a place of business as connected with the Trade Marks Office.—If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Trade Marks Office, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

109. Penalty for falsification of entries in the register.—If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

110. No offence in certain cases.—The provisions of sections 102, 103, 104 and 105 shall, in relation to a registered trade mark or proprietor of such mark, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if,—

(a) the alleged offence relates to a registered trade mark and the act or omission is permitted under this Act; and

(b) the alleged offence relates to a registered or an unregistered trade mark and the act or omission is permitted under any other law for the time being in force.

111. Forfeiture of goods.—(1) Where a person is convicted of an offence under section 103 or section 104 or section 105 or is acquitted of an offence under section 103 or section 104 on proof that he acted without intent to defraud, or under section 104 on proof of the matters specified in clause (a), clause (b) or clause (c) of that section, the Court convicted or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

(4) When a forfeiture is directed on a conviction, the Court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit.

112. Exemption of certain persons employed in ordinary course of business.—Where a person accused of an offence under section 103 proves—

(a) that in the ordinary course of his business he is employed on behalf of other persons to apply trade marks or trade descriptions, or as the case may be, to make dies, blocks, machines, plates or other instruments for making, or being used in making, trade marks; and

(b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission dependent on the sale of such goods or providing of services, as the case may be; and

(c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or trade description; and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied, he shall be acquitted.

113. Procedure where invalidity of registration is pleaded by the accused.—(1) Where the offence charged under section 103 or section 104 or section 105 is in relation to

a registered trade mark and the accused pleads that the registration of the trade mark is invalid, the following procedure shall be followed:—

(a) If the Court is satisfied that such defence is *prima facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid.

(b) If the accused proves to the Court that he has made such application within the time so limited or within such further time as the Court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(c) If within a period of three months or within such extended time as may be allowed by the Court the accused fails to apply to the Appellate Board for rectification of the register, the Court shall proceed with the case as if the registration were valid.

(2) Where before the institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the trade mark in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the Court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification insofar as the complainant relies upon the registration of his mark.

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

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

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

Explanation.—For the purposes of this section—

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

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

115. Cognizance of certain offences and the powers of police officer for search and seizure.—(1) No Court shall take cognizance of an offence under section 107 or section 108 or section 109 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (c) of sub-section (1) of section 107, a Court shall take cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered trade mark has been represented as registered in respect of any goods or services in respect of which it is not in fact registered.

(2) No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

(3) The offences under section 103 or section 104 or section 105 shall be cognizable.

(4) Any police officer not below the rank of Deputy Superintendent of Police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit.

116. Evidence of origin of goods imported by sea.—In the case of goods brought into India by sea, evidence of the port of shipment shall, in a prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962 (52 of 1962), relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub-section (2) of section 11 of the said Act for the protection of trade marks relating to import of goods, be *prima facie* evidence of the place or country in which the goods are made or produced.

117. Costs of defence or prosecution.—In any prosecution under this Act, the Court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the Court deems reasonable having regard to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

118. Limitation of prosecution.—No prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962 (52 of 1962), relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub-section (2) of section 11 of the said Act for the protection of trade marks, relating to import of goods shall be commenced after expiration of three years next after the commission of the offence charged, or two years after the discovery thereof by the prosecutor, whichever expiration first happens.

119. Information as to commission of offence.—An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

120. Punishment of abetment in India of acts done out of India.— If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he may be found, and be punished therefore with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

121. Instructions of Central Government as to permissible variation to be observed by criminal Courts.—The Central Government may, by notification in the Official Gazette, issue instructions for the limits of variation, as regards number, quantity, measure, gauge or weight which are to be recognised by criminal Courts as permissible in the case of any goods.

CHAPTER XIII

MISCELLANEOUS

122. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

123. Certain persons to be public servants.—Every person appointed under this Act and every Member of the Appellate Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

124. Stay of proceedings where the validity of registration of the trade mark is questioned, etc.—(1) Where in any suit for infringement of a trade mark—

(a) the defendant pleads that registration of the plaintiff's trade mark is invalid; or

(b) the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff pleads the invalidity of registration of the defendant's trade mark, the Court trying the suit (hereinafter referred to as the Court) shall,—

(i) if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) if no such proceedings are pending and the Court is satisfied that the plea regarding the invalidity of the registration of the plaintiff's or defendant's trade mark is *prima facie* tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the Court that he has made any such application as is referred to in clause (b)(ii) of sub-section (1) within the time specified therein or within such extended time as the Court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the Court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the Court shall proceed with the suit in regard to the other issue in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the Court shall dispose of the suit conformably to such order insofar as it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the Court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

125. Application for rectification of register to be made to Appellate Board in certain cases.—(1) Where in a suit for infringement of a registered trade mark the validity of the registration of the plaintiff's trade mark is questioned by the defendant or where in any such suit the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff questions the validity of the registration of the defendant's trade mark, the issue as to the validity of the registration of the trade mark concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 47 or section 57, such application shall be made to the Appellate Board and not to the Registrar.

(2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under section 47 or section 57, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board.

126. Implied warranty on sale of marked goods.—Where a mark or a trade mark or trade description has been applied to the goods on sale or in the contract for sale of any goods or in relation to any service, the seller shall be deemed to warrant that the mark is a genuine mark and not falsely applied, or that the trade description is not a false trade description within the meaning of this Act unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of goods or providing of services on contract to and accepted by the buyer.

127. Powers of Registrar.—In all proceedings under this Act before the Registrar,—

(a) the Registrar shall have all the powers of a civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Registrar may, subject to any rules made in this behalf under section 157, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil Court:

Provided that the Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or provision of services or to authorise the use of the mark;

(c) the Registrar may, on an application made in the prescribed manner, review his own decision.

128. Exercise of discretionary power by Registrar.—Subject to the provisions of section 131, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made hereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

129. Evidence before Registrar.—In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

130. Death of party to a proceeding.— If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a Court) dies pending the proceeding, the Registrar may, on request, and on proof of his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

131. Extension of time.—(1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in this Act) whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

132. Abandonment.—Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act or any Act relating to trade marks in force prior to the commencement of this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

133. Preliminary advice by the Registrar as to distinctiveness.—(1) The Registrar may, on application made to him in the prescribed manner by any person who proposes to apply for the registration of a trade mark, give advice as to whether the trade mark appears to him *prima facie* to be distinctive.

(2) If, on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative made within three months after the advice was given, the Registrar, after further investigation or consideration, gives notice, to the applicant of objection on the ground that the trade mark is not distinctive, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

134. Suit for infringement, etc., to be instituted before District Court.—(1) No suit—
 (a) for the infringement of a registered trade mark; or
 (b) relating to any right in a registered trade mark; or
 (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.—For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user.

135. Relief in suits for infringement or for passing off.—(1) The relief which a Court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the Court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

(2) The order of injunction under sub-section (1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the Court shall not grant relief by way of damages (other than nominal damages) or on account of profits in any case—

(a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark; or

(b) where in a suit for infringement the defendant satisfies the Court—

(i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user being by way of permitted use; and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or

(c) where in a suit for passing off, the defendant satisfies the Court—

(i) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of.

136. Registered user to be impleaded in certain proceedings.—(1) In every proceeding under Chapter VII or under section 91, every registered user of a trade mark using by way of permitted use, who is not himself an applicant in respect of any proceeding under the Chapter or section, shall be made a party to the proceeding.

(2) Notwithstanding anything contained in any other law, a registered user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

137. Evidence of entries in register, etc., and things done by the Registrar.—(1) A copy of an entry in the register or of any document referred to in sub-section (1) of section 148 purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry shall be admitted in evidence in all Courts and in all proceedings without further proof or production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to my entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

138. Registrar and other officers not compellable to produce register, etc.—The Registrar or any officer of the Trade Marks Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the Court made for special cause.

139. Power to require goods to show indication of origin.—(1) The Central Government may, by notification in the Official Gazette, require that goods of any class

specified in the notification which are made or produced beyond the limits of India and imported into India, or, which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.

(2) The notification may specify the manner in which such indication shall be applied that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers, or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary.

(4) The provisions of section 23 of the General Clauses Act, 1897 (10 of 1897) shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of Customs is satisfied at the time of importation that they are intended for exportation whether after transshipment in or transit through India or otherwise.

140. Power to require information of imported goods bearing false trade marks.—

(1) The proprietor or a licensee of a registered trade mark may give notice in writing to the Collector of Customs to prohibit the importation of any goods if the import of the said goods constitute infringement under clause (c) of sub-section (6) of section 29.

(2) Where goods, which are prohibited to be imported into India by notification of the Central Government under clause (n) of sub-section (2) of section 11 of the Customs Act, 1962 (52 of 1962), for the protection of trade marks, and are liable to confiscation on importation under that Act, are imported into India, the Commissioner of Customs if, upon representation made to him, he has reason to believe that the trade mark complained of is used as a false trade mark, may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods and to furnish information as to the name and address of the person by whom the goods were consigned to India and the name and address of the person to whom the goods were sent in India.

(3) The importer or his agent shall, within fourteen days, comply with the requirement as aforesaid, and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

(4) Any information obtained from the importer of the goods or his agent under this section may be communicated by the Commissioner of Customs to the registered proprietor or registered user of the trade mark which is alleged to have been used as false trade mark.

141. Certificate of validity.—If in any legal proceeding for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor of the trade mark on the issue as to the validity of the registration of the trade mark, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor on obtaining a final order or judgment in his favour affirming validity of the registration of the trade mark shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost charges and expenses as between legal practitioner and client.

142. Groundless threats of legal proceedings.—(1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a trade mark which is registered, or alleged by the first-mentioned person to be registered, or with some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the registered user of the trade mark, bring a suit against the first-mentioned person and may obtain a declaration to

the effect that the threats are unjustifiable, and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the Court that the trade mark is registered and that the acts in respect of which the proceedings were threatened, constitute, or, if done, would constitute, an infringement of the trade mark.

(2) The last preceding sub-section does not apply if the registered proprietor of the trade mark, or a registered user acting in pursuance of sub-section (1) of section 52 with due diligence commences and prosecutes an action against the person threatened for infringement of the trade mark.

(3) Nothing in this section shall render a legal practitioner or a registered trade marks agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) A suit under sub-section (1) shall not be instituted in any Court inferior to a District Court.

143. Address for service.—An address for service stated in an application or notice of opposition shall for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

144. Trade usages, etc., to be taken into consideration.—In any proceeding relating to trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get up legitimately used by other persons.

145. Agents.—Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is—

- (a) a legal practitioner, or
- (b) a person registered in the prescribed manner as a trade marks agent, or
- (c) a person in the sole and regular employment of the principal.

146. Marks registered by an agent or representative without authority.—If an agent or a representative of the proprietor of a registered trade mark, without authority uses or attempts to register or registers the mark in his own name, the proprietor shall be entitled to oppose the registration applied for or secure its cancellation or rectification of the register so as to bring him as the registered proprietor of the said mark by assignment in his favour:

Provided that such action shall be taken within three years of the registered proprietor of the trade mark becoming aware of the conduct of the agent or representative.

147. Indexes.—There shall be kept under the direction and supervision of the Registrar—

- (a) an index of registered trade marks;
- (b) an index of trade marks in respect of which applications for registration are pending;
- (c) an index of the names of the proprietors of registered trade marks; and
- (d) an index of the names of registered users.

148. Documents open to public inspection.—(1) Save as otherwise provided in sub-section (4) of section 49,—

- (a) the register and any document upon which any entry in the register is based;
- (b) every notice of opposition to the registration of a trade mark application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar;
- (c) all regulations deposited under section 63 or section 74, and all applications under section 66 or section 77 for varying such regulations;
- (d) the indexes mentioned in section 147; and
- (e) such other documents as the Central Government may, by notification in the Official Gazette, specify,

shall, subject to such conditions as may be prescribed, be open to public inspection at the Trade Marks Registry:

Provided that when such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer printout of the relevant entry in the register so maintained on computer.

(2) Any person may, on an application to the Registrar and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (1).

149. Reports of Registrar to be placed before Parliament.—The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under the Registrar of this Act.

150. Fees and surcharge.—(1) There shall be paid in respect of applications and registration and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the Trade Marks Registry, the document shall be deemed not to have been filed at the Registry until the fee has been paid.

151. Savings in respect of certain matters in Chapter XII.—Nothing in Chapter XII shall—

(a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him; or

(b) entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution for an offence under that Chapter or against clause (h) of section 112 of the Customs Act, 1962 (52 of 1962), relating to confiscation of goods under clause (d) of section 111 of that Act and notified by the Central Government under clause (n) of sub-section (2) of section 11 thereof for the protection of trade marks relating to import of goods; or

(c) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

152. Declaration as to ownership of trade mark not registrable under the Registration Act, 1908.—Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no document declaring or purporting to declare the ownership or title of a person to a trade mark other than a registered trade mark shall be registered under that Act.

153. Government to be bound.—The provisions of this Act shall be binding on the Government.

154. Special provisions relating to applications for registration from citizens of convention countries.—(1) With a view to the fulfilment of a treaty, convention or arrangement with any country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisation to be a convention country or group of countries or union of countries or Inter-Governmental Organisations, as the case may be, for the purposes of this Act.

(2) Where a person has made an application for the registration of a trade mark in a convention country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation and that person, or his legal representative or assignee, makes an application for the registration of the trade mark in India within six months after the date on which the application was made in the convention country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisations, the trade mark shall, if registered under this Act, be registered as of the date on which the

application was made in the convention country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation and that date shall be deemed for the purposes of this Act to be the date of registration.

(3) Where applications have been made for the registration of a trade mark in two or more convention countries or country which are members of group of countries or union of countries or Inter-Governmental Organisation, the period of six months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those applications was made.

(4) Nothing in this Act shall entitle the proprietor of a trade mark to recover damages for infringement which took place prior to the date of application for registration under this Act.

155. Provision as to reciprocity.—Where any country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of trade marks as it accords to its own nationals, no national of such country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation, as the case may be, shall be entitled, either solely or jointly with any other person,—

(a) to apply for the registration of, or be registered as the proprietor of, a trade mark;

(b) to be registered as the assignee of the proprietor of a registered trade mark; or

(c) to apply for registration or be registered as a registered user of a trade mark under section 49.

156. Power of Central Government to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

157. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette and subject to the conditions of previous publication, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the matters to be included in the Register of Trade Marks under sub-section (1) of section 6, and the safeguards to be observed in the maintenance of records on computer floppies or diskettes or in any other electronic form under sub-section (2) of that section;

(ii) the manner of publication of alphabetical index of classification of goods and services under sub-section (1) of section 8;

(iii) the manner in which the Registrar may notify a word as an international non-proprietary name under section 13;

(iv) the manner of making an application for dissolution of an association under sub-section (5) of section 16;

(v) the manner of making an application for registration of a trade mark under sub-section (1) of section 18;

(vi) the manner of advertising of an application for registration under sub-section (1), and the manner of notifying corrections or amendments under sub-section (2), of section 20;

(vii) the manner of making an application and the fee payable for such application giving notice under sub-section (1) and sending counter-statements under sub-section (2) and submission of evidence and the time therefore under sub-section (4) of section 21;

(viii) the form of certificate of registration under sub-section (2), and the manner of giving notice to the applicant under sub-section (3) of section 23;

(ix) the forms of application for renewal and restoration the time within which such application is to be made and fee and surcharge if any payable with each application, under

section 25 and the time within which the Registrar shall send a notice and the manner of such notice under sub-section (3) of that section;

(x) the manner of submitting statement of cases under sub-section (2) of section 40;

(xi) the manner of making an application by the proprietor of a trade mark under section 41;

(xii) the manner of making an application for assignment or transmission of a certificate trade mark under section 43;

(xiii) the manner of making an application to the Registrar to register title under sub-section (1) of section 45;

(xiv) the manner in which and the period within which an application is to be made under sub-section (4) of section 46;

(xv) the manner of making an application under sub-section (2) of section 47;

(xvi) the manner of making an application, documents and other evidence to accompany such application under sub-section (1), and the manner in which notice is to be issued under sub-section (3) of section 49;

(xvii) the manner of making an application under sub-section (1), the manner of issuing a notice under sub-section (2) and the procedure for cancelling a registration under sub-section (3) of section 50;

(xviii) the manner of making applications under sub-sections (1) and (2), the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 57;

(xix) the manner of making an application under section 58;

(xx) the manner of making an application under sub-section (1), the manner of advertising an application, time and manner of notice by which application may be opposed under sub-sections (2) and (3) of section 59;

(xxi) the manner of advertisement under sub-section (2) of section 60;

(xxii) the other matters to be specified in the regulations under sub-section (2) of section 63;

(xxiii) the manner of making an application under sub-section (1) of section 71;

(xxiv) the manner of advertising an application under section 73;

(xxv) the manner of making an application under section 77;

(xxvi) the classes of goods under section 79;

(xxvii) the conditions and restrictions under sub-section (2) of section 80;

(xxviii) determination of character of textile goods by sampling under section 82.

(xxix) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairman, Vice-Chairman and other Members under sub-section (1) of section 88;

(xxx) the procedure for investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman and other Members under sub-section (3) of section 89;

(xxxi) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under sub-section (2), and the manner in which the officers and other employees of the Appellate Board shall discharge their functions under sub-section (3), of section 90;

(xxxii) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 91;

(xxxiii) the form in which and the particulars to be included in the application to the Appellate Board under sub-section (1) of section 97;

(xxxiv) the manner of making an application for review under clause (c) of section 127;

(xxxv) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 128;

(xxxvi) the manner of making an application and the fee payable therefore under sub-section (1) of section 131;

(xxxvii) the manner of making an application under sub-section (1) and the period for withdrawal of such application under sub-section (2) of section 133;

(xxxviii) the manner of authorising any person to act and the manner of registration as a trade mark agent under section 145;

(xxxix) the conditions for inspection of documents under sub-section (1) and the fee payable for obtaining a certified copy of any entry in the register under sub-section (2) of section 148;

(xl) the fees and surcharge payable for making applications and registration and other matters under section 150;

(xli) any other matter which is required to be or may be prescribed.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect in respect of the matters referred to in clauses (xxix) and (xxxi) of sub-section (2) from a date not earlier than the date of commencement of this Act, but no retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom sub-rule may be applicable.

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

158. Amendments.—The enactment specified in the Schedule shall be amended in the manner specified therein.

159. Repeal and savings.—(1) The Trade and Merchandise Marks Act, 1958 (43 of 1958) is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897), with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, determination, direction, approval, authorization, consent, application, request or thing made, issued, given or done under the Trade and Merchandise Marks Act, 1958 (43 of 1958) shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

(3) The provisions of this Act shall apply to any application for registration of a trade mark pending at the commencement of this Act and to any proceedings consequent thereon and to any registration granted in pursuance thereof.

(4) Subject to the provisions of section 100 and notwithstanding anything contained in any other provision of this Act, any legal proceeding pending in any Court at the commencement of this Act may be continued in that court as if this Act had not been passed.

(5) Notwithstanding anything contained in this Act, where a particular use of a registered trade mark is not an infringement of a trade mark registered before the commencement of this Act, then, the continued use of that mark shall not be an infringement under this Act.

(6) Notwithstanding anything contained in sub-section (2), the date of expiration of registration of a trade mark registered before the commencement of this Act shall be the date immediately after the period of seven years for which it was registered or renewed:

Provided that the registration of a defensive trade mark referred to in section 47 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) shall cease to have effect on the date immediately after the expiry of five years of such commencement or after the expiry of the period for which it was registered or renewed, whichever is earlier.

THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

18/07/1994

CHAPTER I PRELIMINARY

1. Short title, application and commencement.—(1) This Act may be called THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994.

(2) It applies, in the first instance, to the whole of the States of Goa, Himachal Pradesh and Maharashtra and to all the Union territories and it shall also apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.

(3) It shall come into force in the States of Goa, Himachal Pradesh and Maharashtra and in all the Union territories on such date as the Central Government may, by notification, appoint and in any other State which adopts this Act under clause (1) of article 252 of the Constitution, on the date of such adoption; and any reference in this Act to the commencement of this Act shall, in relation to any State or Union territory, means the date on which this Act comes into force in such State or Union territory.

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

(a) “advertisement” includes any form of advertising whether to the public generally or to any section of the public or individually to selected persons;

(b) “Appropriate Authority” means the Appropriate Authority appointed under section 13;

(c) “Authorization Committee” means the committee constituted under clause (a) or clause (b) of sub-section (4) of section 9;

(d) “brain-stem death” means the stage at which all functions of the brain-stem have permanently and irreversibly ceased and is so certified under sub-section (6) of section 3;

(e) “deceased person” means a person in whom permanent disappearance of all evidence of life occurs, by reason of brain-stem death or in a cardio-pulmonary sense, at any time after live birth has taken place;

(f) “donor” means any person, not less than eighteen years of age, who voluntarily authorizes the removal of any of his human organs for therapeutic purposes under sub-section (1) or sub-section (2) of section 3;

(g) “hospital” includes a nursing home, clinic, medical centre, medical or teaching institution for therapeutic purposes and other like institution;

(h) “human organ” means any part of a human body consisting of a structured arrangement of tissues which, if wholly removed, cannot be replicated by the body;

(i) “near relative” means spouse, son, daughter, father, mother, brother or sister;

(j) “notification” means a notification published in the Official Gazette;

(k) “payment” means payment in money or money’s worth but does not include any payment for defraying or reimbursing—

(i) the cost of removing, transporting or preserving the human organ to be supplied; or

(ii) any expenses or loss of earnings incurred by a person so far as reasonably and directly attributable to his supplying any human organ from his body;

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

(m) “recipient” means a person into whom any human organ is, or is proposed to be, transplanted;

(n) “registered medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and who is enrolled on a State Medical Register as defined in clause (k) of that section;

(o) “therapeutic purposes” means systematic treatment of any disease or the measures to improve health according to any particular method or modality; and

(p) “transplantation” means the grafting of any human organ from any living person or deceased person to some other living person for therapeutic purposes.

CHAPTER II

AUTHORITY FOR THE REMOVAL OF HUMAN ORGANS

3. Authority for removal of human organs.—(1) Any donor may, in such manner and subject to such conditions as may be prescribed, authorise the removal, before his death, of any human organ of his body for therapeutic purposes.

(2) If any donor had, in writing and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorised at any time before his death, the removal of any human organ of his body, after his death, for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal for therapeutic purposes, of that human organ from the dead body of the donor.

(3) Where no such authority as is referred to in sub-section (2), was made by any person before his death but no objection was also expressed by such person to any of his human organs being used after his death for therapeutic purposes, the person lawfully in possession of the dead body of such person may, unless he has reason to believe that any near relative of the deceased person has objection to any of the deceased person's human organs being used for therapeutic purposes, authorise the removal of any human organ of the deceased person for its use for therapeutic purposes.

(4) The authority given under sub-section (1) or sub-section (2) or, as the case may be, sub-section (3) shall be sufficient warrant for the removal, for therapeutic purposes, of the human organ; but no such removal shall be made by any person other than the registered medical practitioner.

(5) Where any human organ is to be removed from the body of a deceased person, the registered medical practitioner shall satisfy himself, before such removal, by a personal examination of the body from which any human organ is to be removed, that life is extinct in such body or, where it appears to be a case of brain-stem death, that such death has been certified under sub-section (6).

(6) Where any human organ is to be removed from the body of a person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in such manner and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts consisting of the following, namely:—

(i) the registered medical practitioner in charge of the hospital in which brain-stem death has occurred;

(ii) an independent registered medical practitioner, being a specialist to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority;

(iii) a neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority; and

(iv) the registered medical practitioner treating the person whose brain-stem death has occurred.

(7) Notwithstanding anything contained in sub-section (3), where brain-stem death of any person, less than eighteen years of age, occurs and is certified under sub-section (6), any of the parents of the deceased person may give authority, in such form and in such manner as may be prescribed, for the removal of any human organ from the body of the deceased person.

4. Removal of human organs not to be authorised in certain cases.—(1) No facilities shall be granted under sub-section (2) of section 3 and no authority shall be given under sub-section (3) of that section for the removal of any human organ from the body of a deceased person if the person, required to grant such facilities or empowered to give such authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2) No authority for the removal of any human organ from the body of a deceased person shall be given by a person to whom such body has been entrusted solely for the purpose of interment, cremation or other disposal.

5. Authority for removal of human organs in case of unclaimed bodies in hospital or prison.—(1) In the case of a dead body lying in a hospital or prison and not claimed by any of the near relatives of the deceased person within forty-eight hours from the time of the death of the concerned person, the authority for the removal of any human organ from the dead body which so remains unclaimed may be given, in the prescribed form, by the person in charge, for the time being, of the management or control of the hospital or prison, or by an employee of such hospital or prison authorised in this behalf by the person in charge of the management or control thereof.

(2) No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased person is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased person within the time specified in sub-section (1).

6. Authority for removal of human organs from bodies sent for post-mortem examination for medico-legal or pathological purposes.—Where the body of a person has been sent for post-mortem examination—

(a) for medico-legal purposes by reason of the death of such person having been caused by accident or any other unnatural cause; or

(b) for pathological purposes,

the person competent under this Act to give authority for the removal of any human organ from such dead body may, if he has reason to believe that such human organ will not be required for the purpose for which such body has been sent for post-mortem examination, authorise the removal, for therapeutic purposes, of that human organ of the deceased person provided that he is satisfied that the deceased person, had not expressed, before his death, any objection to any of his human organs being used, for therapeutic purposes after his death or, where he had granted an authority for the use of any of his human organs for therapeutic purposes after his death, such authority had not been revoked by him before his death.

7. Preservation of human organs.—After the removal of any human organ from the body of any person the registered medical practitioner shall take such steps for the preservation of the human organ so removed as may be prescribed.

8. Savings.—(1) Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body or with any part of the body of a deceased person if such dealing would have been lawful if this Act had not been passed.

(2) Neither the grant of any facility or authority for the removal of any human organ from the body of a deceased person in accordance with the provisions of this Act nor the removal of any human organ from the body of a deceased person in pursuance of such authority shall be deemed to be an offence punishable under section 297 of the Indian Penal Code (45 of 1860).

9. Restrictions on removal and transplantation of human organs.—(1) Save as otherwise provided in sub-section (3), no human organ removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.

(2) Where any donor authorizes the removal of any of his human organs after his death under sub-section (2) of section 3 or any person competent or empowered to give authority for the removal of any human organ from the body of any deceased person authorizes such removal, the human organ may be removed and transplanted into the body of any recipient who may be in need of such human organ.

(3) If any donor authorizes the removal of any of his human organs before his death under sub-section (1) of section 3 for transplantation into the body of such recipient not being a near relative as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorization Committee.

(4) (a) The Central Government shall constitute, by notification, one or more Authorization Committees consisting of such members as may be nominated by the Central Government on such terms and conditions as may be specified in the notification for each of the Union territories for the purposes of this section.

(b) The State Government shall constitute, by notification, one or more Authorization Committees consisting of such members as may be nominated by the State Government on such terms and conditions as may be specified in the notification for the purposes of this section.

(5) On an application jointly made in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorization Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made hereunder, grant to the applicants approval for the removal and transplantation of the human organ.

(6) If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorization Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made hereunder, it shall, for reasons to be recorded in writing, reject the application for approval.

CHAPTER III

REGULATION OF HOSPITALS

10. Regulation of hospitals conducting the removal, storage or transplantation of human organs.—(1) On and from the commencement of this Act,—

(a) no hospital, unless registered under this Act, shall conduct, or associate with, or help in, the removal, storage or transplantation of any human organ;

(b) no medical practitioner or any other person shall conduct, or cause to be conducted, or aid in conducting by himself or through any other person, any activity relating to the removal, storage or transplantation of any human organ at a place other than a place registered under this Act; and

(c) no place including a hospital registered under sub-section (1) of section 15 shall be used or cause to be used by any person for the removal, storage or transplantation of any human organ except for therapeutic purposes.

(2) Notwithstanding anything contained in sub-section (1), the eyes or the ears may be removed at any place from the dead body of any donor, for therapeutic purposes, by a registered medical practitioner.

Explanation.—For the purposes of this sub-section, “ears” includes ear drums and ear bones.

11. Prohibition of removal or transplantation of human organs for any purpose other than therapeutic purposes.—No donor and no person empowered to give authority for the removal of any human organ shall authorise the removal of any human organ for any purpose other than therapeutic purposes.

12. Explaining effects, etc., to donor and recipient.—No registered medical practitioner shall undertake the removal or transplantation of any human organ unless he had explained, in such manner as may be prescribed, all possible effects, complications and hazards connected with the removal and transplantation to the donor and the recipient respectively.

CHAPTER IV

APPROPRIATE AUTHORITY

13. Appropriate Authority.—(1) The Central Government shall appoint, by notification, one or more officers as Appropriate Authorities for each of the Union territories for the purposes of this Act.

(2) The State Government shall appoint, by notification, one or more officers as Appropriate Authorities for the purposes of this Act.

(3) The Appropriate Authority shall perform the following functions, namely:—

(i) to grant registration under sub-section (1) of section 15 or renew registration under sub-section (3) of that section;

(ii) to suspend or cancel registration under sub-section (2) of section 16;

(iii) to enforce such standards, as may be prescribed, for hospitals engaged in the removal, storage or transplantation of any human organ;

(iv) to investigate any complaint of breach of any of the provisions of this Act or any of the rules made hereunder and take appropriate action;

(v) to inspect hospitals periodically for examination of the quality of transplantation and the follow-up medical care to persons who have undergone transplantation and persons from whom organs are removed; and

(vi) to undertake such other measures as may be prescribed.

CHAPTER V

REGISTRATION OF HOSPITALS

14. Registration of hospitals engaged in removal, storage or transplantation of human organs.—(1) No hospital shall commence any activity relating to the removal, storage or transplantation of any human organ for therapeutic purposes after the commencement of this Act unless such hospital is duly registered under this Act:

Provided that every hospital engaged, either partly or exclusively, in any activity relating to the removal, storage or transplantation of any human organ for therapeutic purposes immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement:

Provided further that every hospital engaged in any activity relating to the removal, storage or transplantation of any human organ shall cease to engage in any such activity on the expiry of three months from the date of commencement of this Act unless such hospital has applied for registration and is so registered or till such application is disposed of, whichever is earlier.

(2) Every application for registration under sub-section (1) shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.

(3) No hospital shall be registered under this Act unless the Appropriate Authority is satisfied that such hospital is in a position to provide such specialised services and facilities, possess such skilled manpower and equipments and maintain such standards as may be prescribed.

15. Certificate of registration.—(1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made hereunder, grant to the hospital a certificate of registration in such form, for such period and subject to such conditions as may be prescribed.

(2) If, after the inquiry and after giving an opportunity to the applicant of being heard, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act and the rules made hereunder, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be renewed in such manner and on payment of such fees as may be prescribed.

16. Suspension or cancellation of registration.—(1) The Appropriate Authority may, *suo motu* or on complaint, issue a notice to any hospital to show cause why its registration under this Act should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If, after giving a reasonable opportunity of being heard to the hospital, the Appropriate Authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made hereunder, it may, without prejudice to any criminal action that it may take against such hospital, suspend its registration for such period as it may think fit or cancel its registration:

Provided that where the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any hospital without issuing any notice.

17. Appeals.—Any person aggrieved by an order of the Authorization Committee rejecting an application for approval under sub-section (6) of section 9, or any hospital aggrieved by an order of the Appropriate Authority rejecting an application for registration under sub-section (2) of section 15 or an order of suspension or cancellation of registration under sub-section (2) of section 16, may, within thirty days from the date of the receipt of the order, prefer an appeal, in such manner as may be prescribed, against such order to—

(i) the Central Government where the appeal is against the order of the Authorization Committee constituted under clause (a) of sub-section (4) of section 9 or against the order of the Appropriate Authority appointed under sub-section (1) of section 13; or

(ii) the State Government, where the appeal is against the order of the Authorization Committee constituted under clause (b) of sub-section (4) of section 9 or against the order of the Appropriate Authority appointed under sub-section (2) of section 13.

CHAPTER VI

OFFENCES AND PENALTIES

18. Punishment for removal of human organ without authority.—(1) Any person who renders his services to or at any hospital and who, for purposes of transplantation, conducts, associates with, or helps in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Where any person convicted under sub-section (1) is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

19. Punishment for commercial dealings in human organs.—Whoever—

(a) makes or receives any payment for the supply of, or for an offer to supply, any human organ;

(b) seeks to find a person willing to supply for payment any human organ;

(c) offers to supply any human organ for payment;

(d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;

(e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or

(f) publishes or distributes or causes to be published or distributed any advertisement,—

(a) inviting persons to supply for payment of any human organ;

(b) offering to supply any human organ for payment; or

(c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d),

shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees:

Provided that the Court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

20. Punishment for contravention of any other provision of this Act.—Whoever contravenes any provision of this Act or any rule made, or any condition of the registration granted, hereunder for which no punishment is separately provided in this Act, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees.

21. Offences by companies.—(1) Where any offence, punishable under this Act, has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any 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 director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

22. Cognizance of offences.—(1) No Court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the Court.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

CHAPTER VII

MISCELLANEOUS

23. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

24. Power to make rules.—(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which and the conditions subject to which any donor may authorise removal, before his death, of any human organ of his body under sub-section (1) of section 3;

(b) the form and the manner in which a brain-stem death is to be certified and the conditions and requirements which are to be satisfied for that purpose under sub-section (6) of section 3;

(c) the form and the manner in which any of the parents may give authority, in the case of brain-stem death of a minor, for the removal of any human organ under sub-section (7) of section 3;

(d) the form in which authority for the removal of any human organ from an unclaimed dead body may be given by the person in charge of the management or control of the hospital or prison, under sub-section (1) of section 5;

(e) the steps to be taken for the preservation of the human organ removed from the body of any person, under section 7;

(f) the form and the manner in which an application may be jointly made by the donor and the recipient under sub-section (5) of section 9;

(g) the manner in which all possible effects, complications and hazards connected with the removal and transplantation is to be explained by the registered medical practitioner to the donor and the recipient under section 12;

(h) the standards as are to be enforced by the Appropriate Authority for hospitals engaged in the removal, storage or transplantation of any human organ under clause (iii) of sub-section (3) of section 13;

(i) the other measures as the Appropriate Authority shall undertake in performing its functions under clause (vi) of sub-section (3) of section 13;

(j) the form and the manner in which an application for registration shall be made and the fee which shall be accompanied, under sub-section (2) of section 14;

(k) the specialised services and the facilities to be provided, skilled manpower and the equipments to be possessed and the standards to be maintained by a hospital for registration, under sub-section (3) of section 14;

(l) the form in which, the period for which and the conditions subject to which certificate of registration is to be granted to a hospital, under sub-section (1) of section 15;

(m) the manner in which and the fee on payment of which certificate of registration is to be renewed under sub-section (3) of section 15;

(n) the manner in which an appeal may be preferred under section 17;

(o) the manner in which a person is required to give notice to the Appropriate Authority of the alleged offence and of his intention to make a complaint to the Court, under clause (b) of sub-section (1) of section 22; and

(p) any other matter which is required to be, or may be, prescribed.

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

25. Repeal and savings.—(1) The Ear Drums and Ear Bones (Authority for Use for Therapeutic Purposes) Act, 1982 (28 of 1982) and the Eyes (Authority for Use for Therapeutic Purposes) Act, 1982 (29 of 1982) are hereby repealed.

(2) The repeal shall, however, not affect the previous operation of the Acts so repealed or anything duly done or suffered hereunder.

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

30/12/1967

CHAPTER I

PRELIMINARY

1. Short title, extent and application.—(1) This Act may be called THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967.

(2) It extends to the whole of India.

(3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person, who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(5) The provisions of this Act apply also to—

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) “association” means any combination or body of individuals;

(b) “cession of a part of the territory of India” includes admission of the claim of any foreign country to any such part;

(c) “Code” means the Code of Criminal Procedure, 1973 (2 of 1974);

(d) “Court” means a Criminal Court having jurisdiction, under the Code, to try offences under this Act and includes a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008;

(e) “Designated Authority” means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by notification published in the Official Gazette;

(ea) "Order" means the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007, as may be amended from time to time;

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

(g) "proceeds of terrorism" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation or terrorist gang;

(h) "property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents, deeds and instruments in any form including electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired;

(ha) "Schedule" means the Schedule to this Act;

(i) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

(j) "State Government", in relation to a Union territory, means the Administrator thereof;

(k) "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

(m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

(n) "Tribunal" means the Tribunal constituted under section 5;

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,—

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153-A or section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity;

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;

(q) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

UNLAWFUL ASSOCIATIONS

3. Declaration of an association as unlawful.—(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:—

(a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or

(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(d) in such other manner as may be prescribed.

4. Reference to Tribunal.—(1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.

5. Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a Tribunal to be known as the “Unlawful Activities (Prevention) Tribunal” consisting of one person, to be appointed by the Central Government:

Provided that no person shall be so appointed unless he is a Judge of a High Court.

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any Court or office;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code.

6. Period of operation and cancellation of notification.—(1) Subject to the provisions of sub-section (2), a notification issued under section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under section 4, remain in force for a period of two years from the date on which the notification becomes effective.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under section 3 whether or not the declaration made therein has been confirmed by the Tribunal.

7. Power to prohibit the use of funds of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any Gazetted Officer of the Government it may select, and such copy shall be a warrant hereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealings in any moneys, securities or credits which the Investigating Officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this section shall be served in the manner provided in the Code, for the service of a summons, or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof; or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or

credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any Gazetted Officer of the Government, without the consent of the Central Government.

(6) In this section "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or hereunder any person obtains a legal right to the payment of money.

8. Power to notify places used for the purpose of an unlawful association.—

(1) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.

Explanation.—For the purposes of this sub-section "place" includes a house or building or part thereof, or a tent or vessel.

(2) On the issue of a notification under sub-section (1), the District Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry, cattle, grain and food-stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(3) If, in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save in accordance with the written orders of the District Magistrate.

(4) The District Magistrate may, thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on or in, the notified place:

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(5) Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.

(6) Any police officer, not below the rank of a Sub-Inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in the notified place and may detain any such person for the purpose of searching him:

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then, without prejudice to any other proceedings which may be taken against him, he may be removed there from by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under sub-section (1) or by an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is situate—

(a) for declaration that the place has not been used for the purpose of the unlawful association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4), and on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question.

9. Procedure to be followed in the disposal of applications under this Act.—Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in

holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908); for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.

CHAPTER III

OFFENCES AND PENALTIES

10. Penalty for being member of an unlawful association, etc.—Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,—

(a) a person, who—

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

11. Penalty for dealing with funds of an unlawful association.—If any person on whom a prohibitory order has been served under sub-section (1) of section 7 in respect of any moneys, securities or credits pays, delivers, transfers or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and notwithstanding anything contained in the Code, the Court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the moneys or credits or the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the Court may deem fit.

12. Penalty for contravention of an order made in respect of a notified place.—

(1) Whoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (3) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(2) Whoever, knowingly and wilfully is in, or effects or attempts to effect entry into, a notified place in contravention of an order made under sub-section (4) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

13. Punishment for unlawful activities.—(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advices or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefore carried on by any person authorised in this behalf by the Government of India.

14. Offences to be cognizable.—Notwithstanding anything contained in the Code, an offence punishable under this Act shall be cognizable.

CHAPTER IV

PUNISHMENT FOR TERRORIST ACTIVITIES

15. Terrorist act.—Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

Explanation.—For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary.

16. Punishment for terrorist act.—(1) Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

16-A. Punishment for making demands of radioactive substances, nuclear devices, etc.—Whoever intentionally, by use of force or threat of use of force or by any other means, demands any bomb, dynamite or other explosive substance or inflammable substances or firearms or other lethal weapons or poisonous or noxious or other chemicals or any biological, radiological, nuclear material or device, with the intention of aiding, abetting or committing a terrorist act, shall be punishable with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

17. Punishment for raising funds for terrorist act.—Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable

with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18-A. Punishment for organising of terrorist camps.—Whoever organises or causes to be organized any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18-B. Punishment for recruiting of any person or persons for terrorist act.—Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

19. Punishment for harbouring, etc.—Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

20. Punishment for being member of terrorist gang or organisation.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

21. Punishment for holding proceeds of terrorism.—Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

22. Punishment for threatening witness.—Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

23. Enhanced penalties.—(1) If any person with intent to aid any terrorist or a terrorist organisation or a terrorist gang contravenes any provision of, or any rule made under the Explosives Act, 1884 (4 of 1884) or the Explosive Substances Act, 1908 (6 of 1908) or the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), or is in unauthorized possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made hereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

CHAPTER V

FORFEITURE OF PROCEEDS OF TERRORISM

24. Forfeiture of proceeds of terrorism.—(1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism whether held by a terrorist or terrorist organisation or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

25. Powers of investigating officer and Designated Authority and appeal against order of Designated Authority.—(1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism; or

(b) it forms the whole or part of the resources of a terrorist organisation:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, “cash” means—

(a) coins or notes in any currency;

(b) postal orders;

(c) traveller’s cheques;

(ca) credit or debit cards or cards that serve a similar purpose;

(d) banker’s drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the Court within a period of thirty days from the date of receipt of the order, and the Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

26. Court to order forfeiture of proceeds of terrorism.—Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the Court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Court for an offence under Chapter IV or Chapter VI.

27. Issue of show cause notice before forfeiture of proceeds of terrorism.—(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the Court to make an order in respect of the property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the administrator of such property subject to such conditions as may be specified by the Court.

28. Appeal.—(1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the Court, which passed the order appealed against, is situated.

(2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefore as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

29. Order of forfeiture not to interfere with other punishments.—The order of forfeiture made under this Chapter by the Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

30. Claims by third party.—(1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) Where an appeal has been preferred under sub-section (6) of section 25 and any claimant or objector establishes that the property specified in the notice issued under section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

31. Powers of Designated Authority.—The Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a Civil Court required for making a full and fair inquiry into the matter before it.

32. Certain transfers to be null and void.—Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

33. Forfeiture of property of certain persons.—(1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the Court to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter.

(2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

34. Company to transfer shares to Government.—Where any share in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the Court, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share.

CHAPTER VI

TERRORIST ORGANISATIONS

35. Amendment of Schedule, etc.—(1) The Central Government may, by order, in the Official Gazette,—

- (a) add an organisation in the Schedule;
- (b) add also an organisation in the Schedule, which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, to combat international terrorism;
- (c) remove an organisation from the Schedule;
- (d) amend the Schedule in some other way.

(2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation only if it believes that it is involved in terrorism.

(3) For the purposes of sub-section (2), an organisation shall be deemed to be involved in terrorism if it—

- (a) commits or participates in acts of terrorism, or
- (b) prepares for terrorism, or
- (c) promotes or encourages terrorism, or
- (d) is otherwise involved in terrorism.

36. Denotification of a terrorist organisation.—(1) An application may be made to the Central Government for the exercise of its power under clause (c) of sub-section (1) of section 35 to remove an organisation from the Schedule.

(2) An application under sub-section (1) may be made by—

- (a) the organisation, or
- (b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been rejected, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 37 within one month from the date of receipt of the order of such refusal by the applicant.

(5) The Review Committee may allow an application for review against rejection to remove an organisation from the Schedule, if it considers that the decision to reject was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order to such effect.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the Schedule.

37. Review Committees.—(1) The Central Government shall constitute one or more Review Committees for the purposes of section 36.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government and in the case of appointment of a sitting Judge, the concurrence of the Chief Justice of the concerned High Court shall be obtained.

38. Offence relating to membership of a terrorist organisation.—(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

- (a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and
- (b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

39. Offence relating to support given to a terrorist organisation.—(1) A person commits the offence relating to support given to a terrorist organisation,—

- (a) who, with intention to further the activity of a terrorist organisation,—
 - (i) invites support for the terrorist organisation, and
 - (ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or
- (b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—
 - (i) to support the terrorist organisation, or
 - (ii) to further the activity of the terrorist organisation, or
 - (iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or
- (c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

40. Offence of raising fund for a terrorist organisation.—(1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,—

- (a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or
- (b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or
- (c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism.

Explanation.—For the purposes of this sub-section, a reference to provide money or other property includes of its being given, lent or otherwise made available, whether or not for consideration.

(2) A person, who commits the offence of raising fund for a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with fine, or with both.

CHAPTER VII

MISCELLANEOUS

41. Continuance of association.—An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

42. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under section 7, or section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing, direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

43. Officers competent to investigate offences under Chapters IV and VI.—Notwithstanding anything contained in the Code, no police officer,—

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under Chapter IV or VI.

43-A. Power to arrest, search, etc.—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43-B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43-A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43-A shall be forwarded without unnecessary delay to the officer in charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

43-C. Application of provisions of Code.—The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.

43-D. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to “the State Government” shall be construed as a reference to “the Central Government or the State Government”,

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorized or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

43-E. Presumption as to offences under section 15.—In a prosecution for an offence under section 15, if it is proved —

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

(b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

43-F. Obligation to furnish information.—(1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with the prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in his or their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(2) The failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, an offence under subsection (2) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262 shall be applicable thereto].

44. Protection of witnesses.—(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held *in camera*, if the Court so desires.

(2) A Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Court may take under that sub-section may include—

- (a) the holding of the proceedings at a place to be decided by the Court;
- (b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;
- (c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;
- (d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person, who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

45. Cognizance of offences.—(1) No Court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government.

46. Admissibility of evidence collected through the interception of communications.—Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (13 of 1885) or the Information Technology Act, 2000 (21 of 2000) or any other law for the time being in force, shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived there from shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any Court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the Judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

47. Bar of jurisdiction.—(1) Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate, shall be called in question in any Civil Court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any Civil Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Notwithstanding anything contained in sub-section (1), no Civil Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters referred to in section 36.

48. Effect of Act and rules, etc., inconsistent with other enactments.—The provisions of this Act or any rule or order made hereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

49. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against—

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in

this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made hereunder; and

(b) any serving or retired member of the armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

50. Saving.—Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under any law relating to the navy, army or air force or other armed forces of the Union.

51. Impounding of passport and arms licence of person charge-sheeted under the Act.—Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the Court may deem fit.

51-A. Certain powers of the Central Government.—For the prevention of, and for coping with terrorist activities, the Central Government shall have power to—

(a) freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism;

(b) prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism;

(c) prevent the entry into or the transit through India of individuals listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism.

52. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(b) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(c) determination of the price of the forfeited property under sub-section (2) of section 28;

(d) the procedure for admission and disposal of an application under sub-section (3) of section 36;

(e) the qualifications of the members of the Review Committee under sub-section (2) of section 37; and

(ee) the time within which sanction for prosecution and recommendation to the Central Government shall be given under sub-section (2) of section 45, and;

(f) any other matter which is required to be, or may be, prescribed.

53. Orders and rules to be laid before both Houses of Parliament.—(1) Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

(2) The Order referred to in entry 33 of the Schedule and every amendment made to that Order shall be laid as soon as may be after it is made before each House of Parliament

while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions.

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
23/03/1974

CHAPTER I
 PRELIMINARY

1. Short title, application and commencement.—(1) This Act may be called THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974.

(2) It applies in the first instance to the whole of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and the Union territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.

(3) It shall come into force, at once in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union territories, and in any other State which adopts this Act under clause (1) of article 252 of the Constitution on the date of such adoption and any reference in this Act to the commencement of this Act shall, in relation to any State or Union territory, mean the date on which this Act comes into force in such State or Union territory.

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

(a) "Board" means the Central Board or a State Board;

(b) "Central Board" means the Central Pollution Control Board constituted under section 3;

(c) "member" means a member of a Board and includes the Chairman thereof;

(d) "occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;

(dd) "outlet", includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;

(e) "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;

(f) "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

(g) "sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) "sewer" means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h) "State Board" means a State Pollution Control Board constituted under section 4;

(i) "State Government" in relation to a Union territory means the Administrator thereof appointed under article 239 of the Constitution;

(j) "stream" includes—

(i) river;

(ii) water course (whether flowing or for the time being dry);

(iii) inland water (whether natural or artificial);

(iv) sub-terranean waters;

(v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;

(k) "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system, other than domestic sewage.

CHAPTER VII

PENALTIES AND PROCEDURE

41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33-A.—(1) Whoever fails to comply with any direction given under sub-section (2) or sub-section (3) of section 20 within such time as may be specified in the direction shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) Whoever fails to comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a Court under sub-section (2) of section 33 or any direction issued under section 33-A shall, in respect of each such failure and on conviction, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

42. Penalty for certain acts.—(1) Whoever—

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or

(e) fails to intimate the occurrence of any accident or other unforeseen act or event under section 31 to the Board and other authorities or agencies as required by that section, or

(f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or

(g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular,

shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

(2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provisions, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

43. Penalty for contravention of provisions of section 24.—Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

44. Penalty for contravention of section 25 or section 26.—Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

45. Enhanced penalty after previous conviction.—If any person who has been convicted of any offence under section 24 or section 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine:

Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

45-A. Penalty for contravention of certain provisions of the Act.—Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.

46. Publication of names of offenders.—If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

47. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

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

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

48. Offences by Government Departments.—Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

49. Cognizance of offences.—(1) No Court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorised as aforesaid,

and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

(3) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Judicial Magistrate of the first class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

50. Members, officers and servants of Board to be public servants.—All members, officers and servants of a Board when acting or purporting to act in pursuance of any of the provisions of this Act and the rules made hereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005

06/06/2005

1. Short title and commencement.—(1) This Act may be called THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005.

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

2. Act in addition to other laws.—Save as otherwise expressly provided in this Act, the provisions of this Act shall be in addition to any other relevant Act for the time being in force in relation to any matter covered under this Act.

3. Extent and application.—(1) It extends to the whole of India including its Exclusive Economic Zone.

(2) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty of India.

(3) Any person who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(4) The provisions of this Act shall also apply to—

- (a) citizens of India outside India;
- (b) companies or bodies corporate, registered or incorporated in India or having their associates, branches or subsidiaries, outside India;
- (c) any ship, aircraft or other means of transport registered in India or outside India, wherever it may be;
- (d) foreigners while in India;
- (e) persons in the service of the Government of India, within and beyond India.

(5) Notwithstanding the applicability of the provisions of any other Central Act relating to any activity provided herein, the provisions of this Act shall apply to export, transfer, re-transfer, transit and trans-shipment of material, equipment or technology of any description as are identified, designated, categorised or considered necessary by the Central Government, as pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, to the furtherance of its foreign policy or its international obligations under any bilateral, or multilateral or international treaty, Covenant, Convention or arrangement relating to weapons of mass destruction or their means of delivery, to which India is a Party.

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

(a) “biological weapons” are—

(i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; and

(ii) weapons, equipment or delivery systems specially designed to use such agents or toxins for hostile purposes or in armed conflict;

(b) "brought in transit" means to bring goods from any country into India by land, air, or amphibious means of transportation, where the goods are to be taken out from India on the same conveyance on which they are brought into India without any landing in India, but does not include a conveyance in innocent passage through Indian territory, Indian territorial waters or Indian airspace of a foreign conveyance carrying goods.

Explanation I.—A conveyance is a foreign conveyance if it is not registered in India.

Explanation II.—A conveyance is in "innocent passage" if it is not engaged in relevant activity and passes through or above Indian territorial waters or airspace without stopping or anchoring in India;

(c) "chemical weapons" means,—

(i) the toxic chemicals and their precursors, except where intended for—

(a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(b) protective purposes, namely, those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(d) law enforcement including domestic riot control purposes;

as long as the types and quantities are consistent with such purposes;

(ii) the munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in sub-clause (i), which would be released as a result of the employment of such munitions and devices; and

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-clause (ii), together or separately;

(d) "export" shall have the meaning assigned to this expression in the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(e) "fissile material" and "radioactive material" shall have the meanings assigned to these expressions in the Atomic Energy Act, 1962 (33 of 1962);

(f) "item" means materials, equipment, and technology, of any description, notified under this Act or any other Act related to relevant activity;

(g) "non-State actor" is a person or entity not acting under the lawful authority of any country;

(h) "nuclear weapon or other nuclear explosive device" means any nuclear weapon or other nuclear explosive device as may be determined by the Central Government, whose determination in the matter shall be final;

(i) "public domain" means domain that has no restrictions upon dissemination of information within or from it; the existence of any legal rights to intellectual property in that information does not remove such information from being in public domain;

(j) "relevant activity" means,—

(i) the development, production, handling, operation, maintenance, storage or dissemination of a nuclear, chemical or biological weapon; or

(ii) the development, production, maintenance, storage or dissemination of missiles specially designed for delivering any such weapon;

(k) "re-transfer" means transfer of any item notified under this Act from any country or entity to which it has been exported from India, to yet another country or entity;

(l) "technology" means any information (including information embodied in software) other than information in the public domain, that is capable of being used in—

(i) the development, production or use of any goods or software;

(ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of a service of any kind.

Explanation.—When technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used, in the development, production or use of such technology or goods;

(m) “terrorist” shall have the meaning assigned to this expression in the Unlawful Activities (Prevention) Act, 1967 (37 of 1967);

(n) “trans-shipment” means to remove goods from the conveyance on which they were brought into India and to place the goods on the same or another conveyance for the purpose of taking them out of India, where these acts are carried out on a “through bill of lading”, “through airway bill” or “through manifest”.

Explanation.—“through bill of lading”, “through airway bill” and “through manifest” means respectively a bill of lading, airway bill and manifest, for the consignment of goods from a place outside India to a destination which is also outside India without a consignee in India;

(o) “unlawful” means without the authority of the Central Government and the expression “unlawfully” shall be construed accordingly;

(p) “weapons of mass destruction” means any biological, chemical or nuclear weapons.

5. Power to identify, designate, categorise or regulate certain activities.—(1) The Central Government may identify, designate, categorise or regulate, the export, transfer, re-transfer, trans-shipment, or transit of any item related to relevant activity in such manner as may be prescribed.

(2) The Central Government may, by order published in the Official Gazette, designate or notify any item related to relevant activity for the purposes of this Act.

6. Power to appoint Advisory Committees.—For the purposes of this Act, the Central Government may appoint such Advisory Committees as it deems fit, and may appoint to them persons to exercise such powers and perform such duties as the Central Government may, by rules, prescribe.

7. Delegation of powers.—(1) Subject to the provisions of this Act and any other law for the time being in force, related to relevant activity, the Central Government shall have the power to direct or assign to any authority, in such manner as it may deem appropriate, such powers as may be necessary to implement the provisions of this Act.

(2) The Central Government may appoint a Licensing Authority and an Appellate Authority and make provisions relating to such authority and for licensing in such manner and in such form, as the Central Government may, by rules, prescribe.

(3) Without prejudice to the generality of the provisions contained in this Act, the authorities and mechanisms provided under other relevant Acts shall continue to deal with matters covered under those Acts:

Provided that in case of any doubt as to whether a matter falls within the scope of such relevant Acts or under this Act, the decision of the Central Government thereon shall be final.

8. Prohibition relating to weapons of mass destruction.—(1) No person shall unlawfully manufacture, acquire, possess, develop or transport a nuclear weapon or other nuclear explosive device and their means of delivery.

(2) No person shall unlawfully transfer, directly or indirectly, to any one a nuclear weapon or other nuclear explosive device, or transfer control over such a weapon, knowing it to be a nuclear weapon or other nuclear explosive device.

(3) No person shall unlawfully manufacture, acquire, possess, develop or transport a biological or chemical weapon or their means of delivery.

(4) No person shall unlawfully transfer, directly or indirectly, to any one biological or chemical weapons.

(5) No person shall unlawfully transfer, directly or indirectly, to any one missiles specially designed for the delivery of weapons of mass destruction.

9. Prohibition relating to non-State actor or terrorist.—No person shall, directly or indirectly, transfer to a non-State actor or terrorist, any material, equipment and technology notified under this Act or any other Act related to relevant activity:

Provided that such transfer made to a non-State actor shall not include a transfer made as such to any person acting under lawful authority in India.

10. Prohibition as regards intimidating acts.—No person shall transfer, acquire, possess, or transport fissile or radioactive material, which is intended to be used to cause, or in a threat to cause, death or serious injury or damage to property for the purpose of intimidating people or a section of the people in India or in any foreign country, or compelling the Government of India or the Government of a foreign country or an international organisation or any other person to do so or abstain from doing any act.

11. Prohibition on export.—No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.

12. Prohibition on brokering.—No person who is a resident in India shall, for a consideration under the terms of an actual or implied contract, knowingly facilitate the execution of any transaction which is prohibited or regulated under this Act:

Provided that a mere carriage, without knowledge, of persons, goods or technology, or provision of services, including by a public or private carrier of goods, courier, telecommunication, postal service provider or financial service provider, shall not be an offence for the purposes of this section.

13. Regulation of export, transfer, re-transfer, transit and trans-shipment.—(1) No item notified under this Act shall be exported, transferred, re-transferred, brought in transit or transhipped except in accordance with the provisions of this Act or any other relevant Act.

(2) Any transfer of technology of an item whose export is prohibited under this Act or any other relevant Act relating to relevant activity shall be prohibited.

(3) When any technology is notified under this Act or any other relevant Act, as being subject to transfer controls, the transfer of such technology shall be restricted to the extent notified hereunder.

Explanation.—The transfer of technology may take place through either or both of the following modes of transfer, namely:—

(a) by a person or from a place within India to a person or place outside India;

(b) by a person or from a place outside India to a person, or a place, which is also outside India (but only where the transfer is by, or within the control of, person, who is a citizen of India, or any person who is a resident in India).

(4) The Central Government may notify any item as being subject to the provisions of this Act, whether or not it is covered under any other relevant Act; and when such item is exhibited, sold, supplied or transferred to any foreign entity or a foreigner who is resident, operating, visiting, studying, or conducting research or business within the territorial limits of India, or in its airspace or Exclusive Economic Zone, it shall constitute an offence.

14. Offences and penalties.—Any person who contravenes, or attempts to contravene or abets, the provisions of section 8 or section 10 of this Act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

15. Punishment for aiding non-State actor or terrorist.—(1) Any person who, with intent to aid any non-State actor or terrorist, contravenes the provisions of section 9 of this Act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Any person who, with intent to aid any non-State actor or terrorist, attempts to contravene or abets, or does any act preparatory to contravention of sub-section (1), shall be deemed to have contravened that provision and the provision of sub-section (1) shall apply subject to the modification that the reference to “imprisonment for life” therein shall be construed as a reference to “imprisonment for ten years”.

(3) While determining the punishment under this section, the Court shall take into consideration whether the accused had the knowledge about the transferee being a non-State actor or not.

16. Punishment for unauthorized export.—(1) Any person who knowingly contravenes, abets or attempts to contravene, the provisions of sub-section (4) of section 13 of this Act, shall be punishable with fine which shall not be less than three lakh rupees and which may extend to twenty lakh rupees.

(2) If any person is again convicted of the same offence under sub-section (1), then he shall be punishable for the second and every subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

17. Punishment for violation of other provisions of the Act.—(1) Where any person contravenes, or abets or attempts to contravene, any provision of this Act other than the provisions under sections 8, 9, 10 and sub-section (4) of section 13 of this Act, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

(2) If any person is again convicted of the same offence under sub-section (1), then he shall be punishable for the second and every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

18. Penalty for using false or making forged documents, etc.—Where any person signs or uses, or causes to be signed or used, any declaration, statement or document submitted to the competent authority knowing or having reason to believe that such declaration, statement or document is forged or tampered with or is false in any material particular, and relates to items notified under this Act or any other relevant Act, including those related to relevant activity, he shall be punishable with fine which shall not be less than five lakh rupees or five times the value of the materials, equipment, technology or services, whichever is more.

19. Punishment for offences with respect to which no provision has been made.—Whoever contravenes any other provision of this Act or any rule or order made hereunder for which no specific punishment is provided, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

20. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section—

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

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

21. Cognizance of offences.—No Court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf.

22. Bar of jurisdiction of civil Courts.—No action or proceedings taken under section 5 and sub-sections (1) and (2) of section 7 of this Act by the Central Government or any officer authorised by it in this behalf shall be called in question in any civil Court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under those provisions.

23. Effect of other laws.—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any other instrument having effect by virtue of any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other relevant Act, then the offender found guilty of such offence shall be liable to be punished under that Act which imposes a greater punishment.

24. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer or authority of the Central Government or any other authority on whom powers have been conferred pursuant to this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made hereunder.

25. Special provisions as to Central Government.—Nothing in this Act shall affect the activities of the Central Government in the discharge of its functions relating to the security or the defence of India.

26. Power to make rules.—(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) manner of regulating any item related to relevant activity under sub-section (1) of section 5;

(b) appointment of Advisory Committees, their powers and duties under section 6;

(c) appointment of Licensing and Appellate Authority and the manner of licensing under sub-section (2) of section 7; and

(d) any other matter which has to be, or may be, prescribed.

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

27. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1956

28/12/1956

1. Short title, extent and commencement.—(1) This Act may be called THE YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

2. Definitions.—(1) In this Act,—

(a) “harmful publication” means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly—

(i) the commission of offences; or

(ii) acts of violence or cruelty; or

(iii) incidents of a repulsive or horrible nature,

in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever;

(b) "State Government" in relation to a Union Territory, means the administrator thereof;

(c) "young person" means a person under the age of twenty years.

3. Penalty for sale, etc., of harmful publications.—(1) If a person—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, any harmful publication, or

(b) for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or

(c) advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person,

he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(2) On a conviction under this section, the Court may order the destruction of all the copies of the harmful publication in respect of which the conviction was had and which are in the custody of the Court or remain in possession or power of the person convicted.

4. Power of Government to declare harmful publications forfeited.—(1) The State Government may, if it is of opinion after consultation with the principal law officer of the State, whether called the Advocate General or by any other name, that any publication is a harmful publication declare, by order notified in the Official Gazette, that every copy of such publication shall be forfeited to the Government and every such notification shall state the ground for the order.

(2) Without prejudice to the provisions contained in sub-section (1) of section 6, where there is an order of forfeiture under sub-section (1) in respect of any publication it shall be lawful for any police officer to seize the same wherever found in the territories to which this Act extends.

5. Appeal to High Court against order of forfeiture.—Any person aggrieved by an order of forfeiture passed by the State Government under section 4 may, within sixty days of the date of such order, apply to the High Court to set aside such order, and upon such application the High Court may pass such order as it deems fit.

6. Power to seize and destroy harmful publications.—(1) Any police officer or any other office empowered in this behalf by the State Government may seize any harmful publication.

(2) Any Magistrate of the first class may, by warrant, authorise any police officer not below the rank of Sub-Inspector to enter and search any place where any stock of harmful publications may be or may be reasonably suspected to be, and such police officer may seize any publication found in such place if in his opinion it is a harmful publication.

(3) Any publication seized under sub-section (1) shall be produced, as soon as may be, before a Magistrate of the first class, and any publication seized under sub-section (2) shall be produced, as soon as may be, before the Court which issued the warrant.

(4) If in the opinion of the Magistrate or Court such publication is a harmful publication, the Magistrate or Court may cause it to be destroyed, but if, in the opinion of the Magistrate or Court, such publication is not a harmful publication, the Magistrate or Court shall dispose of it in the manner provided in sections 523, 524 and 525 of the Code of Criminal Procedure, 1898 (5 of 1898).

7. Offences under this Act to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), any offence punishable under this Act shall be cognizable.