

THE KARNATAKA WAREHOUSES ACT, 1961
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STATEMENT OF OBJECTS AND REASONS**I**

Act 11 of 1962.—The Agricultural Produce (Development and Warehousing) Corporation Act, 1956, providing for the establishment of Central and State Warehousing Corporations, has been passed by Parliament. A State Warehousing Corporation has accordingly been established by this Government. The operations of this Corporation requires passing of a suitable warehousing legislation. The proposed Bill is based on model draft Bill circulated by Government of India for adoption by the States and aims to bring a uniform law in all the five integrated areas of new Mysore for establishment, supervision and control of independent warehouses.

The main features of the Bill are:—

- (1) Prohibition of persons without a licence from carrying on the business of warehouseman;
- (2) Prescription of certain duties of warehouseman;
- (3) Inspection and grading of goods; and
- (4) Issue of warehouse receipts.

(Obtained from L.C. Bill No. 601 dated 21st July 1959) (File No. LAW 56 LGN 58.)

II

Amendment Act 22 of 1965.—It is considered necessary to amend the Mysore Warehouses Act, 1961, casting a clear obligation on every warehouseman and depositor of complying with the provisions of the Central Excises and Salt Act, 1944 and the rules and notifications issued thereunder in respect of goods deposited in a warehouse.

Hence this Bill.

(Obtained from L.A. Bill No. 14198 dated 18th February 1965) (File No. LAW 13 LGN 65).

'[KARNATAKA ACT]' No. 11 OF 1962

(First published in the '[Karnataka Gazette]' on the Twenty-ninth Day of March, 1962.)

THE '[KARNATAKA]' WAREHOUSES ACT, 1961.

(Received the assent of the President on the Seventh day of March, 1962.)

(As Amended by Karnataka Act 22 of 1965)

An Act to provide for the regulation and licensing of warehouses in the '[State of Karnataka]'.

WHEREAS it is expedient to encourage the establishment of independent warehouses and make provision for their supervision and control;

BE it enacted by the '[Karnataka State]' Legislature in the Twelfth year of the Republic of India as follows:—

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

CHAPTER I**PRELIMINARY**

1. Short title, extent and commencement.—(1) This Act may be called the '[Karnataka]' Warehouses Act, 1961.

(2) It extends to the whole of the '[State of Karnataka]'.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

(3) It shall come into force on such '[date]' as the State Government may, by notification, appoint.

1. Act has come into force w.e.f. 01.09.1969 by notification. The text of notification is at the end of the Act.

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

(a) "co-operative society" means a society registered or deemed to be registered under the '[Karnataka]' Co-operative Societies Act, 1959 '[Karnataka]' Act 11 of 1959);

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

(b) "depositor" means a person who tenders his goods to the warehouseman for storing in his warehouse and includes any person who lawfully holds the receipt issued by the warehouseman in respect of such goods and derives title thereto by a proper endorsement or transfer thereof to him by the depositor or the depositor's lawful transferee;

(c) "goods" means any of the articles specified in the schedule to this Act;

(d) "licensed warehouse" means a warehouse licensed under this Act;

- (e) "notification" means a notification published in the official Gazette;
- (f) "person" includes any company or association or body corporate;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "prescribed authority" means in relation to any provision of this Act, the authority prescribed by rules to carry out such provision;
- (i) "receipt" means a warehouse receipt in the prescribed form issued by a warehouseman to a person depositing goods in the warehouse;
- (j) "rules" means rules made by the State Government under this Act;
- (k) "warehouse" means any building, structure or other protected enclosure which is or may be used for the purpose of storing goods on behalf of depositors but does not include cloak rooms attached to hotels, railway stations, the premises of other public carriers, and the like; and the expression 'warehousing' shall be construed accordingly;
- (l) "warehouseman" means a person, who has obtained licence under this Act in respect of his warehouse.

CHAPTER II

LICENSING OF WAREHOUSES

3. Regulation of business of warehousing.—No person shall carry on the business of warehousing except under licence granted under this Act and in accordance with such terms and conditions thereof as may, from time to time, be prescribed.

4. Grant of licence.—(1) Every application for a licence shall be made in the prescribed form to the prescribed authority.

(2) Subject to the provisions of section 5, the prescribed authority may, on receiving such application and on payment of such fees as may be prescribed, grant a licence.

5. Conditions for grant of licence.—(1) Before granting a licence the prescribed authority shall satisfy itself,-

(a) that the warehouse mentioned in the application is suitable for proper storage of the class or classes of goods in respect of which the licence has been applied for;

(b) that the applicant is competent to conduct such a warehouse;

(c) that the applicant fulfils any other condition notified by the State Government under sub-section (2);

(d) that the applicant has paid the fee prescribed for the licence and has also furnished the prescribed security, if any;

Provided that where the applicant is a corporation established under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956, no security shall be required;

(e) that there is no other cause or reason for which the applicant for the licence may, in the opinion of the prescribed authority, be deemed to be disqualified.

(2) The State Government may, by notification add to or alter the conditions under which a licence is granted to a warehouseman under this section.

6. Term and renewal of licence.—Every licence granted under section 4 shall be valid for the prescribed period, and may, on application and payment of the prescribed fee, be renewed from time to time by the prescribed authority, and for the prescribed period, provided the other conditions referred to in section 5 continue to be fulfilled.

7. Notice of refusal to grant or renew licence.—If the prescribed authority refuses to grant or renew a licence under section 4 or 6, it shall record its reasons for such refusal in writing and communicate a copy of its order to the applicant.

8. Suspension and cancellation of licence.—(1) Every licence granted under section 4 or renewed under section 6 shall be liable to be suspended or cancelled either temporarily or permanently by the prescribed authority, for reasons to be recorded in writing if in its opinion the licensee,-

- (a) has applied to be adjudicated or been adjudicated an insolvent; or
- (b) has parted in whole or in part with his control over the warehouse; or
- (c) has ceased to conduct such warehouse; or
- (d) has made unreasonable charges for the services rendered by him; or
- (e) has in any other manner become incompetent to conduct such warehouse;

or

(f) has contravened or failed to comply with any of the terms of the licence or any of the provisions of this Act or of the rules.

(2) If a licence is suspended or cancelled the prescribed authority shall make an entry to that effect in the licence.

9. Notice of suspension and cancellation of licence.—(1) Before passing an order under section 8, the prescribed authority shall give notice to the warehouseman stating the grounds on which it is proposed to suspend or cancel his licence and give him a reasonable opportunity of showing cause against it.

(2) After considering the explanations, if any, of the warehouseman, the prescribed authority may pass such orders as it deems just.

10. Return of licence.—When a licence expires or is suspended or cancelled, the warehouseman shall cease to work as such and shall, return the licence to the

prescribed authority who shall give reasonable time to the warehouseman to enable him to wind up the business.

11. Duplicate licence.—(1) Where a licence granted to a warehouseman is lost, destroyed, torn, defaced or otherwise becomes illegible, the prescribed authority shall issue a duplicate licence on the application of the warehouseman and on payment of the prescribed fee.

(2) When a duplicate licence is issued it shall be clearly stamped "Duplicate" and shall be marked with the date of issue of the duplicate and that of the original from the record of the office issuing the licence.

CHAPTER III DUTIES OF A WAREHOUSEMAN

12. Reasonable care of the goods deposited to be taken.—Every warehouseman shall take such care of the goods deposited with him as a man of ordinary prudence would take of his own goods under similar circumstances and conditions.

13. Precautions against damage or injury to goods.—(1) Every warehouseman shall keep his warehouse clean and free from damp, take all necessary precautions against rats and other pests and fulfil such other conditions as may be prescribed.

(2) No warehouseman shall accept goods for deposit which are likely to cause damage to other goods which are or may be deposited in the warehouse.

14. Preservation of identity of goods.—Every warehouseman shall keep the goods of one depositor separate from the goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued, in such a manner as to permit at all times of the identification and delivery of the goods deposited:

Provided that where standardised and graded goods are stored in a warehouse, then subject to any agreement between the warehouseman and a depositor, the same variety of goods belonging to different depositors may be pooled together and each depositor shall be entitled only to his portion of the goods according to weight or quantity, as the case may be, as shown in his receipt.

15. Goods deteriorating in warehouse and their disposal.—(1) Whenever goods deposited in a warehouse deteriorate from causes beyond the control of the warehouseman, he shall forthwith give notice of such deterioration to the depositor, requiring him to take delivery of the goods immediately, after surrendering the receipt duly discharged and paying all charges due to the warehouseman.

(2) If the depositor does not, within a reasonable time, comply with a notice given to him under sub-section (1), the warehouseman may cause the goods to be removed from the warehouse and sold by public auction at the cost and risk of the depositor.

(3) Any person having an interest in any goods deposited in a warehouse or in the receipt of such goods may inform the warehouseman in writing of the fact and nature of his interest and the warehouseman shall keep a record thereof, and if such person requests in writing that intimation be given to him regarding the condition of the goods and agrees to pay the charges for giving such intimation the warehouseman shall give him intimation accordingly.

16. Delivery of goods.—(1) Every warehouseman, in the absence of reasonable excuse, shall, without unnecessary delay, deliver the goods deposited in his warehouse without deterioration to the depositor on demand made by him and surrender of the receipt duly discharged and payment of all charges due to the warehouseman.

Explanation.—For the purposes of this sub-section, deterioration from causes beyond the control of the warehouseman, shall not be deemed to amount to deterioration.

(2) Subject to any agreement between the warehouseman and the depositor, the depositor may take partial delivery of the goods deposited in a warehouse.

17. Liability of warehouseman for shortage or excess in goods stored.—(1) If there is any excess in the goods stored in a warehouse by absorption of moisture or other causes beyond the control of the warehouseman, the warehouseman shall not be entitled thereto.

(2) If there is any shortage in the goods stored in a warehouse by dryage or other causes beyond the control of the warehouseman, the warehouseman shall not be responsible therefor.

(3) In the event of a dispute arising as to whether such shortage or excess is due to dryage or absorption of moisture or is due to other causes beyond the control of the warehouseman, the matter shall be referred in such manner and within such time as may be prescribed, to the appellate authority referred to in section 29 whose decision thereon shall be final and binding.

18. Insurance of goods in a warehouse.—(1) Every warehouseman shall insure the goods stored in his warehouse against such events and in such manner as may be prescribed by rules, and such rules may provide that insurance against certain events shall be optional:

Provided that nothing in this section shall apply to goods deposited in a warehouse belonging to a Corporation established under the Agricultural Produce (Development

and Warehousing) Corporations Act, 1956 (Central Act 28 of 1956), where such corporation has agreed, in the prescribed manner, to compensate the depositor against loss or damage arising from the prescribed events.

(2) Every warehouseman shall be entitled to recover from the depositor, at the rate prescribed if the insurance is obligatory, or at the rate agreed to if the insurance is optional, the charges for insurance in respect of the depositor's goods before delivery thereof and the warehouseman shall have a lien on the said goods in respect of such charges.

19. Discrimination prohibited.—No warehouseman shall, in the conduct of his business, discriminate between persons desiring to avail themselves of the facilities of his warehouse:

Provided that a warehouseman shall show such preference to co-operative societies in the State and allow them such concessional rates as may be prescribed.

20. Warehouseman not to deal in or lend against goods in warehouse.—Notwithstanding anything contained in any other law, no warehouseman other than a co-operative society shall either on his own account or that of others, deal in, or lend money on goods received by him for deposit in his warehouse.

21. Accounts and books to be maintained by warehouseman.—A warehouseman shall maintain accounts, books and records in such form and manner as may be prescribed.

CHAPTER IV

INSPECTION AND GRADING OF GOODS

22. Inspection.—The prescribed authority may, at any time, during business hours, inspect, or examine or cause to be inspected or examined, any licensed warehouse, its machinery and equipment, goods deposited therein and the account books and records relating thereto, for the purpose of satisfying itself that the requirements of this Act and the rules are being complied with.

23. Weighers, samplers and graders to obtain licences.—(1) The prescribed authority may, on application made in the prescribed manner and on payment of the prescribed fee, issue licences to persons possessing the prescribed qualifications entitling them to act as weighers, samplers and graders of any goods deposited or to be deposited in a licensed warehouse and to issue certificates as to the weight, bulk, quality or grade of the goods, which they have examined.

(2) Any certificate so issued shall, subject to the provisions of section 24 be binding on the warehouseman and the depositor as to the weight, bulk, quality or grade of the goods so certified.

(3) No person who is not licensed under this section shall act, or hold himself out, as a weigher, sampler or grader.

24. Provisions regarding licences under section 23.—(1) Every licence granted to a weigher, sampler or grader, under section 23, shall be valid for the prescribed period and may, on application and payment of the prescribed fee, be renewed from time to time for the prescribed period by the prescribed authority.

(2) The prescribed authority may for reasons to be recorded in writing suspend or cancel any such licence.

(3) Before suspending or cancelling a licence under sub-section (2), the prescribed authority shall give notice to the licensee stating the grounds on which it is proposed to suspend or cancel his licence and give him a reasonable opportunity of showing cause against it.

(4) After considering the explanations, if any, of the licensee, the prescribed authority may pass such orders as it deems just.

(5) The holder of any such licence shall, on the expiry thereof or the receipt of an order suspending or cancelling it, return the licence to the prescribed authority.

(6) Where a licence granted to a weigher, sampler or grader is lost, destroyed, torn, defaced or otherwise becomes illegible, the prescribed authority shall issue a duplicate licence on the application of the weigher, sampler or grader, as the case may be, and on payment of the prescribed fee.

25. Facilities to be given for weighing goods, etc.—Every warehouseman shall provide facilities for weighing, sampling and grading any goods deposited in his warehouse.

CHAPTER V WAREHOUSE RECEIPTS

26. Receipt to be issued.—For the goods deposited in his warehouse by each depositor, the warehouseman shall issue a receipt which shall contain full particulars of the goods and be in the prescribed form.

27. Receipts for deposits in warehouses.—The receipt issued by a warehouseman shall, unless it is otherwise specified thereon, be transferable by endorsement and shall entitle the lawful holder thereof to receive the goods specified in it on the same terms and conditions as the original depositor.

28. Duplicate receipt.— If a receipt is lost, destroyed, or damaged the warehouseman shall, on application by the depositor and payment by him of the prescribed fee issue a duplicate receipt on such conditions he may think fit to impose, being conditions included in rules prescribed for the purpose.

CHAPTER VI
MISCELLANEOUS

29. Decision of appeals, disputes and complaints.—(1) An appeal against any order of the prescribed authority refusing to grant or renew a licence or suspending or cancelling any such licence in respect of a warehouseman or weigher, sampler or grader or against any other order of the prescribed authority shall be made to such authority and within such time as may be prescribed.

(2) The decision of such appellate authority shall be final.

30. No compensation for suspension or cancellation of licence.—Where any licence is suspended or cancelled under this Act, the licensee shall not be entitled to any compensation therefor, nor shall he be entitled to the refund of any fee paid by him for the licence.

31. Security amount to be forfeited and recovered as arrears of land revenue.—(1) If a warehouseman fails to comply with, or contravenes any of the terms or conditions of, his licence or of any provision of this Act, then, without prejudice to any other penalty to which he may be subject, the amount of security deposited by him under a bond 9 executed by him under the provisions of this Act shall be liable to be forfeited, and the amount due under such bond shall be recoverable from him, or from his sureties or their heirs or legal representatives, as an arrear of land revenue.

(2) The State Government may make payment out of the amount so forfeited or recovered, to any person who may have sustained loss by reason of the warehouseman failing to comply with, or acting in contravention of, any terms or conditions of his licence or of any provision of this Act.

32. Contracts and agreements inconsistent with Act to be void.—Every contract or agreement which is inconsistent with the provisions of this Act or the rules shall, to the extent of such inconsistency, be void.

[32A. Warehousemen and depositors to comply with the provisions of Central Act 1 of 1944.—In respect of goods warehoused under this Act to which the provisions of the Central Excises and Salt Act, 1944, are applicable, every warehouseman or depositor shall comply with the provisions of the said Act and the rules and notifications issued thereunder in, so far as they are applicable to such goods.]¹

1. Inserted by Act 22 of 1965 w.e.f. 18.11.1965.

33. Penalty.—(1) Whoever, fails to comply with, or acts in contravention of, any provision of this Act shall be deemed to commit an offence under this Act, and shall, on conviction, be punished,-

(a) in the case of a contravention of the provisions of section 3 or 20, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

(b) in any other case with fine which may extend to one thousand rupees.

(2) (a) Where an offence under sub-section (1) is committed by 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 clause shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(b) Notwithstanding anything contained in clause (a), where an offence under sub-section (1) 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 sub-section,-

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

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

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

(2) In particular and without prejudice to the generality of the foregoing power, such rules may add any article to, or omit any article from the Schedule, or provide for,-

(a) the matters expressly required or allowed by this Act to be prescribed;

(b) the conditions to be inserted in licences to be granted to warehousemen and the form of such licences;

(c) the publication of the grant, suspension or cancellation of licences to warehousemen and of consolidated lists of warehousemen and licensed warehouses;

(d) the charges to be levied by the warehousemen for their services;

(e) the books, accounts and records to be maintained by warehousemen;

(f) the conduct of public auctions for the sale of goods deteriorating or about to

deteriorate in licensed warehouses and the manner in which the proceeds of such sales shall be accounted for;

(g) the scales of losses and gains of weight or bulk which may be sustained by goods owing to shrinkage or dryage in the one case and owing to absorption of moisture in the other;

(h) the disinfection of licensed warehouses and the disinfection of goods stored therein;

(i) the efficient conduct generally of the business of warehousemen;

(j) the qualifications to be possessed by persons applying for grant of licences as weighers, samplers or graders; the conditions to be inserted in their licences; the form of the certificates to be issued by them and the grounds on which the licences may be suspended or cancelled;

(k) the standard weights, measures and gradations of goods to be used in licensed warehouses;

(l) the authority to which and the time within which an appeal under section 29 should be made;

(m) the manner of giving notices 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 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 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.

35. Act not to apply to certain warehouses.—Nothing contained in this Act shall apply to any warehouse appointed or licensed under the provisions of the Sea Customs Act, 1878 (Central Act VIII of 1878), the Inland Bonded Warehouses Act, 1896 (Central Act VIII of 1896), the Central Excises and Salt Act, 1944 (Central Act 1 of 1944) or the rules made thereunder.

36. Repeal and savings.—The Bombay Warehouses Act, 1947 (Bombay Act LVI of 1947), as in force in the '[Belgaum Area]', the Coorg Warehouses Act, 1956 (Coorg Act V of 1956), as in force in the Coorg District, the Hyderabad Warehouses Regulation, 1358 F (Hyderabad Regulation XLVI of 1358 Fasl), as in force in the '[Gulbarga Area]', the Madras Warehouses Act, 1951 (Madras Act XV of 1951), as in

force in the '[Mangalore and Kollegal Area]', the Madras Warehouses Act, 1951 (Madras Act XV of 1951), as in force in the Bellary District and the Mysore Warehouses Act, 1951 (Mysore Act XXIX of 1951), as in force in the Mysore Area are hereby repealed:

Provided that section 6 of the '[Karnataka]' General Clauses Act, 1899 '[Karnataka Act]' III of 1899), shall be applicable in respect of the repeal of the said enactments and sections 8 and 24 of the said Act shall be applicable as if the repealed enactments had been repealed and re-enacted by this Act.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

SCHEDULE

[See section 2(c)]

(GOODS TO WHICH THIS ACT APPLIES)

- I. Fibres,-
 - (1) Cotton ginned and unginned.
 - (2) San hemp.
 - (3) Agave, coir and their products.
- II. Cereals.
- III. Pulses.
- IV. Oilseeds including copra and their products.
- V. Cashewnuts, coconuts.
- VI. Jaggery, Sugar and Khandasari.
- VII. Fruits.
- VIII. Vegetables, potatoes, onions.
- IX. Animal Husbandry Products,- (1) Wool, (2) Butter, (3) Ghee, (4) Milk, (5) Eggs.
- X. Fish. XI. Condiments, spices and others,- (1) Coriander, (2) Chillies, (3) Turmeric, (4) Garlic, (5) Ginger, (6) Cummin, (7) Tamarind, (8) Cardamom, (9) Pepper, (10) Soapnut, (11) Areca, (12) Coffee.
- XII. Cattle fodder.
- XIII. Tobacco. XIV. Fertilisers.

* * *

NOTIFICATION

Bangalore, dated 6th August, 1969 [No. DPC 49 CWH 69.]

S.O. 1683.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Mysore Warehouses Act, 1961 (Mysore Act No. 11 of 1962), the Government of Mysore hereby appoints the 1st day of September, 1969, as the date on which the said Act shall come into force.

By Order and in the name of the Governor of Mysore,

(N. J. GOREPEERZADE)

Deputy Secretary to Government.

(Published in the Karnataka Gazette, dated 14th August 1969, PART IV—2C (ii) at page. 4048.)

सत्यमेव जयते

THE KARNATAKA MONEY-LENDERS ACT, 1961
ARRANGEMENT OF SECTIONS

Statement of Objects and Reasons

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16. Court's power to cancel or suspend a licence.
17. No compensation for suspension or cancellation of licence.
18. Persons debarred from doing business during period of suspension or cancellation of licence.
19. Person whose licence is suspended or cancelled not to apply without giving particulars of endorsement or of disqualification.
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44. Rules.
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STATEMENT OF OBJECTS AND REASONS

I

Act 12 of 1962. - At present five different Acts are in force on money-lenders and money-lending in different regions of the State. These Acts are not equal in scope. It has become necessary to have an Act applicable to the entire State and with sufficient provisions not only to regulate and control the money-lending transactions effections effectively but to afford sufficient protection to innocent debtors. The Mysore Money-lenders Bill, 1958 seeks to achieve this object.

Some of the main features of the Bill are:-

- (i) licensing of money-lenders;
- (ii) requiring money-lenders to keep and furnish prescribed accounts;

(iii) empowering of courts to direct payment of decretal amount by installments;

(iv) loans to or by a bank, by a co-operative society, insurance company, local authority authorised by Government and other types of loans specified in clause 2(9) are excluded from the purview of the Act.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A dated 26th March 1959)

II

Amending Act 77 of 1976.—With a view to further restricting the usurious practices of money lending it has become imperative to plug certain inadequacies in the existing Act, and also to provide the Executive Officers with sufficient powers to enforce the provisions of the Act, besides providing deterrent penalties for the infringement of the Act.

Accordingly the present facility available under section 11 of the Act enabling Courts to give permission to unlicensed money lenders to obtain licences and thereafter to proceed with their suits for the recovery of dues is now done away with under the amended provisions.

Secondly section 15 has been substituted empowering the authorised officers under the Act to enter the premises where the business of money lending is carried on and to call upon the money lenders to produce the required records and if need be to search the premises and seize any record and documents as may be necessary.

Thirdly the penalties under the Act have been enhanced both by way of fine and imprisonment to create a deterrent impact on the undesirable money lending practices.

Hence the Bill.

(Obtained from L.A. Bill No.59 of 1976)

III

Amending Act 41 of 1985.—The persons who borrow money from the licensed money lenders pledge costly gold ornaments and other articles with them.

To safeguard the interests of these borrowers it is proposed to insist on a security deposit in a Government Treasury from such licensed money lenders, and to make a security deposit a condition precedent for granting license in future.

In view of the voluminous work in the Administration of the Act, it is also proposed to increase the license fee.

As the matter was very urgent, the Karnataka Money Lenders (Amendment) Ordinance, 1985 (Karnataka Ordinance No. 11 of 1985) was issued.

This Bill seeks to replace the said ordinance.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 25th July 1985 as No. 399 at page. 6.)

IV

Amending Act 2 of 1987.—It is considered necessary to exclude certain Banking and financial institutions from the purview of the definition of the Money Lender under the Karnataka Money Lenders Act, 1961.

The existing provisions of the Act provide for the licensee to maintain his books of accounts in any recognised language. It is proposed to make it obligatory to keep such accounts either in Kannada or in English language.

For the above purpose an Ordinance was promulgated. This Bill seeks to replace the said Ordinance.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 4th February 1987 as No. 97 at page 4.)

V

Amending Act 14 of 1998.—It is considered necessary to amend the Karnataka Money Lenders Act, 1961 (Karnataka Act 12 of 1962) for the following reasons, namely:—

- (I) to enhance the period of licence from one year to five years;
- (ii) to enhance the licence fee from Rs. 100.00 per year to Rs. 5000.00 for the term of licence.
- (iii) to enhance the licence fee for additional place of business from Rs. 50.00 per year to Rs. 2500.00 for the term of licence;
- (iv) to provide for refund of security deposit in the event to cancellation of licence.
- (v) since, the Karnataka High Court in Writ Petition No. 8912/85 and other connected matters directed the Government to pay interest on security deposit as there is no specific provision prohibiting payment of interest, appropriate provisions are made to remove the lacuna retrospectively from 31st May 1985, and to validate the action.

Hence the Bill.

(Obtained from file SAMVYASHAE 19 SHASANA 94.)

¹[KARNATAKA ACT]¹ No. 12 OF 1962

(First published in the ¹[Karnataka Gazette]¹ on the Twenty-ninth day of March, 1962.)

THE ¹[KARNATAKA]¹ MONEY-LENDERS ACT, 1961.

(Received the assent of the President on the Eighth day of March, 1962.)

(As amended by Karnataka Acts 77 of 1976, 41 of 1985, 2 of 1987 and 14 of 1998.)

An Act to regulate the transactions of money-lending in the ¹[State of Karnataka]¹.

WHEREAS it is expedient to make better provision for the regulation and control of transactions of money-lending in the ¹[State of Karnataka]¹;

BE it enacted by the ¹[Karnataka State]¹ Legislature in the Twelfth Year of the Republic of India as follows:—

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

1. Short title, extent and commencement.—(1) This Act may be called the ¹[Karnataka]¹ Money-lenders Act, 1961.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

(2) It extends to the whole of the ¹[State of Karnataka]¹.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

(3) It shall come into force on such ²[date]² as the State Government may by notification, appoint. 1. This Act has come into force on 1.4.1965 by Notification Text of the Notification is at the end of the Act.

2. Definitions.—In this Act, unless the context otherwise requires,— ¹[(1) “bank” means,—

(i) a banking company to which the Banking Regulation Act, 1949 (Central Act 10 of 1949) applies;

(ii) the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955);

(iii) a subsidiary bank defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959);

(iv) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970);

(v) a regional rural bank established under the Regional Rural Banks Act, 1976 (Central Act 21 of 1976);

(vi) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Central Act 40 of 1980);

(vii) the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (Central Act 18 of 1964);

(viii) the National Bank for Agriculture and Rural Development established under the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 61 of 1981);

(ix) the Export Import Bank of India established under the Export Import Bank of India Act, 1981 (Central Act 11 of 1959);¹

(x) the Industrial Finance Corporation of India established under the Industrial Finance Corporation of India Act, 1948 (Central Act 15 of 1948);

(xi) State Financial Corporations established under the State Financial Corporation, Act, 1951 (Central Act 63 of 1951);

²[(xii) the Industrial Reconstruction Bank of India established under the Industrial Reconstruction Bank of India Act, 1984 (Central Act 62 of 1984);]²

(xiii) the Industrial Credit and Investment Corporation of India Limited, a company incorporated under the Indian Companies Act, 1913 (Central Act 7 of 1913).]¹

1. Substituted by Act 41 of 1985 w.e.f. 31.5.1985.

2. Substituted by Act 2 of 1987 w.e.f. 16.10.1986.

¹[(xiv) the Agricultural Finance Corporation Limited a company incorporated under the Companies Act, 1956;]¹

1. Inserted by Act 2 of 1987 w.e.f. 16.10.1986.

(2) "business of money-lending" means the business of advancing loans whether or not in connection with or in addition to any other business;

(3) "capital" means a sum of money which a money-lender invests in the business of money-lending;

(4) "company" means a company as defined in the Companies Act, 1956 (Central Act 1 of 1956);

(5) "co-operative society" means a society registered or deemed to have been registered under the '[Karnataka]' Co-operative Societies Act, 1959 ('[Karnataka]' Act 11 of 1959);

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

(6) "interest" includes the return to be made over and above what was actually lent,

whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a money-lender for or on account of costs, charges or expenses in accordance with the provisions of this Act, or any other law for the time being in force;

(7) "licence" means a licence granted under this Act;

(8) "licence fee" means the fee payable in respect of a licence;

(9) "loan" means an advance at interest whether of money or in kind, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include,-

(a) a deposit of money or other property in a Government Post Office Bank or in a '[Karnataka Government Savings Bank]' or in any other bank or in a company or with a co-operative society;

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

(b) a loan to, or by, or a deposit with, any society or association registered under the '[Karnataka] Societies Registration Act, 1960 ('[Karnataka] Act 17 of 1960);

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced by a co-operative society;

(e) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund;

(f) a loan to or by an insurance company as defined in the Insurance Act, 1938 (Central Act IV of 1938);

(g) a loan to or by a bank;

(h) an advance of not less than three thousand rupees made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881) other than on the basis of a promissory note;

(i) except for the purposes of sections 26 and 28,—

(i) a loan to a trader;

(ii) a loan to a money-lender who holds a valid licence; or

(iii) a loan by a landlord to his tenant for financing of crops or seasonal finance of not more than fifty rupees per acre of land held by the tenant;

(10) "money-lender" means,-

(i) an individual; or

(ii) an undivided Hindu family; or

- (iii) a company; or
- (iv) an unincorporated body of individuals;

who or which,-

- (a) carries on the business of money-lending in the State; or
- (b) has his or its principal place of such business in the State, but shall not include a bank [or any other financial institution which the State Government may, by notification specify in this behalf]¹;

1. Inserted by Act 2 of 1987 w.e.f. 16.10.1986.

- (11) "notification" means a notification published in the official Gazette;
- (12) "prescribed" means prescribed by rules made under this Act;
- (13) "principal" means in relation to a loan, the advance actually made to the debtor;
- (14) "Provident Fund" means a Provident Fund as defined in the Provident Funds Act, 1925 (Central Act XIX of 1925), and includes a Government Provident Fund and a Railway Provident Fund as defined in the said Act;
- (15) "recognised language" means the language of the Court;
- (16) "register" means a register of money-lenders maintained under section 4;
- (17) "rules" means rules made under this Act;
- (18) "State" means the 1[State of Karnataka]¹;

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

- (19) "suit to which this Act applies" means any suit or proceeding,-
 - (a) for the recovery of a loan made after the date on which this Act comes into force;
 - (b) for the enforcement of any security taken, or any agreement made after the date on which this Act comes into force in respect of any loan made either before or after the said date; or
 - (c) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date;
- (20) "trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and includes,- a wholesale or retail merchant, a commission agent, a broker, a manufacturer, a contractor, a factory owner, -but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

Explanation.—For the purposes of this clause an "artisan" means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

¹[(21) 'Year' means the year commencing on the first day of April;]¹

1. Inserted by Act 14 of 1998 w.e.f. 22.5.1998.

3. Appointment of Registrar General, Registrars and Assistant Registrars.—The State Government may, by notification, appoint a Registrar General, Registrars and Assistant Registrars of Money-lenders for the purposes of this Act and may define the areas within which each such officer shall exercise his powers and perform his duties.

4. Register of money-lenders.—Every Assistant Registrar shall maintain for the area in his jurisdiction a register of money-lenders in such form as may be prescribed.

5. Money-lenders to obtain licence.—No person shall carry on the business of money-lending in the State except ¹[under and]¹ in accordance with the terms and conditions of a licence ²[and, after the commencement of the Karnataka Money Lenders (Amendment) Act, 1985, except on payment of security deposit as provided in section 7A]².

1. Inserted by Act 77 of 1976 w.e.f. 27.10.1976.

2. Inserted by Act 41 of 1985 w.e.f. 31.5.1985.

6. Application for licence.—(1) Every money-lender shall ¹[x x x]¹ before such date as may be prescribed make an application in the prescribed form for the grant of a licence to the Assistant Registrar of the area within the limits of which the place where he intends to carry on the business of money-lending, or if he intends to carry on such business at more than one place in the area, the principal place of such business, is situated. Such application shall contain the following particulars, namely:—

1. Omitted by Act 14 of 1998 w.e.f. 22.5.1998.

(a) the name in which such money-lender intends to carry on business and the name of the person proposed to be responsible for the management of the business;

(b) if the application is by or on behalf of,—

(i) an individual, the name and address of such individual

(ii) an undivided Hindu family, the names and addresses of the manager or the kamavan or the yajaman and the adult coparceners of such family;

(iii) a company, the names and addresses of the directors, and of the manager or principal officer managing it;

(iv) an unincorporated body of individuals, the names and addresses of such individuals;

(c) the area and the place or principal place of the business of money-lending in the State;

(d) the name of any other place in the State where the business of money-lending is carried on or intended to be carried on;

(e) whether the person signing the application has himself or any of the adult coparceners of an undivided Hindu family, or any director, manager or principal officer of the company or any member of the unincorporated body on behalf of which such application has been made, as the case may be, has carried on the business of money-lending in the State in the year ending '[on the 31st day of March]' immediately preceding the date of the application either individually, or in partnership, or jointly with any other coparcener or any other person and whether in the same or any other name;

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

(f) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made;

(g) if the places at which the business of money-lending is to be carried on are more than one, the names of persons who shall be in the management of the business at each such place.

(2) The application shall be in writing and shall be signed,—

(a)(i) if the application is made by an individual, by the individual;

(ii) if the application is made on behalf of an undivided Hindu family, by the manager or the kamavan or the yajaman, as the case may be, of such family;

(iii) if the application is made by a company or unincorporated body, by the managing director or any other person having control of its principal place of business in the territory of India or of its place of business in the area in which it intends to carry on the business; or

(b) by an agent authorised in this behalf by a power-of-attorney by the individual money-lender himself or the family, or the company or the unincorporated body, as the case may be.

(3) The application shall also contain such other particulars as may be prescribed.

(4) The application shall be accompanied by a licence fee at the following rates:—

(a) if the place at which the business of money-lending is to be carried on is not more than one. '[five thousand rupees]';

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

(b) if the business of money-lending is to be carried on at more than one place within the limits of the area of the Registrar. '[five thousand rupees]' for the principal place of business and '[rupees two thousand five hundred]' for each of the other places in the area:

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

Provided that where an application is made after the expiry of the period prescribed by rules in respect of such application, it shall be accompanied by a licence fee at double the rates specified above.

(5) The fee payable under this section shall be paid in the manner prescribed and shall not be refunded, notwithstanding the fact that the grant of the licence is refused or the application is withdrawn.

7. Grant of licence and entry in register.—(1) On receipt of an application under section 6 and after making a summary inquiry in accordance with the prescribed procedure, the Assistant Registrar shall forward the application, together with his report, to the Registrar. The Registrar may after making such further inquiry, if any, as he deems fit, grant the applicant a licence in such form and '[subject to the conditions specified in section 7A and such other conditions]¹ as may be prescribed, and direct the Assistant Registrar to enter the name of such applicant in the register maintained by him under section 4.

1. Substituted by Act 41 of 1985 w.e.f. 31.5.1985.

If the application is in respect of more than one place of business in the area under the jurisdiction of the Registrar, a separate licence in respect of each such place shall be granted in the name of the applicant and the person responsible for the management of the business at such place.

(2) If the application also contains a request for the grant of a licence to carry on the business of money-lending at any place within the State, but at a place outside the jurisdiction of the Registrar who granted the licence in respect of the principal place of business of the money-lender, the Registrar shall forward copies of the application and of the licence granted to the Registrar having jurisdiction who may grant a licence on payment of the licence fee provided for in section 6 without making any inquiry in respect of the application.

[7A. Conditions of licence.—¹[(1) Every money lender applying for grant of a licence under section 7 for the first time or for grant of a fresh licence under that section for the succeeding term, shall at the time of making such application, pay security deposit as provided in sub-section (2).]¹

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

(2) Every licensee specified in column (2) of the Table below shall, in the prescribed manner, deposit in the Government Treasury the amount specified in the corresponding entry in column (3) of the said Table by way of security for the due observance of the conditions of the licence.

TABLE

1	2	3
(1) A licensee who invests less than one lakh rupees in a year.	'[invests]' less than one lakh	Five thousand rupees.
(2) A licensee who invests one lakh rupees and above and less than five lakh rupees in a year.	'[invests]' one lakh rupees less than five lakh rupees	Ten thousand rupees.
(3) A licensee who invests five lakh rupees and above but less than ten lakh rupees in a year.	'[invests]' five lakh rupees less than ten lakh rupees	Twenty five thousand
(4) A licensee who invests ten lakh rupees and above in a year.	'[invests]' ten lakh rupees	Fifty thousand rupees.

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

(3) For the purposes of sub-section (2), the amount of the security payable in a year by a licensee shall be determined on the basis of the ¹[the amount invested by him in the business during the previous year ²[and such security deposit shall not carry any interest]³]:

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

2. Inserted by Act 14 of 1998 w.e.f. 22.5.1998.

Provided that in the case of a new licensee or a person who was a licensee only for a portion of the preceding year the amount of security shall be determined on the basis of a declaration in the prescribed form as to the amount which he is likely to '[invest]' during the year, filed before the Registrar in the prescribed manner.

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

7B. Forfeiture of security.—(1) The Registrar may, at any time, by order in writing, forfeit to the Government the whole or any portion of the security furnished under sub-section (2) of section 7A, if the licensee,—

(a) carries on the business of money lending in contravention of any provisions of this Act or the rules made thereunder or the conditions of the licence; or

(b) is convicted of an offence under section 27 or section 38 or section 39 or section 40; or

(c) maintains false accounts.

(2) Before forfeiting to the Government the whole or any portion of the security deposit made under sub-section (1), the Registrar shall give the licensee a notice in

writing stating the grounds on which it is proposed to take action and requiring him to show cause against it within such time as may be specified in the notice.

(3) Every order of the Registrar under this section shall be communicated to the licensee in such manner as may be prescribed.

(4) Any person aggrieved by an order under sub-section (1), may within a period of one month from the date on which the order was communicated to him, prefer an appeal to the Registrar General whose decision shall be final.

(5) The Registrar may, out of the amount forfeited, direct payment of such amounts and at such rates as may be prescribed to the borrowers affected by the acts of the licensee.]

1. Sections 7A and 7B Inserted by Act 41 of 1985 w.e.f. 31.5.1985.

8. Refusal of Issue of licence.—(1) The grant of licence shall not be refused except on any of the following grounds:—

(a) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender, is disqualified by an order under section 16 from holding a licence;

(b) that the applicant has not complied with the provisions of this Act or the rules in respect of an application for the grant of a licence;

(c) that the applicant has made wilful default in complying with or knowingly acted in contravention of any requirements of this Act;

(d) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has,—

(i) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending, or

(ii) been found guilty of an offence under Chapter XVII or Chapter XVIII of the Indian Penal Code.

(2) The Registrar shall, before refusing a licence under sub-section (1), record the evidence adduced before him and his reasons for such refusal.

(3) An appeal shall lie from an order of the Registrar refusing a licence under sub-section (1), to the Registrar General whose decision shall be final.

9. Registrar's power to cancel licences.—(1) The Registrar may, during the term of any licence, cancel the same by an order in writing on the ground that the person to whom it was granted has been guilty of any act or conduct for which he might under section 8 have refused him the grant of the licence and which act or conduct was not brought to his notice at the time of the grant of licence.

(2) Before cancelling a licence under sub-section (1), the Registrar shall give notice in writing to the licensee and may hold such inquiry as may be necessary.

(3) An appeal shall lie from an order of the Registrar cancelling a licence under sub-section (1), to the Registrar General whose decision thereon shall be final.

¹[9A. Repayment of Security Deposit.—Where a licence has been cancelled by the Registrar, he shall by order in writing refund the security deposit paid but not forfeited under section 7B, to the person whose licence has been so cancelled.]¹

1. Inserted by Act 14 of 1998 w.e.f. 22.5.1998.

10. Term of licence.—A licence shall be valid 1[for a term of five years]1:

Provided that where a money-lender holding a licence has made an application for a fresh licence before the date prescribed under sub-section (1) of section 6, for the succeeding ¹[term]¹, such money-lender shall, notwithstanding the expiry of the term of his licence, be deemed to have a valid licence until orders are received by him on his application for the fresh licence.

1. Substituted by Act 14 of 1998 w.e.f. 22.5.1998.

¹[Explanation.—Where a licence has been granted in the middle of a year, for the purpose of computing the term of licence, the remaining part of the year shall be deemed to be a year.]¹

1. Inserted by Act 14 of 1998 w.e.f. 22.5.1998.

11. ²[x x x]² suits by money-lenders not holding licence.—(1) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit to which this Act applies, filed by a money-lender, unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, ¹[and on the date such suit was filed]¹ the money-lender held a valid licence.

1. Inserted by Act 77 of 1976 w.e.f. 27.10.1976.

2. Omitted by Act 77 of 1976 w.e.f. 27.10.1976.

¹[(2) x x x

(3) x x x

(4) x x x]¹

1. Omitted by Act 77 of 1976 w.e.f. 27.10.1976.

(5) Nothing in this section shall affect—

(a) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force;

(b) the powers of an official receiver, an administrator or a Court under the provisions of the Mysore Insolvency Act, 1925, or other corresponding law in force in

any area of the State, or of a liquidator under the Companies Act, 1956, to realise the property of a money-lender.

[12. xxx]

1. Omitted by Act 77 of 1976 w.e.f. 27.10.1976.

13. Application for cancellation of licence.—(1) Any person may, during the currency of a licence, file an application, to the Registrar for the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar may under section 8 refuse him the grant of a licence. At the time of filing his application the said person shall deposit such amount not exceeding one hundred rupees as the Registrar may direct.

(2) On the receipt of such application and deposit, the Registrar shall hold an inquiry and if he is satisfied that the money-lender has been guilty of such act or conduct he may cancel the licence of the money-lender and may also direct the return of the deposit made under sub-section (1).

(3) If in the opinion of the Registrar, an application made under sub-section (1) is frivolous or vexatious, he may, out of the deposit made under sub-section (1), direct to be paid to the money-lender such amount as he deems fit as compensation.

(4) Any person aggrieved by an order of the Registrar under sub-section (2) or (3) may, within such time and on payment of such fee as may be prescribed, appeal to the Registrar General and the order of the Registrar General on such appeal shall be final.

14. Registrar and Assistant Registrar to have powers of Civil Court.—For the purposes of sections 7 and 13, the Registrar and Assistant Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses; and
- (d) proof of facts by affidavits.

[15. Power of authorised officer to require production of records or documents and power of entry, inspection and seizure]—(1) The Registrar, Assistant Registrar or any Officer authorised by the State Government in this behalf may, for the purpose of verifying whether the business of money-lending is carried on in accordance with the provisions of this Act, enter the premises of the money lender or any person who in his opinion is carrying on the business of money-lending and call upon him to produce any record or document relating to such business and every such money lender or person shall allow such inspection and produce such record or document.

1. Substituted by Act 77 of 1976 w.e.f. 27.10.1976.

(2) The Registrar, Assistant Registrar or the other officer referred to in sub-section (1) may, for the purposes of the said sub-section, search the premises and seize any record and document as may be necessary. The record or document seized shall be retained only for such period as may be necessary for the purposes of examination, prosecution or other legal action:

Provided that the provisions of sections 100 and 102 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall, so far as may be, apply to such search and seizure:

Provided further that for every record or document seized, appropriate acknowledgement shall be given to the person from whose custody it is seized.

(3) The Registrar, Assistant Registrar or the other officer referred to in sub-section (1) shall also have power to summon and examine the money lender or any person who in his opinion is in a position to furnish relevant information.]¹

16. Court's power to cancel or suspend a licence.—(1) (i) A Court passing an order of conviction against a money-lender for an offence under this Act, or (ii) a Court trying a suit to which this Act applies, if satisfied that such money-lender has committed such contravention of any provision of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending,—

(a) may order that all the licences held by such money-lender in the State be cancelled or suspended for such period as it may think fit; and

(b) may, if it thinks fit, declare any such money-lender, or if any money-lender is an undivided Hindu family, a company or an unincorporated body, such family, company or body and also any person responsible for the management of the business of money-lending carried on by such family, company or body, to be disqualified from holding any licence in the State for such time as the Court may think fit:

Provided that no order or declaration shall be made under this sub-section unless a reasonable opportunity has been given to the person concerned to show cause against the order or declaration proposed to be made.

(2) Where a Court convicts a money-lender of an offence under this Act, or makes an order or declaration under clause (a) or (b) of sub-section (1), it shall cause the particulars of the conviction, order or declaration, as the case may be, to be endorsed on all the licences held by the money-lender convicted or by any other person affected by the order or declaration and shall cause copies of its order or declaration to be sent to the Registrars by whom the licences were granted, for the purpose of entering such particulars in the registers:

Provided that where any licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding any licence under this

section he may appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(3) Any licence required by a Court for endorsement in accordance with sub-section (2) shall be produced by the person by whom it is held in such manner and within such time as may be directed by the Court and any person who, without reasonable cause, makes default in producing the licence so required shall be liable, on conviction, to a fine which may extend to five hundred rupees for each day of the period during which the default continues.

(4) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

17. No compensation for suspension or cancellation of licence.—Where any licence is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any licence fee.

18. Persons debarred from doing business during period of suspension or cancellation of licence.—A person whose licence has been suspended or cancelled in accordance with the provisions of this Act shall not during the period of suspension or cancellation, as the case may be, carry on the business of money-lending in the State.

19. Person whose licence is suspended or cancelled not to apply without giving particulars of endorsement or of disqualification.—No person whose licence has been endorsed under section 16 or who has been disqualified from holding a licence shall apply for, or be eligible to hold a licence, without giving particulars of such endorsement or disqualification.

20. Duty of money-lender to keep accounts and furnish copies.—(1) Every money-lender shall keep and maintain a cash book and a ledger ¹[in Kannada or in English]¹ in such form and in such manner as may be prescribed.

1. Inserted by Act 2 of 1987 w.e.f. 16.10.1986.

(2) Every money-lender shall,-

(a) deliver or cause to be delivered,-

(i) to the debtor within thirty days from the date on which a loan is made, a statement ¹[either in Kannada or in English]¹ showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged:

1. Substituted by Act 2 of 1987 w.e.f. 16.10.1986.

Provided that no such statement shall be required to be delivered to a debtor if he is

supplied by the money-lender with a pass book which shall be in the prescribed form and shall contain an up-to-date account of the transactions with the debtor;

(ii) to the Assistant Registrar, within the said period, a statement containing the particulars referred to in sub-clause (i);

(b) upon repayment of a loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or reassign every assignment given by the debtor as security for the loan.

(3) No money-lender shall receive any payment from a debtor on account of any loan without giving him a duly signed receipt for the payment.

(4) No money-lender shall accept from a debtor any article as a pawn, pledge or security for a loan without giving him a signed receipt for the same with its description, estimated value, the amount of loan advanced against it and such other particulars as may be prescribed.

21. Delivery of statement of accounts and copies thereof by money-lender.—(1) Every money-lender shall deliver or cause to be delivered every year to each of his debtors a legible statement of such debtor's accounts signed by the money-lender or his agent of any amount that may be outstanding against such debtor. The statement shall show,-

(i) the amount of principal and the amount of interest, separately, due to the money-lender;

(ii) the amount of every payment already received by the money-lender in respect of the loan during the year together with the date on which each payment was made;

(iii) all payments credited first in the account of interest and the residue, if any, of any payment more than sufficient to discharge the balance of interest due at the time it is made, credited to the debtor in the account of principal, in the alternative such of the payments credited first in the account of principal as the money-lender may determine and the remaining payments credited in the account of interest calculated on the basis of the decreased balance of principal and when the balance of interest is fully discharged the residue of the payments, if any, further credited in the account of principal;

(iv) the amount of principal and interest remaining unpaid.

The statement shall be signed by the money-lender, or his agent, and shall be '[either in Kannada or in English]¹. It shall be in such form and shall be supplied to the debtor on or before such date as may be prescribed:

1. Substituted by Act 2 of 1987 w.e.f. 16.10.1986.

Provided that no such statement shall be required to be delivered to a debtor if he is supplied by the money-lender with a pass book which shall be in the prescribed form and shall contain an up-to-date account of the transactions with the debtor.

The money-lender shall on or before the aforesaid date deliver or cause to be delivered a statement containing the particulars specified in clauses (i) to (iv) to the Assistant Registrar.

(2) In respect of any particular loan, whether advanced before or after the date on which this Act comes into force, the money-lender shall, on demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor or if the debtor so requires, to any person specified in that behalf in the demand, a statement, '[either in Kannada or in English]', signed by the money-lender or his agent, and containing the relevant particulars specified in sub-section (1).

1. Substituted by Act 2 of 1987 w.e.f. 16.10.1986.

(3) A money-lender shall, on a demand in writing by the debtor, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the debtor, or if the debtor so requires, to any person specified in that behalf in the demand.

'[(4). xxx]'

1. Omitted by Act 14 of 1998 w.e.f. 22.5.1998.

22. Fees for certain statements supplied to debtors and Assistant Registrars.—(1) A money-lender may recover from a debtor fees for the statements or a pass book supplied to him under sub-section (2) of section 20 or sub-section (1) of section 21 and in respect of copies of such statements supplied to the Assistant Registrar under the said sub-sections.

(2) Such fees shall be recoverable at such rates and in such manner as may be prescribed, subject to the maximum of two rupees per debtor, per year, irrespective of the number of statements or copies thereof supplied to the debtor or the Assistant Registrar during the relevant year.

23. Debtors not bound to admit correctness of accounts.—A debtor to whom a statement of accounts or a pass book has been furnished under section 20 or 21 shall not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the accounts.

24. Procedure of court in suits regarding loans.—Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies,—

(a) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of sections 20 and 21;

(b) if the Court finds that the provisions of section 20 or section 21 have not been complied with by the money-lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due as may seem reasonable to it in the circumstances of the case and may disallow costs.

Explanation.—A money-lender who has given the receipt or furnished a statement of accounts or a pass book in the prescribed form and manner, shall be held to have complied with the provisions of section 20 or section 21, as the case may be, in spite of any errors and omissions if the Court finds that such errors and omissions are not material or not fraudulent.

25. Provisions of certain sections not to apply to loans made by company or unincorporated body exempted by Government.—Nothing in sections 20 to 24 shall apply to loans advanced by any class of companies or unincorporated bodies which the State Government may by notification exempt from the operation of those sections.

26. Power of Court to limit interest recoverable in certain cases.—Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which this Act comes into force, decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree.

27. Power of Court to direct payment of decretal amount by instalments.—The Court may, at any time, on application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

28. Limitation on rates of interest.—(1) The State Government may from time to time by notification fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

(2) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at a rate exceeding the maximum rate fixed by the State Government under sub-section (1), shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

(3) If any money-lender charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the State Government under sub-section (1), he shall, for the purposes of section 39, be deemed to have contravened the provisions of this Act.

29. Prohibition of charge for expenses on loans by money-lenders.—No money-lender shall receive from a debtor or intending debtor any sum other than reasonable costs of investigating title to the property, costs of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between the parties includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed of such costs and reimbursement thereof; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

30. Notice and information to be given on assignment of loan.—(1) Where a loan advanced, whether before or after the date on which this Act comes into force, or any interest on such loan or the benefit of any agreement made or security taken in respect of such loan or interest, is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made,—

(a) give the assignee notice in writing that the loan, interest, agreement or security is affected by the operation of this Act;

(b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act; and

(c) give the debtor notice in writing of the assignment supplying the name and address of the assignee.

(2) Any person acting in contravention of the provisions of sub-section (1) shall be liable to indemnify any other person who is prejudiced by the contravention.

31. Application of Act as respects assignees.—(1) Save as hereinafter provided, where any debt due to a money-lender in respect of money lent by him whether before or after the date on which this Act comes into force, or of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, has been assigned, the assignee shall be deemed to be the money-lender and all the provisions of this Act shall apply to such assignee as if he were the money-lender,

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, where for any reason any such assignment is invalid and the debtor has made any payment of money or transfer of property on account of any loan which has been so assigned, the assignee shall in respect of such payment or transfer be deemed to be the agent of the money-lender for all the purposes of this Act.

32. Reopening of transactions.—Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard *ex parte* or otherwise,—

- (a) reopen any transaction, or any account already taken between the parties;
- (b) take an account between the parties;
- (c) reduce the amount charged to the debtor in respect of any excessive interest;
- (d) if on taking accounts it is found that the money-lender has received more than what is due to him, pass a decree in favour of the debtor in respect of such amount:

Provided that in the exercise of these powers, the Court shall not,-

- (i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than six years from the date of the suit;
- (ii) do anything which affects any decree of a Court.

Explanation.—For the purpose of this section "excessive interest" means interest at a rate which contravenes any of the provisions of section 28.

33. Inquiry for taking accounts and declaring the amount due.—(1) Any debtor may make an application at any time to the Court, whether the loan has or has not become payable, for taking accounts and for declaring the amount due to the money-lender. Such application shall be in the prescribed form and accompanied by the prescribed fee.

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the money-lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of sections 20 to 32 and section 35.

34. Deposit in Court of money due to money-lender.—(1) At any time a debtor may tender to a money-lender any sum of money due from him to the money-lender in respect of a loan by way of principal, interest or both.

(2) If the money-lender refuses to accept any sum so tendered, the debtor may deposit the said sum in Court to the account of the money-lender.

(3) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and he may, on presenting a petition stating the sum then due in respect of the loan, and his willingness to accept the said sum, receive and appropriate it first towards the interest and the residue if any towards the principal.

(4) When the money-lender does not accept the sum, the Court shall appropriate the said sum first towards the interest and the residue if any towards the principal.

35. When interest to be paid for entire month.—Notwithstanding any agreement between the parties or any law for the time being in force, when a statement is delivered or pass book is supplied to a debtor under section 21 or if accounts are taken under section 33, or a tender is made by a debtor to a money-lender in respect of a loan under section 34 before the sixteenth day of a calendar month, the interest due shall be calculated as payable for fifteen days of the said month, and if the statement is delivered or pass book is supplied or accounts are taken or tender is made on any subsequent day, then for the entire calendar month irrespective of the fact that such statement is delivered or pass book is supplied or such accounts are taken or such tender is made on any such day.

36. Money-lenders to exhibit their names over shops.—Every money-lender shall always keep exhibited over his shop or place of business, his name with the word 'money-lender' and its equivalent in Kannada.

37. Entry of wrong sum in bond, etc., to be an offence.—(1) No money-lender shall take any promissory note, acknowledgment, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

38. Penalty for molestation.—Whoever molests, or abets the molestation of, a debtor for the recovery of a debt due by him to a creditor shall, on conviction, be punished with imprisonment which may extend to six months or with fine which may extend to '[five thousand]' rupees or with both.

1. Substituted by Act 77 of 1976 w.e.f. 27.10.1976.

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing,—

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use of any such property, or

(c) loiters at or near a house or other place where such other person resides or works, or carries on business, or happens to be, or

(d) does any act calculated to annoy or intimidate such other person or the members of his family, or

(e) moves or acts in a manner which causes or is calculated to cause alarm or danger to the person or property of such other person,

-shall be deemed to molest such other person:

Provided that a person who goes to the house or place referred to in clause (c) in order merely to obtain or communicate information shall not be deemed to molest.

39. General provision regarding penalties.—Whoever fails to comply with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this Act, on conviction, be punished,-

(a) for the first offence with simple imprisonment which may extend to '[three months]' or with fine which may extend to '[one thousand]' rupees or with both, and

1. Substituted by Act 77 of 1976 w.e.f. 27.10.1976.

(b) for the 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.

1. Inserted by Act 77 of 1976 w.e.f. 27.10.1976.

40. Offences by Hindu Joint Family, Corporation, etc.—(1) If the person contravening any of the provisions of this Act is an undivided Hindu family, the person responsible for the management of the business of such family shall be deemed to be guilty of such contravention.

(2) (a) 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 clause 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.

(b) Notwithstanding anything contained in clause (a), 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 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.

41. Certain offences to be cognizable.—Offences punishable,-

- (a) under section 39 for contravening the provisions of section 5, and
- (b) under section 38,

shall be cognizable.

42. Every officer to be public servant.—Every officer of the Government acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

43. Saving of laws relating to agriculturists' indebtedness.—Nothing in this Act shall affect any of the provisions of any enactment relating to relief of agriculturists' indebtedness.

44. Rules.—(1) The State Government may, after previous publication, 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 form of the register under section 4;
- (b) the form of the application for a licence, the further particulars to be included therein and the manner of payment of licence fee under section 5;
- (c) the form and conditions of the licence, and the procedure for a summary inquiry under section 7;
- (d) the form of cashbook and ledger and the manner in which they should be maintained under sub-section (1) of section 20 and the other particulars to be prescribed under sub-section (4) of that section;
- (e) the form of the statement of accounts and pass books to be furnished or delivered and the date before which it is to be furnished or delivered under sub-section (1), the fee to be paid under sub-section (2), and the sum of expenses to be paid under sub-section (3), of section 21;
- (f) the rates at which and the manner in which fees may be recovered under section 22;
- (g) the form of application and the fee to be paid under sub-section (1) of section 33;
- (h) the period within which appeals under this Act have to be filed and the fee payable in respect of such appeals;
- (i) any other matter which has to be or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the provisions of 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 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 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.

45. Repeal and savings.—The Bombay Money-lenders Act, 1946 (Bombay Act XXXI of 1947), as in force in the '[Belgaum Area]'; the Coorg Money-lenders Act, 1939 (Coorg Act I of 1939), as in force in the Coorg District; the Hyderabad Money-lenders Act, 1349 F (Hyderabad Act V of 1349 Fasli), and the Hyderabad Money-lenders (Validity of Licenses) Act, 1956 (Hyderabad Act XLVIII of 1956), as in force in the '[Gulbarga Area]'; the Madras Debtors Protection Act, 1934 (Madras Act VII of 1935) as in force in the '[Mangalore and Kollegal Area]' and the Mysore Money-lenders Act, 1939 (Mysore Act XII of 1939) as in force in the Mysore area, are hereby repealed:

Provided that section 6 of the '[Karnataka]' General Clauses Act, 1899 ('[Karnataka Act]' III of 1899) shall be applicable in respect of the repeal of the said enactments and sections 8 and 24 of the said Act shall be applicable as if the said enactments had been repealed and re-enacted by this Act.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973

NOTIFICATION

Bangalore, dated 23rd March, 1965 [NO. AF 41 CCS 62]

S.O. 2175.- In exercise of the powers conferred by sub-section (3) of Section 1 of the Mysore Money Lenders Act, 1961 (Mysore Act 12 of 1962), the Government of Mysore hereby appoints the first day of April 1965, as the date on which the said Act, shall come into force.

By Order and in the name of the Governor of Mysore,

(S. RAMANATHAN)

Secretary.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2C (ii) dated 1st April 1965 at page 517.)

THE KARNATAKA PAWNBROKERS ACT, 1961

ARRANGEMENT OF SECTIONS

Statement of Object and Reasons Sections :

1. Short title, extent and commencement.
2. Definitions.
3. Pawn-broker to obtain licence.
4. Grant and renewal of licences.
- 4A. Conditions of licence.
- 4B. Forfeiture of security.
5. Pawnbrokers to exhibit their names over shops, etc.
6. Interest and charges allowed to pawnbrokers.
7. Pawn-ticket to be given to pawner.
8. Person producing pawn-ticket presumed to be entitled to redeem the pledge.
9. Protection of owners and of pawners not having pawn-tickets.
10. Pawnbrokers to keep books, give receipts, etc.
11. Redemption of pledge.
12. Sale of pledge and inspection of sale book.
13. Liability of pawnbroker in case of fire.
14. Compensation for depreciation of pledge.
15. Pawn-broker advancing smaller amount or receiving higher interest than that specified in accounts to be punishable.
16. Certain other acts of pawn-brokers to be punishable.
- 16A. Pawnbroker to redeem pledges.
17. Certain acts of pawners to be punishable.
18. General penalty for contravention of Act, etc.
19. Jurisdiction to try offences.
- 19A. Offences by Hindu undivided Family, Companies etc.
20. Certain offence to be cognizable.
21. Contract of pawn to be void in certain cases and not to be void in certain other cases.

22. Power to make rules.
23. Savings.
24. Repeal.

STATEMENT OF OBJECTS AND REASONS

I

Act 13 of 1962.—The Madras Pawnbrokers Act, 1943 is in force in the Madras Area, Pawnbrokers in other areas are regulated by the existing Money-Lenders Acts in force in the respective areas. After a careful consideration, it was, however, noticed that provisions to be made for pawnbrokers are not the same as those for money-lenders and hence, it has been considered desirable to enact a separate legislation for regulation and control of pawnbrokers in this State.

Hence this Bill.

(Obtained from L.C. No. 3221 dated 21st March, 1959. Published in PART IV—2-A at page 141.)

II

Amending Act 29 of 1979.—The Karnataka Pawnbrokers Act 1961, which was brought into force from 29th day of March, 1962 has revealed in the course of working that certain Pawnbrokers are in the habit of pledging with Commercial Banks the articles pledged with them for securing monetary accommodation and that the money so taken is being utilised by them in their money lending transactions for which high rate of interest are being charged. It has become, therefore necessary to amend the relevant provision of the Act, so that the said practice adopted by the Pawnbrokers could be brought within the purview of the provisions of the Act.

Hence the Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 3rd February 1979 at page. 5.)

III

Amending Act 40 of 1985.—Persons who obtain credit from the licensed Pawn Brokers, pledge costly gold ornaments and other articles. It is considered necessary to insist security deposit from such licensed Pawn Brokers to safeguard the interests of the Pawnners.

In order to meet the increasing cost of administration of the Act, it is also proposed to increase the license fee.

As the matter was very urgent, the Karnataka Pawn Brokers (Amendment Ordinance, 1985 (Karnataka Ordinance No. 12 of 1985) was issued.

This Bill seeks to replace the said Ordinance.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 25th July 1985 as No. 398 at page 6.)

IV

Amending Act 9 of 1998.—It is considered necessary to amend the Karnataka pawn Brokers Act, 1961 (Karnataka Act 13 of 1962), for the following reasons, namely:—

- (i) To enhance the duration of licence from one year to five years;
- (ii) To provide for calculating the amount of security deposit on the amounts invested and not on the amounts lent.
- (iii) Since, the Karnataka High Court in writ petition No. 8912/85 and other connected matters directed the Government to pay interest on security deposit, as there is no specific provision prohibiting payment of interest, appropriate provisions are made to remove the lacuna retrospectively from 31st May 1985 and to validate the section.

Hence the Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 2nd September 1997 as No. 990 at page. 4.)

सत्यमेव जयते

¹[KARNATAKA ACT]¹ No. 13 OF 1962

(First published in the ¹[Karnataka Gazette]¹ on the Twenty-ninth day of March, 1962.)

THE ¹[KARNATAKA]¹ PAWNBROKERS ACT, 1961.

(Received the assent of the President on the Eighth day of March, 1962)

(As amended by Karnataka Acts 29 of 1979, 40 of 1985 and 9 of 1998)

An Act to regulate and control the business of Pawnbrokers in the ¹[State of Karnataka]¹.

WHEREAS it is expedient to make provision for the regulation and control of the business of pawnbrokers in the ¹[State of Karnataka]¹;

BE it enacted by the ¹[Karnataka State]¹ Legislature in the Twelfth Year of the Republic of India as follows:—

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

1. Short title, extent and commencement.—(1) This Act may be called the ¹[Karnataka]¹ Pawnbrokers Act, 1961.

(2) It extends to the whole of the ¹[State of Karnataka]¹.

(3) It shall come into force,—

(a) at once in the ¹[Mangalore and Kollegal Area]¹; and

(b) in such other area of the State on such ²[date]² as the State Government may by notification specify.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

2. Act came into force w.e.f. 1.10.1966 Vide notification No. DPC 271 CCC 66 dt. 26.8.1966

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

(1) "company" means a company as defined in the Companies Act, 1956 (Central Act 1 of 1956);

(2) "co-operative society" means a society registered or deemed to be registered under the ¹[Karnataka]¹ Co-operative Societies Act, 1959 ¹[Karnataka]¹ Act 11 of 1959)

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(3) "interest" includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a pawnbroker in consideration of or otherwise in respect of a loan; but does not include any sum lawfully charged in accordance with the provisions of this Act by a pawnbroker for or on account of charges;

(4) "licence" means a licence granted under this Act;

(5) "loan" means an advance at interest whether of money or in kind and includes any transaction which the Court finds in substance to amount to such an advance but does not include,-

(i) a deposit of money or other property in a Government Post Office Savings Bank or Government Savings Bank or banking company or in a company or with a co-operative society;

[(ii) an advance made by,—

(a) a banking company as defined in the Banking Regulation Act, 1949 (Central Act 10 of 1949); or

(b) the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955); or

(c) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959); or

(d) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970); or

(e) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Central Act 40 of 1980); or

(f) a regional rural bank constituted under the Regional Rural Banks Act, 1976 (Central Act 21 of 1976); or

(g) the National Bank for Agriculture and Rural Development established under the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 61 of 1981); or

(h) the Agricultural Finance Corporation Limited, a company incorporated under the Indian Companies Act 1956m (Central Act 11 of 1956)

(i) a Co-operative society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959);¹

1. Substituted by Act 40 of 1985 w.e.f. 31.5.1985

(iii) an advance made by Government or by any person authorised by Government to make advances on their behalf, or by any local authority;

(iv) an advance made by any person bona fide carrying on any business not having for its primary object the lending of money, if such loan is advanced in the regular course of such business; and

(v) an advance made by a landlord to his tenant, for the purpose of carrying on agriculture;

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

(7) "pawn-broker" means a person who carries on the business of taking goods and chattels in pawn for a loan;

Explanation.—Every person who keeps a shop for the purchase or sale of goods or chattels and who purchases goods or chattels and pays or advances thereon any sum of money, with or under an agreement or understanding expressed or implied that the goods or chattels may be afterwards re-purchased on any terms, is a pawnbroker within the meaning of this clause;

(8) "pawner" means a person delivering an article for pawn to a pawnbroker;

(9) "pledge" means an article pawned with a pawnbroker;

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

(11) "principal" means in relation to a loan the amount actually lent to the pawner;

¹[(12) "Year" means the year commencing on the first day of April.]

1. Substituted by Act 9 of 1998 w.e.f. 21.4.1998

3. Pawn-broker to obtain licence.—No person shall, after the expiry of six months from the date on which the provisions of this Act come into force in any area, carry on or continue to carry on business as a pawnbroker at any place in such area, unless he has obtained a pawn-broker's licence under this Act ¹[and after the commencement of the Karnataka Pawn Brokers (Amendment) Act, 1985, except on payment of security deposit as provided in section 4A.]

1. Inserted by Act 40 of 1985 w.e.f. 31.5.1985

Explanation 1.—Where a pawnbroker has more than one shop or place of business, whether in the same town or village or in different towns and villages he shall obtain a separate pawnbroker's licence in respect of each such shop or place of business.

Explanation 2.—Every pawn-broker's licence granted under this Act shall be valid ¹[for a term of five years, but may be renewed from term to term].

1. Substituted by Act 9 of 1998 w.e.f. 21.4.1998

¹**Explanation 3.**—Where a licence has been granted in the middle of a year, for the purpose of computing the term of licence, the remaining part of the year shall be deemed to be a year.]

1. Inserted by Act 9 of 1998 w.e.f. 21.4.1998

4. Grant and renewal of licences.—(1) Every application for the grant or renewal of a pawnbroker's licence shall be in writing and shall be made to the prescribed licensing authority.

(2) The grant or renewal of a licence shall not be refused except on any of the following grounds, namely:—

(a) that the applicant is of bad character;

Explanation.—If any evidence of bad character is adduced against the applicant, he shall be given an opportunity of rebutting such evidence;

(b) that the shop or place at which he intends to carry on the business of a pawnbroker or any adjacent house or shop or place, owned or occupied by him, is frequented by persons of bad character, or

(c) that the applicant does not hold a licence under the '[Karnataka]' Money-lenders Act, 1961.

1. Adapted by the Karnataka Adaptation of Laws Order 1973 w.e.f. 1.11.1973

(3) Any person aggrieved by an order refusing the grant or renewal of a licence may, within the prescribed time, appeal to the prescribed authority.

(4) Every licence shall be granted or renewed in such form and '[subject to the conditions specified in section 4A and such other conditions]' as may be prescribed.

1. Substituted by Act 40 of 1985 w.e.f. 31.5.1985

¹[(5) Every application for the grant or renewal of a licence, shall be accompanied by a fee at the following rates:—

(a) if the place at which the business Rupees two thousand five hundred. is to be carried on is not more than one.

(b) if the business is to be carried on Rupees two thousand five hundred at more than one place. for the principal place of business and Rupees one thousand two hundred and fifty for each of the other places.]¹

Provided that where an application is made after the expiry of the period prescribed by rules in respect of such application, it shall be accompanied by a fee at double the rates specified above.

1. Substituted by Act 9 of 1998 w.e.f. 21.4.1998

(6) The fee payable under this section shall be paid in the manner prescribed and shall not be refunded, notwithstanding the fact that the grant or renewal of the licence is refused or the application is withdrawn.

¹[4A. Conditions of licence.—²[(1) Every person making an application for grant of a licence under section 4 shall, at the time of making such application, pay security deposit as provided under sub-section (2) and in the case of an application for renewal of such licence the security deposit shall be paid two months before the expiry of such licence.]²

1. Inserted by Act 40 of 1985 w.e.f. 31.5.1985

2. Substituted by Act 9 of 1998 w.e.f. 21.4.1998

(2) Every licensee specified in column (1) of the Table below shall in the prescribed manner deposit in the Government Treasury the amount specified in the corresponding entry in column (2) of the said Table by way of security for the due observance of the conditions of the licence.

TABLE

(1)	(2)
1. A licensee who ¹ [invests] ¹ less than one lakh rupees in a year.	Five thousand rupees.
2. A licensee who ¹ [invests] ¹ one lakh rupees and above but less than five lakh rupees in a year.	Ten thousand rupees.
3. A licensee who ¹ [invests] ¹ five lakh rupees and above but less than ten lakh rupees in a year.	Twenty five thousand rupees.
4. A licensee who ¹ [invests] ¹ ten lakh rupees and above in a year.	Fifty thousand rupees

1. Substituted by Act 9 of 1998 w.e.f. 21.4.1998

(3) For the purposes of sub-section (2), the amount of security payable by a licensee in a year shall be determined on the basis of ¹[the amount invested by him in the business during the previous year]¹ ²[and such security deposit shall not carry any interest]²

1. Substituted by Act 9 of 1998 w.e.f. 21.4.1998

2. Inserted by Act 9 of 1998 w.e.f. 31.5.1998

Provided that the security deposit made by a licensee under the provisions of the Karnataka Money Lenders Act, 1961 (Karnataka Act 12 of 1962) shall be deemed to be the security deposit for the purposes of this Act also.

³[Provided further that in the case of a new licensee or a person who has a licence only for a portion of the preceeding year the amount of security shall be determined on the basis of a declaration in the prescribed form as to the amount which he is likely to invest during the year.]³

1. Inserted by Act 9 of 1998 w.e.f. 31.5.1998

⁴[4B. Forfeiture of security.—(1) The licensing authority may, at any time, by order in writing, forfeit to the Government the whole or any portion of the security

deposit paid or deemed to have been paid under sub-section (2) of section 4A, if the licensee,—

(a) carries on the business of money lending in contravention of any of the provisions of this Act or the rules made thereunder or the conditions of licence; or

(b) is convicted of an offence under sub-section (3) of section 9, section 15, section 16 or section 16A or section 18; or

(c) maintains false accounts.

(2) Before forfeiting to the Government the whole or any portion of the security deposit under sub-section (1), the licensing authority shall give the licensee a notice in writing stating the grounds for which it is proposed to take action and requiring him to show cause against it within such time as may be specified in the notice.

(3) Every order of the licensing authority under this section shall be communicated to the licensee in such manner as may be prescribed.

(4) Every person aggrieved by an order under sub-section (1) may, within a period of one month from the date on which the order was communicated to him, prefer an appeal to the prescribed authority whose decision shall be final.

(5) The licensing authority may, out of the amount forfeited, direct payment of such amount and at such rates as may be prescribed to the borrowers affected by the acts of the licensee.]¹

1. Inserted by Act 9 of 1998 w.e.f. 31.5.1998

5. Pawn-brokers to exhibit their names over shops, etc.—Every pawn-broker shall,-

(a) always keep exhibited in large characters over the outer door of his shop or place of business his name with the word pawnbroker in English and its equivalent in Kannada, and

(b) always keep placed in a conspicuous part of his shop or place of business so as to be clearly visible to all persons resorting thereto the information required to be printed on pawn-tickets by rules made under this Act, in the Kannada language.

6. Interest and charges allowed to pawn-brokers.—(1) No pawn-broker shall charge interest in respect of a loan on a pledge at a rate exceeding nine per cent per annum simple interest or at such other rate as the State Government may by notification fix from time to time.

(2) A pawnbroker may demand and take from the pawner such charges and in such cases as may be prescribed.

(3) A pawnbroker shall not demand or take from the pawner any profit, interest, charge or sum whatsoever, other than the interest due to him and the charges, if any, referred to in sub-section (2).

7. Pawn-ticket to be given to pawner.—Every pawnbroker shall on taking a pledge in pawn give to the pawner a pawn-ticket in the prescribed form signed by the pawner and the pawnbroker, and shall not take a pledge in pawn unless the pawner takes the pawn-ticket.

8. Person producing pawn-ticket presumed to be entitled to redeem the pledge.—(1) The holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and subject to the provisions of this Act, every pawnbroker shall on payment of the principal and interest, deliver the pledge to the person producing the pawn-ticket, and he is hereby indemnified for so doing.

(2) Except as otherwise expressly provided in this Act, a pawnbroker shall not be bound to deliver back a pledge unless the pawn-ticket for it is delivered to him.

9. Protection of owners and of pawners not having pawn tickets.—(1) The following provisions shall have effect for the protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce:—

(a) Any person claiming to be the owner of a pledge but not holding the pawn-ticket or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration (which shall be in the prescribed form), which the pawnbroker shall deliver to him:

Provided that an application shall not be made under this clause where the loan exceeds two hundred and fifty rupees unless the applicant has caused a public notice of his claim, containing such particulars as may be prescribed, to be published in the prescribed manner not less than the prescribed number of days before the date of the application.

(b) If the applicant delivers back to the pawn-broker the declaration duly made before any Magistrate or Judge by the applicant and by a person identifying him, the applicant shall have, as between himself and the pawn-broker, all the same rights and remedies as if he had produced the pawn-ticket:

Provided that such a declaration shall not be effectual for that purpose, -

(1) in cases where the loan exceeds two hundred and fifty rupees, unless the applicant executes a bond with two sureties, to the satisfaction of the pawn-broker or of such authority or person as may be prescribed in this behalf, agreeing to indemnify the pawnbroker in respect of any liability which may be incurred by him by reason of delivering the pledge or otherwise acting in conformity with the declaration; and

(ii) in all cases, unless the declaration is duly made and delivered back to the pawnbroker within such period after the delivery of the form to the applicant, as may be prescribed;

(c) The pawnbroker is hereby indemnified for not delivering the pledge to any person until the expiration of the period aforesaid.

(d) The pawnbroker is hereby further indemnified for delivering the pledge or otherwise acting in conformity with the declaration unless, he has had notice within the meaning of the Transfer of Property Act, 1882 (Central Act IV of 1882), that the declaration was fraudulent or was false in any material particulars.

(2) Notwithstanding anything contained in sub-section (1), but without prejudice to his liability to account for the pledge to the owner of the pledge or the person entitled to hold the pawn ticket, the pawnbroker may deliver the pledge to any person claiming to be the owner of the pledge but not holding the pawn-ticket, if the pawnbroker is satisfied that such person is the owner of the pledge and is entitled to the delivery of the pledge, either after obtaining a bond from the claimant or otherwise.

(3) Any person making a declaration under sub-section (1), either as an applicant or as identifying an applicant knowing the same to be false in any material particular, shall, on conviction 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.

10. Pawnbrokers to keep books, give receipts, etc.—(1) Every pawnbroker shall,-

(a) regularly record and maintain or cause to be recorded and maintained in a pledge book in the prescribed form an account showing for each pawner separately,-

(i) the date of the loan, the amount of the principal of the loan and the rate of interest charged on the loan per cent per annum or per rupee per mensem or per rupee per annum;

(ii) the amount of every payment received by the pawnbroker in respect of the loan, and the date of such payment;

(iii) a full and detailed description of the article or of each of the articles taken in pawn;

(iv) the time agreed upon for the redemption of the pawn; and

(v) the name and address of the pawner, and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof;

(b) keep and use in his business the following documents and books (which shall be in the prescribed form) and enter therein from time to time, as occasion requires, in

a fair and legible manner such particulars and in accordance with such directions as may be prescribed:—

- (i) pawn-ticket;
- (ii) sale book of pledges;
- (iii) declaration where pledge is claimed by owner;
- (iv) declaration of pawn-ticket lost; and
- (v) receipt on redemption of pledge;

(c) give to the pawner or his agent a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment; and

(d) on requisition in writing made by the pawner furnish to the pawner or, if he so requires to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent, showing the particulars referred to in clause (a) and also the amount, which remains outstanding on account of the principal and of interest, and charge such sum as the State Government may prescribe as fee therefor.

(2) All records or entries made in the books, accounts and documents referred to in sub-section (1) shall be either in English or in Kannada as may be prescribed:

Provided that the State Government may by notification permit the use of any other language in any area for such period, not exceeding three years, as may be specified in the notification.

(3) All books, accounts and documents referred to in sub-section (1), and all pledges taken by the pawnbroker shall be open to inspection at any time by the licensing authority or an officer subordinate to the licensing authority authorised by that authority.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act I of 1872), a copy of the account referred to in clause (a) of sub-section (1), certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

(5) A pawner to whom a statement of account has been furnished under clause (d) of sub-section (1) and who fails to object to the correctness of the account shall not, by such failure alone, be deemed to have admitted the correctness of such account.

(6) In the pawn-ticket furnished to the pawner, in the receipt given under clause (c) of sub-section (1) and in the statement of account furnished under clause (d) of that sub-section, the figures shall be entered only in Arabic numerals.

11. Redemption of pledge.—(1) Every pledge shall be redeemable within one year from the day of pawning exclusive of that day; and there shall be added to that

year of redemption fifteen days of grace within which every pledge (if not redeemed within the period of redemption) shall continue to be redeemable.

(2) A pledge pawned for a sum not exceeding ten rupees, if not redeemed within the period of redemption and days of grace, shall at the end of the days of grace become the pawnbroker's absolute property.

(3) A pledge pawned for a sum exceeding ten rupees shall further continue to be redeemable until it is disposed of as provided in this Act, although the period of redemption and days of grace have expired.

Explanation.—Where the contract between the parties provides a longer period for redemption than one year, the provisions of sub-sections (1), (2) and (3) shall be read and construed as if references to such longer period had been substituted for the references to the period of one year therein.

12. Sale of pledge and inspection of sale book.—(1) A pledge pawned for a sum exceeding ten rupees shall, when disposed of by the pawnbroker, be disposed of by sale by auction and not otherwise, and the sale shall be conducted in accordance with such rules as may be prescribed.

(2) A pawnbroker may bid for and purchase at a sale by public auction conducted under sub-section (1), a pledge pawned with him; and on such purchase he shall become the absolute owner of the pledge.

(3) At any time within three years after the public auction, the holder of the pawn-ticket may inspect the entry relating to the sale either in the pawnbroker's book or in such catalogue of the auction as may be prescribed.

(4) (a) Where on such inspection or otherwise the pledge appears to have been sold for more than the amount of the loan and the interest and charges due at the time of the sale, the pawnbroker shall pay to the holder of the pawn-ticket, on demand made within three years after the sale, the surplus after deducting therefrom the necessary costs and charges of the sale.

(b) If on such demand it appears that the sale of the pledge has resulted in a surplus but that within twelve months before or after such sale, the sale of another pledge or pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit against the surplus and shall be liable to pay only the balance, if any, after such set off.

13. Liability of pawnbroker in case of fire.—(1) Where a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable on application made within the period during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the principal and interest.

Explanation.—For the purpose of this sub-section, the value of the pledge shall be its estimated value (if any) entered in the pledge book at the time of the pawn together with interest on the amount of the principal and shall in no case be less than the aggregate of the amount of the principal and interest and twenty-five per cent on the amount of the principal.

(2) A pawnbroker shall be entitled to insure to the extent of the value so estimated.

14. Compensation for depreciation of pledge.—If a person entitled and offering to redeem a pledge shows to the satisfaction of a Civil Court having jurisdiction to entertain a suit for such redemption that the pledge has become or has been rendered of less value than it was at the time of pawning thereof by or through the default, neglect or wrongful act of the pawnbroker, the Court may, if it thinks fit, award reasonable compensation to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker (as the case requires) in such manner as the Court directs.

15. Pawnbroker advancing smaller amount or receiving higher interest than that specified in accounts to be punishable.—(1) Any pawnbroker who actually advances an amount less than that shown in the pawn-ticket or in his accounts or registers or who takes or receives interest or any other charge at a rate higher than that shown in the pawn-ticket or in his accounts or registers shall, on conviction be punished with fine which may extend to five hundred rupees.

(2) If a pawnbroker is convicted of an offence under sub-section (1) after having been previously convicted of a similar offence, the Court convicting him may order his licence as a pawnbroker to be cancelled.

16. Certain other acts of pawnbrokers to be punishable.—A pawnbroker who, -

(1) takes an article in pawn from any person appearing to be under the age of fourteen years or to be intoxicated; or

(2) purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker; or

(3) employs any person under the age of sixteen years to take pledges in pawn; or

(4) under any pretence purchases, except at a public auction, any pledge while in pawn with him; or

(5) suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it; or

(6) makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption; or

(7) sells [hypothecates, pawns]¹ or otherwise disposes of any pledge pawned with him except at such time and in such manner as is authorised by or under the Act;

-shall on conviction 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.

¹[Provided that for an act referred to in clause (7), the term of imprisonment shall not be less than one month and the fine shall not be less than five hundred rupees.]¹

1. Inserted by Act 29 of 1979 w.e.f 1.8.1979

[16A. Pawnbroker to redeem pledges.—(1) Where before the commencement of the Karnataka Pawnbrokers (Amendment) Act, 1979 any pawnbroker has pawned or hypothecated any pledge with any person, such pawnbroker shall, redeem the pledge within thirty days from the date of such commencement.

(2) Any pawnbroker who fails to so redeem shall, on conviction, be punished with imprisonment for a term which may extend to six months and with fine which may extend to rupees one thousand:

Provided that the term of imprisonment shall not be less than one month and the fine shall not be less than rupees five hundred.]¹

1. Inserted by Act 29 of 1979 w.e.f 1.8.1979

17. Certain acts of pawners to be punishable.—(1) Any person who,-

(a) offers to a pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory account of the means by which he became possessed of the article; or

(b) wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article; or

(c) not being entitled to redeem and not having any colour of title by law to redeem, a pledge, attempts or endeavours to redeem the same;

-shall, on conviction 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) In every case falling under sub-section (1), and also in any case, where on an article being offered in pawn, for sale, or otherwise, to a pawnbroker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker shall, in the absence of reasonable excuse, inquire into the name and address of the person concerned, and seize and detain such person and the article, or either of them, and forthwith communicate to the nearest police station the facts of the case and shall deliver the person and the article, or either of them (as soon as may be) to the custody of the police.

(3) A list of properties believed to have been stolen may be delivered by the police to any pawnbroker licensed under this Act and thereupon it shall be the duty of such pawnbroker—

(a) if any article answering the description of any of the properties set forth in any such list is offered to him in pawn, for sale, or otherwise, to proceed in accordance with the provisions of sub-section (2); and

(b) if any such article is already in his possession, forthwith to communicate to the nearest police station the facts of the case (including full particulars as to the name and address of the person concerned in the delivery of the article to the pawnbroker) and also, if so required by the police, to deliver the article to them.

18. General penalty for contravention of Act, etc.—(1) Whoever contravenes any of the provisions of this Act or of any rule or of any terms or conditions of a licence made or granted thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, on conviction be punished with fine which may extend to fifty rupees and, if such person has been previously convicted whether under this section or any other provision contained in this Act, with fine which may extend to one hundred rupees.

(2) Any person who after having been convicted of the offence of carrying on, or continuing to carry on the business of pawnbroker in contravention of the provisions of section 3, continues to commit the same offence in the same year, shall in addition to the fine to which he is liable under sub-section (1), be punished with a further fine which may extend to ten rupees for each day after the previous date of conviction during which he continues so to offend.

(3) Any Court convicting a pawnbroker of contravention of the provisions of clause (d) of sub-section (1) of section 10, may direct him to furnish a statement of account in accordance with the provisions of that clause, and if the pawnbroker fails to comply with the direction, the Court may order his licence as a pawnbroker to be cancelled.

19. Jurisdiction to try offences.—No Court inferior to that of a Magistrate of the second class shall try any offence against this Act.

[19A. Offences by Hindu undivided Family, Companies etc.]—(1) If any of the provisions of this Act is contravened by a Hindu undivided Family, the person responsible for the management of the business of such Family shall be deemed to have contravened such provision.

(2) (a) 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 clause 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.

(b) Notwithstanding anything contained in clause (a), 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, 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;]¹

1. Inserted by Act 29 of 1979 w.e.f 1.8.1979

[20. Certain offence to be cognizable.—Offences punishable, -

(a) under section 16 for an act referred to in clause (7) thereof;

(b) under section 16A; and

(c) under section 18 for contravening the provision of section 3,

-shall be cognizable.]¹

1. Substituted by Act 29 of 1979 w.e.f 1.8.1979

21. Contract of pawn to be void in certain cases and not to be void in certain other cases.—(1) If any pawnbroker not licensed under this Act, takes any article in pawn for a loan, the contract of pawn so far as it confers any right on the pawnbroker in respect of the article pawned shall be void and the retention of the article by such pawnbroker shall be wrongful.

(2) Where a pawnbroker is guilty of an offence against this Act (not being an offence against any provision of this Act relating to licences), any contract of pawn or other contract made by him, in relation to his business of pawnbroker, shall nevertheless not be void by reason only of that offence, nor shall he by reason only of that offence, lose his lien on or right to the pledge or to the loan and the interest and other charges, if any, payable in respect thereof:

Provided that if a pawnbroker fails to deliver to the pawner a pawn-ticket as required by section 7 or fails to give to the pawner or his agent a receipt as required by clause (c) of sub-section (1) of section 10 or to furnish on a requisition made under clause (d) of that sub-section, a statement of account as required therein within one month after such requisition has been made, the pawnbroker shall not be entitled to any interest for the period of his default:

Provided further that if in any suit or proceeding relating to a loan the Court finds that a pawnbroker has not maintained accounts as required by clause (a) or clause (b) of sub-section (1) of section 10, he shall not be allowed his costs.

22. Power to make rules.—(1) The State Government may after previous publication, by notification, 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) all matters expressly required or allowed by this Act to be prescribed;

(b) the form of, and the particulars to be contained in, an application for a pawnbroker's licence under this Act; and

(c) the form in which books, accounts and documents specified in this Act shall be recorded, maintained, kept or used.

(3) 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 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.

23. Savings.—(1) Nothing contained in this Act shall apply to any loan advanced on a pledge in any area in which this Act is brought into force by a notification under sub-section (3) of section 1 before the expiry of six months from the date appointed in such notification.

(2) The provisions of this Act shall be in addition to the provisions of the '[Karnataka] Money-lenders Act, 1961.

1. Adapted by the Karnataka Adaptations of Law s Order 1973 w .e.f. 1.11.1973

24. Repeal.—The Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943) as in force in the '[Mangalore and Kollegal Area]' is hereby repealed:

Provided that section 6 of the 1[Karnataka]1 General Clauses Act, 1899 '1[Karnataka]' Act III of 1899) shall be applicable in respect of the repeal of the said enactment and sections 8 and 24 of the said Act shall be applicable as if the repealed enactment had been repealed and re-enacted by this Act.

1. Adapted by the Karnataka Adaptations of Law s Order 1973 w .e.f. 1.11.1973

NOTIFICATION

Bangalore, dated 26th August 1966 [No. DPC 271 CCC 66.]

In exercise of the powers conferred by Clause (b) of sub-section (3) of Section 1 of the Mysore Pawn-Brokers Act, 1961 (Mysore Act No. 13 of 1962), and in supersession of Notification No. AF/43/CCS/62, dated 19th July 1966, published as S.O. 4958 in Part IV Section 2-C (ii) of Mysore Gazette dated 28th July 1966, the Government of Mysore, hereby appoints the first day of October, 1966, as the date on which the said Act, shall come into force in Bombay Area, Hyderabad Area, Coorg District and Mysore Area of the State of Mysore.

By Order and in the name of the Governor of Mysore,

(R. BHARANIAH)

Secretary.

सत्यमेव जयते

THE KARNATAKA PROHIBITION ACT, 1961
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SCHEDULE B

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STATEMENT OF OBJECTS AND REASONS

I

Act 17 of 1962.- After Re-organisation of the States on 01.11.1956, there were four different Prohibition Acts in force in the different areas in the New Mysore State, viz., in the Old Mysore Area, Bombay Karnataka Area, Madras Karnataka area and Coorg, respectively as noted below:-

- (1) The Mysore Prohibition Act 1948 (Mysore Act XXVII of 1948).
- (2) The Bombay Prohibition Act 1949 (Bombay Act XXV of 1949).
- (3) The Madras Prohibition Act, 1938 (Madras Act X of 1938).
- (4) The Coorg Prohibition Act, 1956 (Coorg Act 1 of 1956).

There was, however, no Prohibition Act in the Hyderabad Karnataka Area, as the entire area was wet. But, as Prohibition was introduced in Bidar District of Hyderabad Karnataka area from 01.07.1959, the Mysore Prohibition Act, 1948, had to be extended to that area by an Ordinance in the first instance and then a regular Bill was got passed in the Legislature and thus the Mysore Prohibition Act is now in force in the Hyderabad Karnataka Area.

The existence of different sets of laws in different areas causes considerable administrative and procedural difficulties and also inconveniences in the proper implementation of Prohibition on a uniform analysis throughout the State. Therefore,

with a view for having a uniform law for the entire new Mysore State, a uniform Prohibition Bill has been prepared and it replaces the various Prohibition Acts referred to above.

(Obtained from Legislative File No. LAW 48 LGN 59).

II

Amending Act 10 of 1967.—The Government of India, in the Ministry of Home Affairs, while communicating the assent of the President to the Mysore Prohibition Bill (which has now become the Mysore Prohibition Act, 1961) have conveyed observations of the Government of India relating to the administration of the Act for consideration of State Government and have also suggested certain amendments to the Act. In order to implement the decision taken by the Government in the light of public opinion to effect changes in the policy of prohibition, it is considered necessary to take power to exclude the operation of the Act in specified areas of the State and to extend the operation of the Mysore Excise Act, 1965, to such areas. Hence this Bill. (Published in the Kamataka Gazette (Extraordinary) Part IV-2A dated 25th May 1957, at page. 45.)



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¹[KARNATAKA ACT]¹ No. 17 OF 1962

(First published in the ¹[Karnataka Gazette]¹ on the Nineteenth day of April, 1962.)

THE '¹[KARNATAKA]'¹ PROHIBITION ACT, 1961

(Received the assent of the President on the Twelfth day of April, 1962.)

(As amended by Karnataka Act 10 of 1967)

An Act to amend and consolidate the law relating to the promotion and enforcement of and carrying out the policy of prohibition in the '¹[State of Karnataka]'¹.

WHEREAS it is expedient to amend and consolidate the law relating to the promotion and enforcement of and carrying out the policy of prohibition of consumption except for medicinal purposes of intoxicating drinks and drugs and to provide for certain other purposes hereinafter appearing;

BE it enacted by the '¹[Karnataka State]'¹ Legislature in the Twelfth Year of the Republic of India as follows:—

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.—(1) This Act may be called the '¹[Karnataka]'¹ Prohibition Act, 1961.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(2) It extends to the whole of the '¹[State of Karnataka]'¹.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(3) It shall come into force at once in the areas in which any of the enactments mentioned in Schedule A is in force immediately prior to the commencement of this Act.

(4) (a) This section, section 2 and section 15 shall come into force at once in the whole of the '¹[State of Karnataka]'¹.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(b) The other provisions of this Act shall come into force in such area of the '¹[State of Karnataka]'¹ other than the areas in which this Act comes into force under sub-section (3), on such ²[date]² as the State Government may, by notification, specify.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

2. Notification bringing the Act into force in Other areas of the State is not available

¹[(5) Notwithstanding anything contained in sub-sections (3) and (4), the State Government may, by notification, declare that the provisions of this Act other than this section and sections 2 and 15 shall cease to be in force in any area on such date as may be specified in such notification, and thereupon the ²[Karnataka]² Excise Act, 1965 ²[Karnataka]² Act 21 of 1966) and the rules, orders and notifications made or issued or deemed to be made or issued thereunder shall extend to such area and shall come into force therein with effect on and from such date, and this Act other than this section and sections 2 and 15, shall stand repealed in such area and the provisions of section 6 of the ²[Karnataka]² General Clauses Act, 1899, shall apply accordingly:

Provided that the issue of a notification under this sub-section shall not preclude the State Government from issuing a notification under clause (b) of sub-section (4) bringing the provisions of this Act into force in such local area.]¹

1. Inserted by Act 10 of 1967 w .e.f. 24.8.1967

2. Adapted by the Karnataka Adaptations of Laws Order 1973

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

'[(1) 'alcohol' means ethyl alcohol of any strength and purity having the chemical composition C₂H₅CH:]¹

1. Inserted by Act 10 of 1967 w .e.f. 24.8.1967

'[(1A)]¹ "authorisation" means an authorisation granted under section 36 for use, or for manufacture for use, of liquor for sacramental purposes;

1. Re-numbered by Act 10 of 1967 w .e.f. 24.8.1967

(2) "to bottle", with its various grammatical variations means to transfer any article from a cask or other vessel to a bottle, jar, flask, pot or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not; and "bottling" includes rebottling;

(3) "Commissioner" means the Prohibition Commissioner appointed under section 3;

(4) "Committee" means any of the committees appointed by the State Government under section 8;

(5) "country liquor" includes all liquor produced or manufactured in India;

(6) "cultivation" includes the tending or protecting of a plant and does not necessarily imply raising it from seed;

(7) (a) "denatured" means subjected to a process prescribed for the purpose of rendering unfit for human consumption;

(b) "denatured spirituous preparation" means any preparation made with denatured spirit or alcohol and includes liquors, French Polish, Thinners and varnish prepared out of such spirit or alcohol;

(8) "Deputy Commissioner" means the Deputy Commissioner of a District, or any person appointed under sub-section (3) of section 4 to exercise all or any of the powers or to perform all or any of the duties of a Deputy Commissioner under this Act;

(9) "to drink", with its grammatical variations, means to drink liquor or to consume any intoxicating drug;

(10) "excisable article" means,-

- (a) any alcoholic liquor for human consumption;
- (b) any intoxicating drug;
- (c) opium;
- (d) other narcotic drugs, narcotics and non-narcotic drugs, which the State Government may, by notification, declare to be an excisable article;

(11) "excise duty" and "countervailing duty" means such excise duty or countervailing duty, as the case may be, as is mentioned in entry 51 in List II in the Seventh Schedule to the Constitution;

(12) "excise revenue" means revenue derived or derivable from any duty, fee, tax, fine (other than a fine imposed by a Court of law) or confiscation or forfeiture imposed or ordered under the provisions of this Act or of any other law for the time being in force relating to intoxicants;

(13) "export" means to take out of the State otherwise than across a customs frontier;

(14) "foreign liquor" includes all liquors other than country liquor:

Provided that the State Government may, by notification declare that any specified description of country liquor shall, for the purpose of this Act, be deemed to be foreign liquor;

(15) "hemp" means any variety of the Indian hemp plant (*Cannabis Sativa* or *Indica*) from which intoxicating drugs can be produced;

(16) "import" means to bring into the State otherwise than across a customs frontier;

(17) "intoxicant" means any liquor or any intoxicating drug or any other substance which the State Government may, by notification, declare to be an intoxicant;

[(18) 'intoxicating drugs' means,-

- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa* or *Indica*) including all forms known as bhang, siddi or ganja;
- (ii) charas, that is, the resin obtained from the Indian hemp plant, which has

not been submitted to any manipulations other than those necessary for packing and transport;

- (iii) any other intoxicating or narcotic drug or substance, which the State Government may, by notification, declare to be an intoxicating drug, for the purposes of this Act, such drug or substance not being opium, cocoa leaf or manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930 (Central Act 2 of 1930);
- (iv) any mixture with or without neutral materials of any of the above forms of intoxicating drug or any drink prepared therefrom;]

1. Substituted by Act 10 of 1967 w .e.f. 24.8.1967

(19) "liquor" includes spirits of wine, denatured spirits, wine, beer, toddy and all liquids consisting of or containing alcohol, and any other intoxicating substance, which the State Government may, by notification, declare to be liquor for the purpose of this Act;

(20) "manufacture" includes,-

- (a) every process, whether natural or artificial by which any liquor or intoxicating drug is produced, prepared or blended and also re-distillation and every process for the rectification of liquor; but does not include flavouring, blending or colouring of liquor or intoxicating drug lawfully possessed for private consumption, and
- (b) every process of producing and drawing of toddy from trees;

(21) "mhowra flower" means the flower of *passialatifolla* (Ippe), but does not include the berry or seed of the mhowra tree;

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

(23) "notification" means a notification published in the official Gazette;

(24) "permit" means a permit granted under the provisions of this Act and the expression "permit holder" shall be construed accordingly;

(25) "place" includes a house, shop, enclosure, building, shed, tent or vessel;

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

(27) "prescribed" means prescribed by the rules, orders and regulations made under this Act;

(28) "Prohibition Officer" means the Commissioner, a Deputy Commissioner, or any officer or person appointed to exercise any of the powers or to perform any of the duties and functions under the provisions of this Act;

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

(30) "Registered Medical Practitioner" means a person who is entitled to practise any system of medicine in the State under any law for the time being in force relating to medical practitioners;

(31) "sell", with its grammatical variations, includes, -

- (a) any transfer, whether such transfer is for any consideration or not;
- (b) any supply or distribution for mutual accommodation; and
- (c) the word "buy", with its grammatical variations, shall be construed accordingly;

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

(33) "State" means the '[State of Karnataka]', including the space within the limits of its territorial waters appertaining to it;

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(34) "sweet toddy or neera" means unfermented juice drawn from a cocoanut palm, palmyra, date, bagani or any tree of the species of palm or palmyra, into receptacles treated in the prescribed manner, so as to prevent fermentation;

(35) "territorial waters" with reference to the State, means any part of the open sea within a distance of six nautical miles measured from the appropriate base line according to the President's proclamation published in this behalf in the Government of India, Ministry of External Affairs, Notification No. S.R.O. 669, dated 22nd March 1956, or such other distance as may be fixed from time to time by the President hereafter;

(36) "toddy" means fermented or unfermented juice drawn from a cocoanut palm, palmyra, date, bagani or any tree of the species of palm or palmyra, and includes sweet toddy or neera;

(37) "to tap" means to prepare any part of a tree or to use any means for the purpose of causing juice to exude from the tree;

(38) "tourist" means a person, who is not a citizen of India and who is either born or brought up or domiciled in any country outside India, but who visits India on a tour for a temporary period;

(39) "transport" means to move from one place to another within the State, whether any intervening area lies wholly within the State or not.

CHAPTER II

ESTABLISHMENT AND CONTROL

3. Prohibition Commissioner.—The State Government may, by notification, appoint an officer of Government as Prohibition Commissioner, who, subject to the control of the State Government, and subject to such general or special orders as the State Government may, from time to time, make,—

(a) shall exercise such powers and shall perform such duties and such functions as are conferred upon the Commissioner, by or under the provisions of this Act,

(b) may exercise such powers and perform such duties and functions as are assigned by or under the provisions of this Act, to a Deputy Commissioner, and

(c) shall superintend the administration and carry out generally the provisions of this Act.

4. Deputy Commissioner.—(1) The Deputy Commissioner of a district shall within the limits of his jurisdiction exercise such powers and perform such duties and functions as are assigned by or under the provisions of this Act to a Deputy Commissioner, subject to such control as the State Government may from time to time direct.

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

(3) The State Government may, by notification, appoint any person other than the Deputy Commissioner of a district to exercise in any district or place, all the powers and perform all the duties and functions as are assigned by or under this Act to a Deputy Commissioner, subject to the control of the Prohibition Commissioner and such other control as the State Government may from time to time direct.

5. Subordinate officers.—To aid the Commissioner and the Deputy Commissioners in carrying out the provisions of this Act, the State Government may appoint such subordinate officers with such designations and confer on them such powers, duties and functions under this Act, rules, regulations or orders made thereunder, as may be deemed necessary.

6. Investing officers of other departments with powers and duties under this Act.—The State Government may invest any officer in the Police Department or any officer of any other Department with such powers, impose upon him such duties and direct him to perform such functions under this Act, rules or regulations or orders made thereunder, as may be deemed necessary and any such officer shall thereupon exercise the said powers, discharge the said duties and perform the said functions, in addition to the powers, duties and functions incidental to his principal office.

7. Board of Experts.—(1) For the purpose of determining whether,-

- (a) any medicinal or toilet preparation containing alcohol, or
- (b) any antiseptic preparation or solution containing alcohol, or
- (c) any flavouring extract, essence or syrup, containing alcohol,

-is or is not an article unfit for use as intoxicating liquor, the State Government shall constitute a Board of Experts.

(2) The Board of Experts constituted under sub-section (1) shall consist of such members, not less than three in number, with such qualifications as may be prescribed by rules. The members so appointed shall hold office during the pleasure of the State Government.

(3) Two members shall form a quorum for the disposal of the business of the Board.

(4) Any vacancy of a member of the Board shall be filled in as early as practicable:

Provided that during any such vacancy the continuing members may act, as if no vacancy had occurred.

(5) The procedure regarding the work of the Board shall be such as may be prescribed by rules.

(6) It shall be the duty of the Board to advise the State Government on the question whether any article mentioned in sub-section (1), containing alcohol, is unfit for use as intoxicating liquor and on such other matters incidental to the said question as may be referred to it by the State Government. On obtaining such advice, the State Government shall determine whether any such article is fit or unfit for use as intoxicating liquor or not and such article shall be presumed accordingly to be fit or unfit for use as intoxicating liquor, until the contrary is proved.

8. Committees.—(1) The State Government may appoint committees to advise and assist officers in carrying out the provisions of this Act.

(2) Such committees shall perform such functions as are provided by or under the provisions of this Act.

(3) The constitution of such committees and the procedure regarding their work shall be such as may be prescribed by rules.

(4) The State Government may direct that the members of such committees shall be paid such fees and allowances as may be prescribed by rules.

9. Medical Boards.—(1) The State Government may constitute one or more medical boards for such areas and consisting of such members as it may deem fit.

(2) A medical board so constituted shall perform such functions as are provided by or under this Act.

(3) The procedure regarding the work of the medical board shall be such as may be prescribed by rules.

(4) The members of the medical board shall be entitled to such fees and allowances as may be prescribed by rules.

10. Control of Commissioner over Prohibition Officers and other Officers.—In the exercise of their powers and in the discharge of their duties and functions under the provisions of this Act or rules, regulations or orders made thereunder, all Prohibition Officers and all officers including the officers of the Police and other Departments, shall, subject to the general or special orders of the State Government, be subordinate to and under the control of the Commissioner and shall be bound to follow such orders as the Commissioner may, from time to time, make.

11. Delegation.—(1) The State Government may, by notification, delegate any of the powers exercisable by it under section 5, section 6 or section 9 to the Commissioner or such other officer as it deems fit.

(2) Subject to the control and direction of the State Government, the powers conferred on the Commissioner or any other officer appointed or invested with powers under this Act may be delegated by him to any of his subordinates

CHAPTER III PROHIBITION

12. Prohibition of the manufacture of, traffic in and consumption of liquors and intoxicating drugs.—Save in the manner and to the extent provided by or under the provisions of this Act or in accordance with the terms and conditions of a licence, permit, pass or authorisation granted thereunder, no person shall,-

- (a) export, import, transport or possess liquor or any intoxicating drug; or
- (b) manufacture liquor or any intoxicating drug; or
- (c) cultivate or collect hemp or any portion of such plant from which any intoxicating drug can be manufactured; or
- (d) tap any toddy-producing tree, or permit or suffer to be tapped any toddy-producing tree belonging to him or in his possession; or
- (e) draw toddy from any tree, or permit or suffer toddy to be drawn from any tree belonging to him or in his possession; or
- (f) construct or work any distillery or brewery; or
- (g) use, keep or have in his possession any materials, still, utensil, implement, or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug or keep or have in his possession any materials which have undergone any process towards the manufacture of

liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured; or

- (h) bottle any liquor for sale; or
- (i) sell or buy liquor or any intoxicating drug; or
- (j) consume or use liquor or any intoxicating drug; or
- (k) allow any of the acts aforesaid upon premises in his immediate possession.

13. Alterations of denatured spirit or denatured spirituous preparations.—No person shall,-

- (a) alter or attempt to alter any denatured spirit or denatured spirituous preparation by dilution with water or by any method whatsoever with the intention that such spirit or preparation may be used for human consumption, whether as a beverage or an intoxicating liquor or internally as a medicine or in any other way whatsoever; or
- (b) have in his possession any denatured spirit or denatured spirituous preparation in respect of which he knows or has reason to believe that such alteration or attempt has been made.

14. Prohibition of soliciting use of intoxicant or hemp or doing any kind of action calculating to incite or encourage member of public to commit offence.—No person shall,-

- (a) solicit the use of or offer any intoxicant or hemp; or
- (b) do any act which is calculated to incite or encourage any member of the public or a class of individuals or the public in general to commit any offence under this Act, or to commit breach of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorisation granted thereunder.

15. Prohibition of publication of advertisements relating to intoxicants, etc.—(1) No person shall print or publish in any newspaper, news-sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter,-

- (a) which solicits the use of or offers any intoxicant or hemp; or
- (b) which is calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act, or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorisation granted thereunder.

(2) Save as otherwise provided in sub-section (3), nothing in this section shall apply to,-

- (a) catalogues or price-lists, which may be generally or specially approved by the Commissioner in this behalf;
- (b) any advertisement or other matter contained in any newspaper, news-sheet, book, leaflet, booklet, or other publication, printed and published in accordance with law, outside the State, but normally circulating within the State;
- (c) any advertisement or other matter contained in any newspaper printed and published in the State before such date as the State Government may, by notification, specify; and
- (d) any other advertisement or matter which the State Government may, by notification, generally or specially exempt from the operation of this section.

(3) Notwithstanding anything contained in sub-section (2), the State Government may, by notification, prohibit within the State the circulation, distribution or sale of any newspaper, news-sheet, book, leaflet, booklet or other publication printed and published outside the State, which contains any advertisement or matter of the nature described in clause (a) or (b) of sub-section (1).

16. This Chapter not to apply to certain articles.—Nothing in this Chapter shall be deemed to apply to,-

(1) any toilet, medicinal or antiseptic preparation or solution,

(2) any flavouring extract, essence or syrup, containing alcohol, which is unfit for use as intoxicating liquor:

Provided that such article corresponds with the description and limitations mentioned in section 49:

Provided further that the purchase, possession or use of any liquor or alcohol for the manufacture of any such article shall not be made or had, except under a licence granted under section 24.

CHAPTER IV

CONTROL, REGULATION AND EXEMPTION

17. Power to notify exemptions.—(1) The State Government may, by notification and subject to such conditions as it thinks fit, direct that,-

- (a) any preparation containing alcohol not exceeding a specified percentage by volume, or

- (b) any liquor or intoxicating drug or preparation containing such liquor or drug, and required for medicinal, scientific, industrial or such like purpose, 1[or]¹

¹[(c)members of the Armed Forces of the Union or of any other Armed Forces raised or maintained by the Union or attached to or operating with any of its Armed Forces:]¹

shall be exempt from any of the provisions of this Act or rules, regulations or orders made thereunder.

1. Inserted by Act 10 of 1967 w .e.f. 24.8.1967

(2) When issuing a notification under sub-section (1), the State Government shall have power to provide that a breach of any of the conditions subject to which the exemption is notified, shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.

18. Establishment of distilleries and warehouses for Intoxicants or licensing manufacture of Intoxicants.—The Commissioner may,-

- (a) establish a distillery in which spirit may be manufactured in accordance with a licence issued under this Act on such conditions as the State Government deems fit to impose;
- (b) discontinue any distillery established;
- (c) license, on such conditions as the State Government deems fit to impose, the construction and working of a distillery or brewery;
- (d) establish or license a warehouse wherein any liquor, intoxicating drug, hemp, mhowra flowers or molasses may be deposited and kept without payment of duty; and
- (e) discontinue any warehouse so established.
- (f) license on such conditions as the State Government deems fit to impose the manufacture of liquor or any intoxicating drug by any person.

19. Intoxicating drug or hemp not to be removed from warehouse.—No liquor, intoxicating drug, hemp, mhowra flowers or molasses shall be removed from any distillery, warehouse or other place of storage established or licensed under this Act, except under a pass and unless the duty, if any, imposed under the provisions of this Act, has been paid or a bond has been executed for the payment thereof.

20. Passes for import, etc.—(1) The Commissioner, or a Deputy Commissioner, or any other officer authorised by the State Government may grant passes for the import, export or transport of any liquor, intoxicating drug or hemp.

(2) Such passes may be either general for definite periods of time and definite kinds of liquor, intoxicating drug or hemp, or special for specified occasions and particular consignments only.

(3) Every such pass shall specify—

- (a) the name of the person authorised to import, export or transport liquor, intoxicating drug or hemp;
- (b) the period for which the pass is to be in force;
- (c) the quantity and description of liquor, intoxicating drug or hemp for which it is granted; and
- (d) the places from and to which liquor, intoxicating drug or hemp are to be imported, exported or transported, and in the case of places more than ten miles apart, the route by which they are to be conveyed.

21. Passes for through consignments.—The through transport of any consignment of any intoxicant, hemp, mhowra flowers or molasses by a railway administration or by any steamer, ferry, road transport or air service shall be under such passes and subject to such conditions as may be prescribed by rules.

22. Licences for possession of denatured spirit, rectified spirit and alcohol for industrial or medicinal purposes.—The State Government, or, subject to its control, the Deputy Commissioner, may grant licences for the possession of denatured spirit, rectified spirit, and alcohol for industrial or medicinal purposes, if such spirit or alcohol is, in the opinion of the State Government or the Deputy Commissioner, as the case may be, necessary for scientific, industrial, medicinal or similar purposes:

Provided that no licence shall be necessary for the possession of denatured spirit to the extent of such quantity as may be prescribed by rules.

23. Licences for bona fide medicinal or other purposes.—The State Government, or, subject to its control, the Deputy Commissioner, may grant licence to any person or in respect of any institution, whether under the management of Government or not, for the manufacture, export, import, transport, sale, possession, consumption or use of liquor, any intoxicating drug or hemp or any article containing liquor, intoxicating drug or hemp on the ground that such liquor, intoxicating drug, hemp or article is required by such person or in respect of such institution for a bona fide medicinal, scientific, industrial or such like purpose, or for sale, for any of the aforesaid purposes:

Provided that when any liquor, intoxicating drug, or hemp has been obtained by any person for a bona fide medicinal purpose from any person or institution, licensed to sell the same under this section, it shall not be necessary for such person to obtain a licence for the possession, consumption or use of the same.

24. Licence for purchase, etc., of liquor for manufacture of articles mentioned in section 16.—The State Government, or, subject to its control, the Deputy Commissioner, may grant licences for the purchase, possession or use of any liquor or alcohol for the manufacture of any article mentioned in section 16 on s

25. Licence for tapping for neera.—Subject to the control of the State Government, the Deputy Commissioner or any officer empowered by him, may grant,-

- (a) licences for tapping of, or drawing juice from, any palm tree for the purpose of sale or consumption as sweet toddy or neera or for the manufacture of jaggery or any other article which is not an intoxicant; or
- (b) permits for the possession, transport or sale of such sweet toddy or neera.

26. Licences for tapping toddy in specified areas.—(1) The State Government, or, subject to its control, the Deputy Commissioner, may issue licences to any person for tapping of trees for toddy in any area specified in such licence and for the possession, manufacture, transport and export of such toddy.

(2) The provisions of the Mysore Excise Act, 1901, or any corresponding law in force in any area of the State, and the rules made thereunder, shall, notwithstanding anything contained in this Act, apply to the tapping of trees for toddy and the possession, manufacture, transport and export of toddy licensed under sub-section (1).

27. Trade and import licences.—The State Government, or, subject to its control, the Deputy Commissioner, may grant trade and import licences to persons intending to import and to sell by wholesale any liquor, intoxicant drug or hemp.

28. Vendors' licences.—The State Government, or, subject to its control, the Deputy Commissioner, may grant a vendor's licence subject to the following conditions:—

- (i) the stock of foreign liquor with the licensee (except what is permitted for disposal in the shop) shall be kept by him at a warehouse approved by Government;
- (ii) the licensee shall be allowed to select his own warehouse and fix its rent with the owner:

Provided that on failure to select such warehouse, the warehouse shall be selected by the licensing authority;

- (iii) the licensee shall pay all rents, costs, charges and expenses incidental to warehousing and supervision;

- (iv) the licensee may sell any part of the stock of foreign liquor to licensees in the State or to any persons outside the State, subject to such conditions as the Commissioner may prescribe;

(v) the licensee may sell only to holders of permits or authorisations;

(vi) the licensee shall be entitled to keep in his shop such quantities of liquor as may be permitted by the licensing authority from time to time for retail sale;

(vii) the licensee shall keep account and shall dispose of the goods according to such instructions as may be given by the Commissioner or any officer authorised in this behalf by the Commissioner.

29. Licences to ship companies and to masters of ships.—The State Government, or, subject to its control, the Deputy Commissioner or any other officer authorised by rules or an order in writing by the State Government, may grant licences to any shipping company for each ship or to the master of any ship to sell foreign liquor and permit the use and consumption of foreign liquor on such ship on such conditions as may be prescribed.

30. Permission to use or consume foreign liquor on war ships, troop ships and in messes and canteens of Armed Forces.—The State Government may, on such conditions as may be specified by a general or special order, permit,-

(i) the sale of foreign liquor to, or

(ii) the purchase, use or consumption of such liquor by,-

(a) the members of the Armed Forces in messes and canteens,

(b) the crew of war ships or troop ships and the members of the Armed Forces thereon.

31. Permits to foreigners residing temporarily in India.—(1) The State Government, or, subject to its control, the Commissioner, the Deputy Commissioner or a Committee appointed for the purpose, may grant permits to persons for the use or consumption of foreign liquors for such quantities as may be prescribed subject to the following conditions:—

(a) that such person is not a minor, and

(b) that such person was either born and brought up or domiciled in any country outside India, where such liquor is being used or consumed or such person is on the Register of Foreigners, maintained under the Registration of Foreigners' Act, 1939, and is not domiciled in India:

Provided that, in the case of any person falling under clause (b), such person has been residing and intends to reside in India temporarily and that such person has a fixed and settled purpose of making his sole and permanent home in any country outside India and that such person has been ordinarily using or consuming such liquor.

(2) If any question arises whether the conditions imposed by clause (a) or (b) of sub-section (1) are satisfied or not, in any case, the State Government shall decide the question and its decision shall be final.

32. Health permits.—(1) The State Government, or, subject to its control, the Deputy Commissioner, may grant a health permit for the use or consumption of liquor to any person who requires such liquor for the preservation or maintenance of his health:

Provided that no such permit shall be granted to a minor.

(2) Such permits shall be granted for such quantity and shall be subject to such further conditions as may be prescribed.

33. Emergency permits.—(1) The State Government, or, subject to its control, the Deputy Commissioner, may grant emergency permits for the use or consumption of brandy, rum or champagne, or any other kind of liquor to any head of a household for the use of his household for medicinal use on emergent occasions:

Provided that the person to whom a permit is granted under this section may allow the use or consumption of liquor in respect of which the permit has been granted by any other person, who requires the use thereof for medicinal purposes on emergent occasions:

Provided further that no permit shall be granted to more than one member of a household at any one time.

(2) When a person to whom an emergency permit is granted allows the use or consumption of liquor held by him under the said permit by any other person on the occasion referred to in the first proviso to sub-section (1), the person holding the emergency permit shall intimate the said fact, in such manner and at such time as may be prescribed, to the authority granting the permit or to an officer appointed by the State Government in this behalf.

(3) Such a permit shall be granted for such quantities and shall be subject to such further conditions as may be prescribed.

Explanation.—For the purposes of this section, a household shall mean a group of persons residing and messing jointly as members of one domestic unit.

34. Special permits to foreign sovereigns, etc.—The State Government may grant special permits for the use or consumption of foreign liquor to any person, who is,-

(a) a sovereign or head of a foreign State;

(b) an Ambassador, diplomatic envoy or Consul, Honorary Consul or Trade, Commerce or other Representative of a foreign State;

(c) a member of the staff appointed by, or serving under, any person specified in clause (a) or (b), provided that such member is a national of a foreign State; and

(d) the Consort of any person specified in clause (a), clause (b) or clause (c) or any relation of such person dependent upon him.

35. Permits to be non-transferable.—Permits granted under section 31, section 32, section 33 or section 34 shall be non-transferable.

36. Authorisation for sacramental purposes.—(1) The State Government, or subject to its control, the Deputy Commissioner, may grant any authorisation to any person for the use of liquor for sacramental purposes or for the manufacture of liquor for use for sacramental purposes:

Provided that the State Government or the Deputy Commissioner is satisfied that the use of such liquor is required in accordance with the religious tenets of the community to which such person belongs.

(2) An authorisation under this section shall be granted on the recommendation of the person, who consistently with the religious tenets of the community to which the person applying for such authorisation belongs, exercises control over sacramental matters relating to such community and has been approved by the State Government in that behalf.

(3) If in any community there is no person who exercises control over sacramental matters relating to such community, and if, in the opinion of the State Government, it is so desirable, the authorisation under this section may be granted on the recommendation of such member of the community, as may be approved by the State Government in this behalf.

(4) If any dispute arises whether use of liquor is required by any person for sacramental purposes, the person requiring such use may apply to the Commissioner and the Commissioner, after holding a summary enquiry in the prescribed manner, shall decide whether or not the liquor is required by the person for sacramental purposes.

(5) The decision of the Commissioner under sub-section (4) shall be final.

37. Tourists' Permits.—(1) The State Government, or subject to its control, the Deputy Commissioner may grant tourists' permits to consume, use or buy foreign liquor to a person who is a tourist.

(2) A tourist's permit may be granted for the period of the tourist's intended stay in the State, but shall in no case be granted for a period exceeding three months.

(3) Such permits shall be available at such places as may be notified by the Commissioner in this behalf.

38. Interim Permits.—(1) Notwithstanding anything contained in section 31, section 32 and section 34, the State Government or, subject to its control, the Deputy Commissioner may grant interim permits to persons applying for permits under any of the said provisions.

(2) Such interim permits shall not be granted for any period exceeding one month.

39. Regulation of use or consumption of foreign liquor by certain Permit-holders.—(1) No holder of a permit granted under any of the provisions of this Act, other than section 33, shall drink in a public place, in any vehicle parked in a public place or in any room in a hotel or any institution provided the public have access to such room.

(2) No holder of a permit granted under section 32 shall allow the use or consumption of any part of the quantity of liquor held by him by any other person.

(3) No holder of a permit granted under section 31, section 34, section 37 or section 38, shall allow the use or consumption of any part of the quantity of liquor held by him under the permit by any other person who is not the holder of any such permit.

40. Licence for consumption or use of intoxicating drugs.—The State Government, or subject to its control the Deputy Commissioner, may grant licences, on the certificate of the Medical Board, for the consumption or use of intoxicating drugs in such quantities as may be prescribed.

41. Regulation of sale, etc., of ware housed intoxicants or hemp.—The State Government may by rules made in this behalf, regulate the sale, custody or removal of ware-housed intoxicants or hemp.

42. Regulation of import, export, etc., of mhowra flowers.—(1) No person shall export, or import, mhowra flowers, except under a pass granted by the Deputy Commissioner or an officer authorised in this behalf.

(2) No person or head of a household on his behalf or on behalf of the members of his household, shall in the aggregate collect or transport or sell or buy or have in his possession mhowra flowers exceeding the prescribed limit in weight, except under the authority and subject to the conditions of a licence, permit or pass granted by the Deputy Commissioner or an officer authorised in this behalf:

Provided that no licence, permit or pass shall be necessary for the collection, transport, sale, purchase or possession within such area and during such period (hereinafter called "vocation period") as the State Government may, by notification, notify, of any quantity of mhowra flowers, which shall be the produce of that year and of that area:

Provided further that unless the State Government by a notification, otherwise directs, no licence, permit or pass shall be necessary for the transport by rail of any quantity of mhowra flowers through an area which has no vocation period or the vocation period for which has expired at the time when the transport takes place, provided that,-

- (i) the said flowers are not unloaded in transit, and

- (ii) there is a vocation period at the place from which and to which the said flowers are transported at the time when the said flowers are despatched or arrive, as the case may be.

Explanation.—For the purposes of this sub-section, a household shall mean a group of persons residing and messing jointly as members of one domestic unit.

43. Control and export, etc., of molasses.—(1) Except as otherwise provided in sub-section (2), no person shall export, import, transport, sell or have in his possession any quantity of molasses:

Provided that no manufacturer of jaggery from sugarcane shall be liable for possession of molasses which is the by product of the process and is not in excess of such quantity as may be prescribed.

(2) The State Government or, subject to its control, the Deputy Commissioner may grant,-

- (a) licences for the export, import, sale or possession of molasses, or
- (b) permits for the transport of molasses.

44. General conditions regarding licences, etc.—¹[(1)]¹ All licences, permits, passes or authorisations granted under this Act shall be in such form and shall, be subject to such conditions as may be prescribed and shall be granted on payment of the prescribed fee:

1. Re-numbered by Act 10 of 1967 w .e.f. 24.8.1967

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

1. Inserted by Act 10 of 1967 w .e.f. 24.8.1967

Provided that every licence, permit, pass or authorisation shall be granted only on the condition that the holder thereof undertakes, and in the opinion of the officer authorised to grant the licence, permit, pass or authorisation, is likely to abide by all the conditions of the licence, permit, pass or authorisation and the provisions of this Act.

45. Power to cancel or suspend licences and permits.—(1) The Commissioner or any officer authorised in this behalf, may cancel or suspend any licence, permit, pass or authorisation granted under this Act,-

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

- (b) if the purposes for which the licence, permit, pass or authorisation was granted ceases to exist;
- (c) in the event of any breach by the holder of such licence, permit, pass or authorisation or by his servants or by any one acting with his express or implied permission on his behalf of any of the terms and conditions of such licence, permit, pass or authorisation or of any licence, permit, pass or authorisation previously held by the holder;
- (d) if the holder thereof or any person in the employ of such holder or any person acting with his express or implied permission on his behalf, is convicted of any offence under this Act, or if the holder of the licence, pass, permit or authorisation is convicted of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs Act, 1930 (Central Act II of 1930), or under the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958), or any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, or any offence punishable under Article 8 of the Schedule to section 167 of the Sea Customs Act, 1878 (Central Act VIII of 1878).

(2) Where a licence, permit, pass or authorisation held by any person is cancelled under sub-section (1), the authority aforesaid may cancel any other licence, permit, pass or authorisation granted or deemed to have been granted to such person under this Act.

46. Holder of licence, etc., not entitled to compensation or refund of fee, for cancellation or suspension.—No holder of a licence, permit, pass or authorisation shall be entitled to any compensation for the cancellation or suspension of the licence, permit, pass or authorisation under section 45, nor to refund of any fee or deposit made in respect thereof.

47. Cancellation for other reasons.—(1) Whenever the authority granting the licence considers that it should be cancelled for any cause other than those specified in section 45, he may cancel the licence either,—

- (a) on the expiration of not less than fifteen days' notice in writing of his intention to do so; or
- (b) forthwith without notice after recording his reasons in writing for doing so.

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

48. Right to title or interest under licence not liable to be sold or attached in execution.—Notwithstanding anything contained in any law for the time being in

force, no right, title or interest in any licence, permit, pass or authorisation granted under this Act, shall be liable to be sold, transferred or attached in execution of any process of any Civil or any other Court.

49. Control and regulation of articles mentioned in section 16 to prevent their use as intoxicating liquor.—(1) No manufacturer of any of the articles mentioned in section 16 shall sell, use or dispose of any liquor produced or processed for the purpose of such manufacture under the provisions of this Act, otherwise than as an ingredient of the articles authorised to be manufactured therefrom. No more alcohol shall be used in the manufacture of any of the articles mentioned in section 16 other than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the articles:

Provided that in the case of manufacture of any of the articles mentioned in section 16 in which the alcohol is generated by a process of fermentation, the amount of such alcohol shall not exceed twelve per cent.

(2) No person shall,-

- (a) knowingly sell any article mentioned in section 16 for being used as an intoxicating drink; or
- (b) sell any such article under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes.

50. Analysis of articles mentioned in section 16.—(1) Whenever the Commissioner has reason to believe that any of the articles mentioned in section 16 does not correspond with the description and limitations provided in section 49, he shall cause an analysis of the said article to be made and if upon such analysis, the Commissioner shall find that the said article does not so correspond, he shall give not less than fifteen days' notice, in writing, to the person who is the manufacturer thereof or is known or believed to have imported such article, to show cause why the said article should not be dealt with as an intoxicating liquor, such notice to be served personally or by registered post, as the Commissioner may determine, and shall specify the time when, the place where, and the name of the officer before whom, such person is required to appear.

(2) Whenever the Commissioner causes an analysis of an article mentioned in section 16 to be made under sub-section (1), he may require the person who is the manufacturer thereof or who is known or believed to have imported such article not to sell, distribute, or otherwise deal with such article or to remove it from any place without the previous permission of the Commissioner for any period not exceeding three months from the date of such requisition or till the result of the analysis is known and communicated to him, whichever is earlier; and thereupon such manufacturer or person shall comply with such request during the said period.

CHAPTER V EXCISE DUTY

51. Excise duties.—An excise duty or countervailing duty, as the case may be, at such rate or rates as the State Government shall by rules direct, may be imposed either generally or for any specified area, on any excisable article, when imported, exported, transported, possessed, manufactured or sold, in or from the State, as the case may be:

Provided that no duty shall be so imposed on any article which has been imported into the territory of India and so liable on such importation to duty under the Indian Tariff Act, 1934 (Central Act XXXII of 1934), or 1[the Customs Act, 1962 (Central Act 52 of 1962)]¹.

1. Substituted by Act 10 of 1967 w .e.f. 24.8.1967

Explanation.—Duty may be imposed under this section at different rates according to places to which an excisable article is to be removed for consumption or according to the varying strengths or quality of such article.

52. Manner of levying excise duties.—Subject to such rules regulating the time, place and manner of payment as may be made by the State Government in this behalf, the duties referred to in section 51 may be levied in one or more of the following ways:—

(a) in the case of an excisable article imported, -

- (i) by payment either in the State at the time of its import or in the State or territory of export at the time of its export; or
- (ii) by payment upon issue for sale from a warehouse established or licensed under the provisions of this Act;

(b) in the case of an excisable article exported, by payment in the State at the time of its export, or in the State or territory of import;

(c) in the case of an excisable article transported, -

- (i) by payment in the district from which they are transported; or
- (ii) by payment upon issue for sale from a warehouse established or licensed under the provisions of this Act;

(d) in the case of spirit or beer manufactured in any distillery established or any distillery or brewery licensed under this Act, -

- (i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued from a warehouse established or licensed under this Act; or

- (ii) by a rate charged in accordance with such scale of equivalents calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe;

(e) in the case of intoxicating drugs manufactured in the State, by payment upon quantities produced or manufactured or issued from a warehouse established or licensed under this Act: Provided that where payment is made upon issue for sale from a warehouse established or licensed under this Act, such payment shall be at the rate of duty enforced on the date of issue from the warehouse: Provided further that where one and the same person is permitted—

- (i) to manufacture or import and to sell, or
- (ii) to manufacture and export, country liquor or any intoxicant,

-such duty may be levied in consideration of the joint privileges granted, as the Deputy Commissioner deems fit.

53. Power to exempt, remit or refund excise duty.—Subject to such rules as shall be made by the State Government in this behalf, the Commissioner may remit or refund wholly or partially any fee in respect of any privilege, licence, permit, pass or authorisation granted under this Act, or duty on toddy-producing trees or excise duty or fee leviable under this Act on any intoxicants, hemp, mhowra flowers or molasses from any person, or institution or class of persons or institutions or exempt such person or institution from the payment of such duty or fee.

54. Declaration of stock of articles mentioned in section 16.—Every person, who imports or manufactures any of the articles mentioned in section 16 shall,-

(a) submit to the Deputy Commissioner within such period and in such form, as may be prescribed, a declaration of the quantity of such article in his possession on the importation or manufacture of the said article, as the case may be;

(b) maintain accounts of the articles in such form and submit such returns as may be prescribed.

55. Power to obtain information and to search and seize excisable articles.—The Deputy Commissioner or any officer empowered by the State Government in this behalf, may subject to such conditions as may be prescribed,-

(a) require, by order, any person liable to pay any excise duty or fee under this Chapter, to furnish him with any information or to produce before him any accounts or other documents concerning any excisable article as may be necessary for the purposes of this Chapter;

(b) inspect at all reasonable hours the accounts or other documents relating to the stocks of any excisable article imported or manufactured or stored in respect of

which such duty or fee has been paid or is payable and any place where such article is manufactured or stored;

(c) enter, for reasons to be recorded in writing, any such place where he knows, or has reason to believe, that any excisable article in respect of which such duty or fee has not been paid, is being imported or manufactured or stored and search for the same and seize any stocks of such article found therein and detain the same until such time as proof of payment of such duty or fee is produced or such further time, as may be necessary for taking action under section 94, 95 or 96 or for prosecuting for an offence under section 68.

'[56. x x x]'

1. Omitted by Act 10 of 1967 w .e.f. 24.8.1967

57. Recovery of duties, etc.—All duties, taxes, fines (except fines imposed by a Court) and fees leviable under any of the foregoing provisions of this Act or of any licence, permit, pass or authorisation granted under it, may be recovered from any person liable to pay the same or from his surety, if any, as if they were arrears of land revenue.

CHAPTER VI

PENALTIES AND OFFENCES

58. Penalty for illegal import, etc., of intoxicants or hemp.—Whoever, in contravention of the provisions of this Act or of any rule or order made or of any licence, pass, permit or authorisation granted thereunder,—

- (a) imports or exports any intoxicant or hemp;
- (b) manufactures any intoxicant;
- (c) constructs or works any distillery or brewery;
- (d) bottles liquor;
- (e) sells or buys any liquor or intoxicant or hemp;

(f) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus for the purpose of manufacturing any intoxicant other than today;

(g) keeps or has in his possession any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured,

-shall, on conviction, be punished,-

(i) for a first offence, 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 any special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and fine shall not be less than five hundred rupees;

(ii) for a second offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary, to be mentioned in the judgment of the Court, such imprisonment shall not be less than nine months, and fine shall not be less than one thousand rupees;

(iii) for a third and subsequent offences, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and fine shall not be less than one thousand rupees.

59. Penalty for illegal cultivation and collection of hemp and other matters.—Whoever, in contravention of the provisions of this Act, or of any rule or order made, or of any licence, permit, pass or authorisation issued thereunder,-

(a) cultivates or collects hemp or collects any portion of hemp plant from which any intoxicating drug can be manufactured;

(b) consumes, uses, possesses or transports any intoxicant or hemp;

(c) taps or permits or suffers to be tapped, any toddy-producing tree;

(d) draws or permits or suffers to be drawn, toddy from any tree;

-shall, on conviction, be punished,-

(i) for a first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees

(ii) for a second offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees;

(iii) for a third and subsequent offences, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than nine months and fine shall not be less than one thousand rupees.

60. Penalty for alteration or attempt to alter denatured spirit or denatured spirituous preparation.—Whoever, in contravention of section 13, alters or attempts to alter any denatured spirit or any denatured spirituous preparation or has in his possession any such spirit or preparation in respect of which he knows or has reason to believe that any such alteration or attempt at alteration has been made, shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees.

61. Penalty for manufacture of articles mentioned in section 16 in contravention of provisions of section 49.—(1) Whoever, in contravention of the provisions of section 49,—

- (a) sells, uses or disposes of any liquor otherwise than as an ingredient of any article mentioned in section 16, or
- (b) uses more alcohol in the manufacture of such article which may be used as intoxicating liquor than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of such article, or
- (c) knowingly sells any such article for being used as an intoxicating drink, or sells any such article under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purpose,

-shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine or with both.

(2) No person, who has been convicted for any offence under this section or has paid any sum of money for compounding such offence shall be entitled to manufacture, import, or to sell any article mentioned in section 16 for a period of one year from the date of such conviction or payment, and any person who imports, manufactures or sells any such article in contravention of this sub-section, shall be liable to the same punishment as is provided for an offence punishable under section 58.

62. Penalty for failure to satisfy the Commissioner under sub-section (1) or to comply with a requisition under sub-section (2) of section 50.—(1) If the manufacturer of any of the articles mentioned in section 16 fails to show, to the satisfaction of the Commissioner, that the article corresponds to the description and

limitations provided in section 49, his licence for the purchase, use or possession of liquor or alcohol for the manufacture of such article shall be revoked.

(2) Any person, who fails to comply with any requisition made by the Commissioner under sub-section (2) of section 50 shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine or with both.

63. Penalty for illegal import, etc., of mhowra flowers.—Whoever in contravention of the provisions of section 42 or of any rule or order made or licence, permit or pass granted under this Act, imports, exports, collects, transports, sells, buys or has in his possession mhowra flowers shall, on conviction, be punished,-

(i) for a first offence, with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees;

(ii) for a second offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees;

(iii) for a third and subsequent offences, with imprisonment which may extend to two years and with fine which may extend to two thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than nine months and fine shall not be less than one thousand rupees:

Provided further that no person shall be punished in respect of any mhowra flowers which are either growing on a tree or are lying uncollected on the ground as they have fallen from a tree.

64. Penalty for illegal import, etc., of molasses.—Whoever, in contravention of the provisions of section 43 or of any rule or order made or of any licence or permit granted under this Act, exports, imports, transports, sells or has in his possession molasses shall, on conviction, 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:

Provided that no manufacturer of jaggery from sugarcane shall be liable for possession of molasses which is a by-product of the process and is not in excess of such quantity as may be prescribed.

65. Penalty for printing or publishing advertisement relating to intoxicants or circulating newspapers, etc., containing such advertisements.—Whoever, in contravention of the provisions of section 15 or of any rule or order made under this Act,—

(1) prints or publishes in any newspaper, news-sheet, book, leaflet, booklet or any single or periodical publication or otherwise displays or distributes any advertisement or other matter,

(2) circulates, distributes or sells any newspaper, news-sheet, book, leaflet, booklet, or other publication printed and published outside the State, which contains any advertisement or matter,—

(a) which solicits the use of or offers any intoxicant or hemp, or

(b) which is calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act or to commit a breach of or to evade the provisions of any rule or order made, or of the conditions of a licence, permit, pass or authorisation granted thereunder,

-shall, on conviction, 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.

66. Penalty for inciting or encouraging certain acts.—Whoever in contravention of the provisions of section 14 or of any rule or order made under this Act,—

(a) solicits the use of or offers any intoxicant or hemp, or

(b) does any act, which is calculated to incite or encourage any individual or class of individuals or the public generally to commit an offence under this Act or commit a breach of any rule or order made or of the conditions of a licence, permit, pass or authorisation granted thereunder,

-shall, on conviction, 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.

67. Penalty for non-compliance with order made under section 55.—Whoever,—

(a) fails to furnish any information or produce any accounts or other documents in compliance with an order made under clause (a) of section 55, or

(b) obstructs any officer making inspection, entry, search or seizure under clause (b) or clause (c) of section 55,

-shall, on conviction, 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.

68. Penalty for import, etc., of intoxicant without payment of duty.—Whoever, imports, exports, transports, possesses, sells or manufactures any intoxicant or hemp without payment of duty or fee provided for under this Act, shall, on conviction, in addition to being required to pay such duty or fee, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or the amount of such duty or fee, whichever is greater, or with both.

69. Penalty for misconduct of licensee, etc.,—Whoever, being the holder of a licence, permit, pass or authorisation granted under this Act, or a person in the employ of such holder or acting with his express or implied permission on his behalf,—

(a) fails to produce the licence, permit, pass or authorisation on demand by a Prohibition Officer or any other officer duly empowered, or

(b) wilfully does or omits to do anything in contravention of any rule made under this Act, or

(c) wilfully does or omits to do anything in breach of any of the conditions of such licence, permit, pass or authorisation, not otherwise provided for under this Act,

—shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both.

70. Penalty for misconduct by licensed vendor or manufacturer.—Whoever, being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or person in the employ of such holder or acting with the express or implied permission on his behalf,—

(a) mixes or permits to be mixed with the said intoxicant any noxious drug or any foreign ingredient likely to add to the actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under this Act, or water except for the purpose of reducing liquor to the strength prescribed in the licence, or any diluting or colouring substance or any ingredient whatsoever likely to render the intoxicant inferior in quality, whether such ingredient is or is not prohibited as aforesaid, when such admixture shall not amount to the offence of adulteration under section 272 of the Indian Penal Code, or

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

(c) marks the cork of any bottle or any bottle, case, package, or other receptacle containing country liquor, or uses any bottle, case, package or other receptacle containing country liquor with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case or package or other receptacle contains foreign liquor when such act shall not amount to an offence of

using a false trade mark with intent to deceive or injure any person under section 482 of the Indian Penal Code, or

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

(e) sells any intoxicant which is not of the nature, substance and quality demanded by the purchaser or keeps or exposes for sale any intoxicant which is not of the nature, substance and quality authorised by the terms of the licence to be kept for sale by the holder of the licence,

-shall, on conviction, be punished for each offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees.

71. Liability of licensee for acts of servants.—The holder of a licence, permit, pass or authorisation granted under this Act, shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting with his express or implied permission on his behalf, under the provisions of this Act, as if he himself had committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence:

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

72. Import, export, etc., of intoxicant by any person on account of another.—(1) Whenever any intoxicant, hemp, mhowra flowers or molasses are manufactured, imported, exported, transported, sold or possessed by any person on account of another person and such other person knows, or has reason to believe that such manufacture, import, export, transport, sale or possession is on his account, the intoxicant hemp, mhowra flowers or molasses, as the case may be, shall for the purposes of this Act be deemed to have been manufactured, imported, exported, transported or sold by, or in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person from liability to any punishment under this Act, for the unlawful manufacture, export, import, transport, sale or possession of such article.

73. Penalty for attempt or abetment.—Whoever attempts to commit or abets the commission of an offence under this Act shall, on conviction, be punished for such attempt or abetment with the same punishment as is provided for the principal offence.

74. Breach of licence, permit, etc., to be an offence.—(1) In the event of any breach by the holder of any licence, permit, pass or authorisation granted under this Act, or by his servants or by any person acting with his express or implied permission

on his behalf, of any of the terms or conditions of such licence, permit, pass or authorisation, such holder, shall, in addition to the cancellation or suspension of the licence, permit, pass or authorisation granted to him, be punished, on 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, unless it is proved that all due and reasonable precautions were exercised by him to prevent any such breach.

(2) Any such person who commits any such breach shall, whether he acts with or without the permission of the holder of the licence, permit, pass or authorisation, be liable to the same punishment.

75. Penalty for conspiracy.—When two or more persons agree, -

(a) to commit or cause to be committed any offence under this Act, or

(b) to commit a breach of the conditions of a licence, permit, pass or authorisation,

-each of such persons, shall, on conviction, be punished with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

76. Penalty for being drunk and for disorderly behaviour.—Whoever, -

(1) in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access—

(a) is drunk and is incapable of taking care of himself, or

(b) behaves in a disorderly manner under the influence of drink, or

(2) not being the holder of a permit granted under the provisions of this Act or is not eligible to hold a permit under section 31, section 34 or section 37 is found drunk in any place,

-shall, on conviction, be punished, -

(a) for a first offence, with imprisonment for a term which may extend to one month, and with fine which may extend to two 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 imprisonment shall not be less than seven days and fine shall not be less than twenty-five rupees;

(b) for a second and subsequent offences, with imprisonment for a term 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 imprisonment shall not be less than one month and fine shall not be less than one hundred rupees.

In a prosecution for an offence under clause (1), it shall be presumed, unless the contrary is proved that the person accused of the said offence has drunk liquor or consumed any other intoxicant for the purpose of being intoxicated and not for a medicinal purpose.

77. Penalty for allowing any premises to be used for the purpose of committing an offence under this Act.—(1) Whoever being the owner or occupier or having the use or care or management or control of any place, knowingly permits it to be used for the purpose of commission by any other person of any offence punishable under this Act, shall, on conviction, be punished with imprisonment for a term, which may extend to six months or with fine which may extend to 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 imprisonment shall not be less than three months and fine shall not be less than five hundred rupees.

(2) It shall be presumed until the contrary is proved that the person accused of an offence under sub-section (1) has committed such offence, if the offence committed by that other person is proved to have been committed in the premises in his immediate possession.

78. Penalty for chemist, druggist, etc., for allowing his premises to be used for the purpose of consumption of liquor.—A chemist, druggist, apothecary or keeper of a dispensary who allows any liquor which has not been bona fide medicated for medicinal purposes according to the prescription of a registered medical practitioner or any intoxicating drug to be consumed on his business premises by any person, shall, on conviction, 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.

79. Penalty for issuing false prescriptions.—If a registered medical practitioner issues a prescription with the intention that such prescription shall be used by the person to whom it is issued for the purpose of consuming liquor or intoxicating drug in contravention of the provisions of this Act, or rule or order made thereunder or any licence, permit, pass or authorisation granted under this Act, he shall, on conviction, 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.

80. Penalty for maliciously giving false information.—Any person who, maliciously and falsely gives information to any person exercising powers under this Act leading to a search, seizure, detention or arrest, shall, on conviction, 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.

81. Punishment for vexatious search, seizure or arrest.—Any officer or person exercising powers under this Act, who, -

(a) maliciously enters or searches or causes to be entered or searched, any building or house or similar dwelling place; or

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

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

(d) in any other way maliciously exceeds or abuses his lawful powers,

-shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

82. Punishment for vexatious delay.—Any officer or person, who vexatiously and unnecessarily delays forwarding to the officer in charge of the nearest Police Station any person arrested or article seized under this Act, shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

83. Punishment for abetment of escape of persons arrested.—Any officer exercising powers under this Act, who, -

(a) unlawfully releases any person arrested under this Act, or

(b) abets the escape of any person arrested under this Act; or

(c) abets the commission of any offence against this Act, and any other officer of the State Government or of a local authority who abets the commission of any offence against this Act,

-shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

84. Penalty for offences not otherwise provided for.—Whoever is guilty of any wilful act or intentional omission in contravention of any provision of this Act, or any rule, regulation or order thereunder or of any licence, permit, pass or authorisation granted under this Act and if such act or omission is not otherwise made an offence under this Act, shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

CHAPTER VII

SPECIAL RULES OF EVIDENCE AND PROCEDURE REGARDING TRIAL OF OFFENCES

85. Presumption as to commission of offence in certain cases.—(1) In prosecutions under any of the provisions of this Act, it shall be presumed without further evidence, until the contrary is proved, that the accused person has committed

an offence under this Act in respect of any intoxicant, hemp, mhowra flowers or molasses or any still, utensil, implement or apparatus whatsoever for the manufacture of any intoxicant as are ordinarily used for the manufacture of such intoxicant or any materials, which have undergone any process towards the manufacture of any intoxicant or from which an intoxicant has been manufactured for the possession of which he is unable to account for satisfactorily.

(2) In prosecutions under section 60, it shall be presumed without further evidence until the contrary is proved that the accused person has committed an offence under that section in respect of any denatured spirit or denatured spiritous preparation which has been or attempted to be altered in contravention of the provisions of section 13.

(3) Subject to the provisions of sub-section (4), where in any trial of an offence under clause (b) of section 59 for the consumption of an intoxicant, it is alleged that the accused person consumed liquor and it is proved that the concentration of alcohol in the blood of the accused person is not less than 0.05 per cent, then the burden of proving that the liquor consumed was a medicinal or toilet preparation or an antiseptic preparation or solution or a flavouring extract, essence or syrup, containing alcohol, the consumption of which is not in contravention of this Act or any rules or orders made thereunder, shall be upon the accused person, and the Court shall in the absence of such proof, presume the contrary.

(4) The provisions of sub-section (3) shall not apply to the consumption of any liquor,-

- (a) by indoor-patients during the period they are being treated in any hospital, convalescent home, messing home, or dispensary, maintained or supported by Government or a local authority, or by charity, or
- (b) by such other person, in such other institutions or in such circumstances as may be prescribed.

86. Documents or reports of registered medical practitioners, etc., as evidence.—Any document purporting to be,-

- (a) a certificate under the hand of a Registered Medical Practitioner or the Chemical Examiner or Assistant Chemical Examiner to Government under section 109 or of an officer appointed under sub-section (1) of that section, or,
- (b) a report under the hand of any Registered Medical Practitioner, in any hospital or dispensary maintained by the State Government or a local authority, or any other Registered Medical Practitioner authorised by the State Government in this behalf, in respect of any person examined by him or upon any matter or thing duly submitted to him for examination or analysis and report,

-may be used as evidence of the facts stated in such certificate, or as the case may be, report, in any proceedings, under this Act; but the Court may, if it thinks fit, and shall, on the application of the prosecution or the accused person, summon and examine any such person as to the subject-matter of his certificate or as the case may be, report.

87. Procedure to be followed by Magistrates.—(1) In all trials for offences under this Act, the Magistrate shall follow the procedure prescribed in the Code of Criminal Procedure, 1898, for the trial of summary cases in which an appeal lies:

Provided that if in respect of any case, the Magistrate, for reasons to be recorded in writing, decides that it is not desirable to follow such procedure, he shall follow the procedure prescribed in Chapter XX or Chapter XXI of the said Code, according as the case is, a summons case or a warrant case.

(2) Save as otherwise expressly provided in this Act, all investigations, arrests, detentions in custody and searches shall be in accordance with the provisions of the Code of Criminal Procedure, 1898:

Provided that no search shall be deemed to be illegal by reason only of the fact that witnesses for the search warrant are not inhabitants of the locality in which the place searched is situated.

88. Offences to be cognizable and non-bailable.—(1) In the absence of any provisions to the contrary in this Act, all offences under this Act shall be cognizable and the provisions of the Code of Criminal Procedure, 1898, with respect to cognizable offences shall apply to offences under this Act.

(2) Offences under section 58, section 59 or section 60 shall be non-bailable.

89. Compounding of offences.—(1) The State Government may sanction the acceptance from any person whose licence, permit, pass or authorisation is liable to be cancelled or suspended under the provisions of this Act, or who is reasonably suspected of having committed an offence under section 63, section 64, section 68, section 69 or section 74, of a sum of money in lieu of such cancellation or suspension or by way of compensation for the offence which may have been committed, as the case may be; and in all cases in which any property, other than the intoxicant, hemp, mhowra flowers or molasses has been seized as liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by the State Government or such officer as the State Government may authorise in this behalf:

Provided that where a person, who is reasonably suspected of having committed an offence under section 63, or section 68 is not the holder of a licence, permit, pass or authorisation granted under this Act, or a person in the employ of such holder or a person acting with his express or implied permission on his behalf, the sum of money which may be accepted from such person by way of compensation, shall not exceed five hundred rupees.

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

90. The Probation of Offenders Act, 1958, and section 562 of the Code of Criminal Procedure, 1898, not to apply to persons convicted under this Act.—Nothing in the Probation of Offenders Act, 1958 (Central Act 20 of 1958), or section 562 of the Code of Criminal Procedure, 1898, shall apply to any person convicted of any offence under this Act.

91. Demand for security for abstaining from commission of certain offences.—(1) Whenever any person is convicted of an offence punishable under this Act, the Court convicting such person, 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 to abstain from the commission of offences punishable under the provisions of this Act during such period not exceeding three years as it may direct.

(2) The bond shall be in such form as may be provided under the provisions of the Code of Criminal Procedure, 1898, and the provisions of the said Code shall in so far as they are applicable apply to all matters connected with such bond as if it were a bond to keep peace, ordered to be executed under section 106 of the said Code.

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

92. Demand for security for good behaviour.—(1) Whenever a District Magistrate, or a Magistrate of the First Class specially empowered by the State Government in this behalf, receives information that any person within the local limits of his jurisdiction habitually commits or attempts to commit or abets the commission of an offence punishable under this Act, such Magistrate may require such person to show cause why he should not be ordered to execute a bond with sureties, for his good behaviour for such period not exceeding three years as the Magistrate may direct.

(2) The provisions of the Code of Criminal Procedure, 1898, shall in so far as they are applicable apply to any proceedings under sub-section (1) as if the bond referred to thereunder were a bond required to be executed under section 110 of the said Code.

93. Execution of bonds in respect of minors.—If any person in respect of whom a bond is ordered to be executed under section 91 or section 92 is a minor, a bond shall be executed by his guardian.

94. Things liable to confiscation.—(1) Whenever any offence punishable under this Act has been committed,-

(a) any intoxicant, hemp, mhowra flowers, molasses, materials, still, utensil, implement or apparatus in respect of which the offence has been committed;

(b) where in the case of an offence involving illegal possession, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers or molasses;

(c) where, in the case of an offence of illegal import, export or transport the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers or molasses;

(d) where, in the case of an offence of illegal import, export or transport the offender has attempted to import, export or transport any intoxicant, hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule or order made thereunder or in breach of any condition of a licence, permit, pass or authorisation, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses, which he has attempted to import, export or transport;

(e) where in the case of an offence of illegal sale, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than that in respect of which an offence has been committed, the whole of such other intoxicant, hemp, mhowra flowers or molasses;

-shall be confiscated by the order of the Court.

(2) Any receptacle, package, or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, vehicles, vessels or other conveyance used in carrying any such article shall likewise be liable to confiscation by the order of the Court.

95. Return to bona fide owners.—When, during the trial of a case for an offence under this Act, the Court decides that anything is liable to confiscation under section 94, the Court may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order confiscation or in the case of any article other than an intoxicant, hemp, mhowra flowers or molasses, give the owner the option to pay fine as the Court deems fit in lieu of confiscation:

Provided that no animal, vessel, vehicle or other conveyance shall be confiscated, if the owner thereto satisfies the Court that he had exercised due care in preventing the commission of the offence.

96. Procedure in confiscation.—When an offence under this Act has been committed and the offender is not known or cannot be found or when anything liable to confiscation under this Act is found or seized, the Commissioner, the Deputy Commissioner, or any other Officer authorised by the State Government in this behalf, may make an enquiry and if after enquiry is satisfied that an offence has been committed, may order the thing found to be confiscated:

Provided that no such order shall be made before the expiry of one month from the date of seizure or without hearing any person who claims any right thereto and the evidence, if any, which he produces in support of his claim.

97. Power to order sale or destruction.—If the thing in question is liable to speedy and natural decay or if the Commissioner, Deputy Commissioner, Court or other officer authorised by the State Government in this behalf is of opinion that the sale would be for the benefits of the owner, the Commissioner, the Deputy Commissioner, Court or the officer may at any time direct it to be sold and the provisions of section 95 or section 96 shall be applied so far as may be to the net proceeds of the sale:

Provided that in the case of any thing liable to speedy and natural decay, the officer concerned may order it to be destroyed, if in his opinion such order is expedient in the circumstances of the case.

98. Forfeiture of publication containing prohibited advertisements.—(1) Where any newspaper, news-sheet, book, leaflet, booklet or other publication, wherever printed or published, appears to the State Government to contain any advertisement or matter soliciting the use of or offering any intoxicant or hemp, the State Government may, by notification, declare every copy of such newspaper, news-sheet, book, leaflet, booklet or other publication whether printed or published in the State or outside to be forfeited to the State Government and thereupon any Police Officer may seize the same wherever found in the State. Any Magistrate may by warrant authorise any Police Officer not below the rank of a Sub-Inspector to enter upon and search for the same in any premises, where any copy of such issue or any such newspaper, news-sheet, book, leaflet, booklet or other publication may be or may be reasonably suspected to be. Every warrant issued under this section shall be executed in the manner prescribed for the execution of search warrants under the Code of Criminal Procedure, 1898.

(2) The declaration of the State Government under this section shall be final and shall not be questioned in any Civil or Criminal Court.

CHAPTER VIII

POWERS AND DUTIES OF OFFICERS IN THE MATTER OF DETECTION
AND INVESTIGATION OF OFFENCES

99. Powers of entry and inspection.—The Commissioner, the Deputy Commissioner, or any Prohibition Officer duly empowered in this behalf by the State Government or any Police Officer not below the rank of an officer in charge of a Police Station may,—

(a) enter at anytime by day or by night any house, building, or enclosed space in which he has reason to believe that any intoxicant, hemp, mhowra flowers or molasses, liable to confiscation under this Act, are manufactured, kept or concealed or that any still, utensil, implement or apparatus is kept, used, or concealed for the purpose of manufacturing any such article;

(b) in case of resistance, break open any door and remove any other obstacle to his entry into any such house, building or enclosed space;

(c) seize any intoxicant, hemp, mhowra flowers or molasses and any materials used in the manufacture of any intoxicant and any still, utensil, implement or apparatus and any other thing, which he has reason to believe to be liable to confiscation under this Act; and

(d) detain and search and if he thinks proper, arrest any person whom he has reason to believe to be guilty of any offence under this Act.

100. Power to open packages, etc.—(1) Any Prohibition Officer duly empowered in this behalf by the State Government, or any Police Officer may open any package and examine any goods and may stop or search for any intoxicant, hemp, mhowra flowers, any vessel, vehicle or other means of conveyance and may seize any intoxicant, hemp, mhowra flowers, molasses or any other thing liable to confiscation or forfeiture under this Act found while making such search.

(2) The unloading and carrying of goods, the bringing of them to the place appointed under sub-section (3) for examination, the opening and re-packing of them where such operations are necessary to be made under this section and removing of goods to and placing of them in the place appointed under sub-section (3) for deposit, shall be performed by or at the expense of the owner of such goods.

(3) The owner of the goods or the person in charge of the goods shall, if so required by any officer conducting the search take the goods to a place appointed by the District Magistrate for the purpose of examination or deposit.

(4) The expenses incurred under sub-section (2) for the purpose of removing the goods to and placing of them in the place appointed under sub-section (3) may be recovered as an arrear of land revenue.

101. Power to require production of licence, etc.—(1) The Commissioner or the Deputy Commissioner or any Prohibition Officer duly empowered in this behalf or any Police Officer may,-

- (a) require a licensed manufacturer, or vendor or any person acting with his express or implied permission on his behalf, to produce the licence, permit, pass or authorisation issued under this Act under which he carries on the manufacture, storage or sale of any intoxicant, hemp, mhowra flowers or molasses or taps toddy-producing trees or draws toddy therefrom;
- (b) enter and inspect at any time by day or by night, any land on which toddy-producing trees licensed for tapping are growing or toddy is drawn from such trees, or any warehouse, shop or premises in which the licensed manufacturer or vendor manufactures, stores or sells any intoxicant, hemp, mhowra flowers or molasses or examines, tests, measures and weighs any stock of any such articles.

(2) If such officer finds that the holder of a licence, permit, pass or authorisation issued under this Act or a person in the employ of such holder or acting with his express or implied permission on his behalf, wilfully does or omits to do anything which is an offence under this Act, such officer may seize any intoxicant, hemp, mhowra flowers or molasses or any materials in respect of which the offence is committed and send a report to his official superior for such action under this Act as he deems fit.

102. Power to obtain information.—(1) The Deputy Commissioner, or any Prohibition Officer specially empowered in this behalf by the State Government or any Police Officer may, by order, require any person to furnish to any specified authority or person any such information in his possession concerning any intoxicant, hemp, mhowra flowers or molasses as may be specified in the order.

(2) If any person fails to furnish any information in compliance with an order made under sub-section (1) or furnishes false information, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

103. Power to seize Intoxicant, etc.—The Commissioner, the Deputy Commissioner, or any Prohibition Officer duly empowered in this behalf or any Police Officer may,-

(a) seize in any open place or in transit any intoxicant, hemp, mhowra flowers or molasses or any other thing which he has reason to believe to be liable to confiscation under this Act;

(b) detain and search any person whom he has reason to believe to be guilty of any offence under this Act, and if such person has any intoxicant, hemp, mhowra flowers or molasses or any other thing in his possession, arrest him.

104. Arrest of offender and seizure of contraband article.—(1) Any Prohibition Officer authorised by the State Government in this behalf or any Police Officer may,-

- (a) arrest without warrant any person whom he has reason to believe to be guilty of an offence under this Act;
- (b) seize and detain any intoxicant, hemp, mhowra flowers or molasses or other articles which he has reason to believe to be liable to confiscation or forfeiture under this Act.

(2) Any Prohibition Officer authorised by the State Government under this section, who arrests any person under clause (a) or seizes and detains any article under clause (b) of sub-section (1) shall forward such person or article, as the case may be, without unnecessary delay to the officer in charge of the nearest Police Station.

105. Arrest without warrant.—The Commissioner or the Deputy Commissioner, or any Prohibition Officer duly empowered in this behalf by the State Government or any Police Officer may arrest without any order from a Magistrate and without warrant, any person who obstructs him in the execution of his duties under this Act or has escaped or attempts to escape from custody in which he has been, or is lawfully detained under this Act.

106. Arrest of offenders failing to give names.—(1) When any person, who in the presence of the Commissioner, Deputy Commissioner or any Prohibition Officer not below such rank as the State Government may determine, has committed or has been accused of committing an offence under this Act, refuses on demand of such officer to give his name and residence or gives a name and residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond with or without sureties to appear before the Magistrate if and when he is so required:

Provided that if such person is not a resident of India, the bond shall be secured by a surety or sureties residing in India.

(3) If the true name and residence of such person is not ascertained within twenty-four hours from the time of arrest or if he fails to execute a bond or if so required to furnish sufficient sureties, he shall, be forthwith forwarded to the nearest Magistrate having jurisdiction.

107. Issue of warrant.—(1) The Commissioner, the Deputy Commissioner, or any Prohibition Officer duly empowered in this behalf, or Magistrate or a Police Officer not below the rank of an Assistant or Deputy Superintendent of Police specially empowered by the State Government in this behalf, may issue a warrant,-

- (a) for the arrest of any person whom he has reason to believe to have committed an offence under this Act;
- (b) for the search, whether by day or by night of any building, vehicle or place in which he has reason to believe that any intoxicant, hemp, mhowra flowers or molasses are manufactured or sold or stored or that any toddy is drawn contrary to the provisions of this Act, or that any intoxicant, hemp or other thing liable to confiscation or forfeiture under this Act is kept or concealed and for the seizure of such intoxicant, hemp, mhowra flowers or molasses or such other things found in such building, vehicle or place.

(2) All warrants issued under sub-section (1) shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a Police Officer or a Prohibition Officer duly empowered in this behalf or if the officer issuing the warrant deems fit, by any other person.

108. Prohibition officers may be empowered to investigate offences.—(1) The State Government may empower any Prohibition Officer to investigate offences under this Act.

(2) An officer empowered under sub-section (1) shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a Police Station.

(3) Any Prohibition Officer to whom such officer is subordinate may, during the course of the investigation, take over the investigation himself or direct any other Prohibition Officer duly empowered, to conduct the same. The officer in conducting the investigation shall have the same powers under sub-sections (1) and (2) as if he was the Prohibition Officer appointed for the area or for the purpose of investigating the said offence.

(4) If the Prohibition Officer conducting the investigation is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond with or without sureties to appear, if and when so required, before the Magistrate empowered to take cognizance of the offence and shall make full report of the case to his official superior and be guided by the order which he shall receive on such report.

(5) The powers of an officer empowered under this section shall be subject to such other modifications or instructions as the State Government may deem fit.

109. Power to require person to submit to medical examination, etc.—(1) Where in the investigation of an offence under this Act, any Prohibition Officer duly empowered in this behalf by the State Government or any Police Officer, not below the rank of a Head Constable has reasonable ground for believing that a person has

consumed an intoxicant and that for the purpose of establishing that he has consumed an intoxicant or for the procuring of evidence thereof, it is necessary that his body be medically examined, or that his blood be collected for being tested for determining the percentage of alcohol therein, such Prohibition Officer or Police Officer may produce such person before a registered medical practitioner, (authorised by general or special order by the State Government in this behalf) for the purpose of such medical examination or collection of blood, and request such registered medical practitioner to furnish a certificate on his finding whether such person has consumed any intoxicant, and to forward the blood collected by him for test to the Chemical Examiner or Assistant Chemical Examiner to Government, or to such officer as the State Government may appoint in this behalf.

(2) The registered medical practitioner before whom such person has been produced shall examine such person and collect and forward in the manner prescribed the blood of such person, and furnish to the officer by whom such person has been produced, a certificate in the prescribed form containing the result of his examination. The Chemical Examiner or the Assistant Chemical Examiner to Government, or other officer appointed under sub-section (1), shall certify the result of the test of the blood forwarded to him, stating therein, in the prescribed form, the percentage of alcohol, and such other particulars as may be necessary or relevant.

(3) If any person offers resistance to his production before a registered medical practitioner under sub-section (1) or on his production before such practitioner to the examination of his body or to the collection of his blood, it shall be lawful to use all means reasonably necessary to secure the production of such person or the examination of his body or the collection of blood necessary for the test.

(4) If the person produced is a female, such examination shall be carried out by, and the blood shall be collected by or under the supervision of a lady registered medical practitioner authorised by general or special order, by the State Government in this behalf, and any examination of the body, or collection of blood of such female shall be carried out or made with strict regard to decency.

(5) Resistance to production before a registered medical practitioner as aforesaid, or to the examination of the body under this section, or to the collection of blood as aforesaid, shall be deemed to be an offence under section 186 of the Indian Penal Code.

(6) In trials under this Act, it may be presumed unless and until the contrary is proved, that the accused has committed an offence under clause (b) of section 59, if he, having been produced before a registered medical Practitioner, under this section, had resisted or had refused to allow himself to be examined by such registered medical practitioner.

(7) Any expenditure incurred for the purpose of enforcing the provisions of this section including any fees payable to a registered medical practitioner or the officer appointed under sub-section (1) shall be defrayed out of moneys provided by the State Legislature.

(8) If any Prohibition Officer or Police Officer vexatiously and unreasonably proceeds under sub-section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine which may extend to five hundred rupees, or with both.

(9) Nothing in this section shall preclude the fact that the person accused of an offence has consumed an intoxicant from being proved otherwise than in accordance with the provisions of this section.

110. Arrested person or thing seized to be sent to nearest Police Station.—Every person arrested and thing seized by a Prohibition Officer under this Act shall be sent to the officer in charge of the nearest Police Station.

111. Bail by a Prohibition Officer.—(1) Any Prohibition Officer empowered to investigate an offence under this Act shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, to any person arrested without a warrant for an offence under this Act.

(2) When any person has been arrested under section 105, a Prohibition Officer empowered to investigate an offence under this Act, shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898.

112. Articles seized.—When anything has been seized by a Prohibition Officer other than the Commissioner or the Deputy Commissioner under the provisions of this Act or has been sent to him in accordance with the provisions of this Act, such officer, after such inquiry as may be deemed necessary,—

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken;

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid shall send it with a full report of the particulars of seizure to the Deputy Commissioner;

(c) if no offence appears to have been committed, shall return it to the person from whose possession it was taken.

113. Landlords and others to give information.—(1) Whenever there has been any tapping for toddy or manufacture of any liquor or intoxicating drug not authorised by a permit or a licence issued under this Act,-

(a) every person who occupies any land or building or a landlord residing in the village on or in which such unauthorised tapping or manufacture takes place, and

(b) every owner of a vessel or vehicle in which such unauthorised manufacture takes place,

-shall, in the absence of reasonable excuse, be bound to give notice of the same to a Magistrate or to a Prohibition Officer or to a Police Officer as soon as such tapping or manufacture shall come to his knowledge.

114. Offence to be reported.—(1) Every village officer or servant and every officer of any other Department of the State Government and any officer or servant of a local authority, shall be bound to give immediate information at the nearest police station or to any officer or person authorised in this behalf, of any breach of any of the provisions of this Act, which may come to his knowledge; and all such officers and servants shall be bound to take all reasonable measures in their power to prevent the commission of any such breach about which they may have knowledge or which they may have reason to believe is about or likely to be committed.

(2) Every officer of the State Government and every officer or servant of a local authority, shall be legally bound to assist any Police Officer or person authorised in this behalf, in carrying out the provisions of this Act.

CHAPTER IX APPEALS AND REVISIONS

115. Appeals and Revisions.—(1) Any person aggrieved by an order passed by a Prohibition Officer other than the Commissioner, or the Deputy Commissioner under this Act, may within sixty days from the date of communication of such order appeal to the Deputy Commissioner.

(2) Any person aggrieved by an order passed by the Deputy Commissioner under this Act, other than an order under sub-section (1), may within ninety days from the date of the communication of the order, appeal to the Commissioner.

(3) Any person aggrieved by an order passed by the Commissioner under this Act, other than an order under sub-section (2), may within ninety days from the date of communication of the order appeal to the State Government.

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

116. Revision.—The State Government may call for and examine records of any proceedings before any Prohibition Officer including those relating to the grant or refusal of a licence, permit, pass or authorisation granted or applied for under this Act, for the purpose of satisfying itself as to the correctness, legality or propriety of any

order passed in, and as to the regularity of such proceedings and may either annul, reverse, modify or confirm such order or pass such other order as it may deem fit:

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

CHAPTER X MISCELLANEOUS

117. Officers and persons acting under this Act to be public servants.—All officers and persons empowered to exercise any powers or 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, and the Prevention of Corruption Act, 1947 (Central Act II of 1947).

118. Bar of proceedings.—No suit or proceeding shall lie against the Government or against any Prohibition, Police or other officers or against any person empowered to exercise powers or to perform the functions under this Act for anything in good faith done or purporting to be done under this Act.

119. Prohibition Officer deemed Police Officer for purposes of section 125 of Evidence Act.—A Prohibition Officer shall be deemed to be a Police Officer within the meaning of this Act for the purposes of section 125 of the Indian Evidence Act, 1872.

120. Proceeding in case of default of person admitted on bail to appear before Prohibition Officer.—When, by reason of default at appearance of a person bailed to appear before a Police or Prohibition Officer, such officer is of opinion that proceedings should be taken to compel payment of the penalty or penalties mentioned in the bond of the person bailed or of the surety or sureties, he shall forward the bond to the Magistrate having jurisdiction to inquire into or try the offence of which the person bailed was accused, and the Magistrate shall proceed to enforce payment of the penalty or penalties in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of penalties in the like case of the default of appearance by a person bailed to appear before his own court.

121. Employment of additional Police.—(1) If the State Government is satisfied that the inhabitants of any area are concerned in the commission or abetment of any of the offences punishable under sections 58 to 63, the State Government may, by notification, direct the employment of additional police for such period as it thinks fit.

(2) The cost of such additional police shall, if the State Government so directs, be either in whole or in part defrayed by a tax imposed on the persons herein below mentioned or by a rate assessed on the property of such persons or both by a tax and by a rate so imposed and assessed, and charged,-

- (a) either generally on all persons, who are inhabitants of the local area to which such notification applied; or
- (b) specially on any particular section or sections, or class or classes of such persons and the State Government may direct the proportions in which such tax or rate shall be charged.

Explanation.—For the purposes of this section, "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and land-holders who by themselves or by their agents or servants collect rents or revenue direct from ryots or occupiers in such area, notwithstanding that they do not actually reside therein.

(3) The cost of the additional police and the tax to be imposed or the rate to be assessed shall be determined in the manner prescribed, by the State Government or such authority or officer that may be empowered in this behalf.

(4) It shall be lawful for the State Government to extend for a term not exceeding in any case, five years, the period for the payment of such tax or rate beyond the period for which such additional police are actually employed.

(5) Every tax imposed or rate assessed shall be recovered by the Deputy Commissioner of the district as if it were a land revenue due by the person liable therefor.

(6) It shall be lawful for the State Government by order to exempt any class of persons from liability to bear any portion of the cost of such additional police.

122. Closing of shops.—(1) It shall be lawful for the Deputy Commissioner, by notice in writing to the licensee, to require that any place in which any intoxicant or hemp is sold by retail shall be closed at such time or for such period as he may deem necessary, if, in the opinion of the Deputy Commissioner, such closing is necessary in the interest of public peace.

(2) If a riot or unlawful assembly is imminent or occurring, it shall be lawful for any Magistrate or Police Officer, who is present, to direct that such place shall be closed and kept closed for such period as he thinks fit.

(3) Any order given under this section shall be final.

123. General powers of State Government in respect of licences, etc.—Notwithstanding anything contained in this Act, or the rules made thereunder, the State Government may, by general or special order, -

(a) prohibit the grant of any kind of licences, permits, passes or authorisations throughout the State, or in any area;

(b) regulate the import, export, transport, possession, sale, purchase, consumption or use of any intoxicant, hemp, mhowra flowers, molasses or any article

which is likely to be used for the manufacture of an intoxicant with or without licence, permit, pass or authorisation throughout the State, or within the limits of any local area, subject to such conditions and for such periods as it deems fit;

(c) exempt any person or institution or any class of persons or institutions from the observance of all or any of the provisions of this Act, or any rule or regulation or order made thereunder;

(d) exempt any intoxicant or class of intoxicants from all or any of the provisions of this Act;

(e) direct that no licence, permit, pass or authorisation of the kind specified in such order, shall be granted without the previous approval of the State Government;

(f) direct any conditions or alterations to be made to or in the conditions subject to which under any other provisions of this Act, such licence, permit, pass or authorisation can be granted;

(g) specify the persons or class of persons to whom licences may not be granted;

(h) direct that licences of the kind specified in such order shall be granted to persons specified in such order;

(i) prohibit, regulate or control, subject to such conditions as may be specified in the order, the consumption or use of any intoxicant or hemp, in any public place; and

(j) issue such other instruction in any matter pertaining to the grant or otherwise of licences, permits, passes or authorisations under this Act, as the State Government may deem proper.

124. Power of State Government to make rules.—(1) The State Government may, by notification, make rules for the purpose of carrying out the provisions of this Act.

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

- (a) regulating the application of any powers by the Commissioner, by a Deputy Commissioner or by any other Prohibition Officer;
- (b) regulating the import, export, transport, collection, sale, purchase, consumption, use or possession of any intoxicant or hemp, mhowra flowers or molasses;
- (c) regulating the manufacture of any intoxicant;
- (d) regulating the cultivation and collection of hemp;
- (e) regulating the tapping of toddy producing in trees, and drawing of toddy therefrom;

- (f) regulating the grant, suspension or cancellation of licences, permits, passes or authorisations for the import, export, transport, collection, sale, purchase, possession, manufacture, consumption, use or cultivation of any of the articles mentioned in clause (b) and for the matters specified in clause (e);
- (g) regulating the purposes and localities for which licences may be granted for the wholesale or retail vend of any of the articles mentioned in clause (b);
- (h) providing for the consulting of public opinion and prescribing the procedure to be followed and the matters to be ascertained before any licence, permit, pass or authorisation for the vend, consumption, or use of any of the articles mentioned in clause (b) is granted to any person or in any locality;
- (i) prohibiting and regulating the employment by a licence holder of any person or class of persons to assist him in his business in any capacity whatsoever;
- (j) prescribing the manner in which the juice from a cocoanut, date or any kind of palm tree is to be treated for the purpose of preventing fermentation;
- (k) prescribing the persons or classes of persons to whom any intoxicant or hemp may not be sold or who may be allowed to sell, purchase or use;
- (l) for the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises and the meeting and remaining of persons of bad character on such premises;
- (m) regulating the grant of expenses to persons called to give information in the investigations in respect of offences under this Act;
- (n) regulating the printing, publishing or otherwise displaying or distributing any advertisement or other matter soliciting the use of or offering any intoxicant or hemp, or calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act, or to commit a breach or evade the provisions of any rule or order made thereunder or the conditions of any licence, permit, pass or authorisation issued thereunder;
- (o) regulating within the State the circulation, distribution or sale of any newspaper, news-sheet, book, leaflet, booklet or other publication, printed and published outside the State containing any advertisement or matter which solicits the use of or offers any intoxicant or hemp;
- (p) imposing restrictions or conditions on buyers of intoxicant including provisions for compelling them to sign entries pertaining to the purchase of intoxicant by them;

- (q) prescribing the specifications and test in respect of the purity of molasses;
 - (r) regulating the taking of samples of molasses;
 - (s) prescribing the powers, functions and duties of Prohibition Officers, Committees and Medical Boards and the fees and allowances payable to the members of the Committees and Medical Boards;
 - (t) prescribing the procedure regarding the work of the Board of Experts;
 - (u) prescribing the fees payable in respect of any privileges, licence, permit, pass or authorisation granted or issued under this Act;
 - (v) prescribing the period within which and the form in which a declaration under section 54 shall be submitted, and the form in which accounts shall be maintained;
 - (w) prescribing the maximum number of licences, permits, passes, or authorisations of any kind which may be granted in any area or to any class of persons;
 - (x) prescribing the number of places at which any intoxicant, hemp, mhowra flowers or molasses may be sold in any area, the location of such places in any area, the days and hours during which such places may or may not be kept open, the number of places in respect of which licences for sale may be granted and the number of such places, which may be managed by the State Government;
 - (y) prescribing the maximum quantity of any intoxicant, hemp, mhowra flowers or molasses, which may be sold in any area or at any place;
 - (z) prescribing the procedure to be followed before granting any licence;
 - (a) prescribing the manner of collecting and forwarding blood and prescribing the form of certificate and other particulars required to be stated therein under sub-section (2) of section 109.
- (3) The power to make rules under this section shall be subject to the condition of previous publication:

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

125. Rules, regulations, etc., to be laid before State Legislature.—Every rule or regulation made under this Act, every order made under section 123 and every notification issued under section 17 or section 130, 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 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, regulation, order or notification or both Houses agree that the rule, regulation, order or notification should not be made, the rule, regulation, order 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, regulation, order or notification.

126. Commissioner's powers to make regulations.—(1) The Commissioner may, with the approval of the State Government, make regulations, not inconsistent with the provisions of this Act or the rules made thereunder,—

(a) regulating, as the case may be, the manufacture, supply or storage of any intoxicant or hemp, mhowra flowers or molasses, including,—

- (i) the erection, inspection, supervision, management and control of any place for the manufacture, supply or storage of such articles, and the fittings, implements and apparatus to be maintained therein;
 - (ii) the cultivation of hemp and the collection of the spontaneous growth of such plant and the preparation of any intoxicating drug from such growth and the storage and supply of such hemp or intoxicating drug;
 - (iii) the bottling of liquor;
- (b) regulating the deposit of any intoxicant, hemp, mhowra flowers or molasses in a warehouse and the removal of such articles from any such warehouse or from any distillery or brewery;
- (c) prescribing in the case of an intoxicant or opium, the way in which the duty on such article shall be levied;
- (d) prescribing the scale of fees or the manner of fixing the fees payable in respect of any storage of any intoxicant, hemp, opium, mhowra flowers or molasses;
- (e) regulating the time, place and manner of payment of any duty or fees;
- (f) prescribing the restrictions under which and the conditions on which any licence, permit, pass or authorisation may be granted, including,—
- (i) the prohibition of the admixture with any intoxicant of any substance deemed to be noxious or objectionable;
 - (ii) the fixing of the strength, price or quality in excess of or below which any intoxicant or mhowra flowers shall not be sold or supplied and the quantity in excess of which denatured spirit or molasses shall not be possessed or sold and the prescription of a standard of quality for any intoxicant, mhowra flowers or molasses;
 - (iii) the prohibition of sale of any intoxicant or hemp except for cash;

- (iv) the prescription of the days and hours during which any licensed premises may or may not be kept open and the provisions for the closure of such premises on special occasions;
- (v) the prescription of the nature of the premises on which any intoxicant may be sold and the notices to be exposed at such premises;
- (vi) the writing of the names and addresses and the taking of signatures of purchasers in the register of sale of any intoxicant, hemp, opium or mhowra flowers;
- (g)(l) declaring the process by which spirits shall be denatured in particular areas or for particular purposes;
- (ii) for causing such spirits to be denatured through the agency or under the supervision of Government officers;
- (iii) for ascertaining whether such spirits have been denatured;
- (h) providing for the destruction or other disposal of any intoxicant declared to be unfit for use;
- (i) regulating the disposal of confiscated or forfeited articles;
- (j) prescribing the occasions on which special orders may be granted for the sale by retail of quantities of liquor or intoxicating drugs, or opium other than those which are prescribed in any notification issued under this Act and the conditions on which such sales may be made;
- (k) prescribing the amount of security to be deposited by the holder of a licence, permit, pass or authorisation for the performance of the conditions for the same;
- (l) providing for the maintenance by the holders of licences, passes or authorisations of the registers of sales, purchases, possession, consumption or use and the particulars to be entered in the register;
- (m) regarding any other matter, which the State Government may, by notification, direct him to prescribe for the purposes of carrying out the provisions of this Act.

(2) The regulations made under this section shall be published in the official Gazette.

127. This Act not applicable to import or export across customs frontier.—For removal of doubts, it is hereby declared that nothing in this Act shall be deemed to apply to any intoxicant or other articles in respect of its import, or export across the customs frontiers.

128. Offences by companies, etc.—(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 section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the 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.

129. Repeal and savings.—(1) The enactments mentioned in Schedule A are hereby repealed:

Provided that section 6 of the '[Karnataka]¹ General Clauses Act, 1899 '[Karnataka]¹ Act III of 1899), shall, subject to sub-section (2), be applicable in respect of such repeal and section 8 and section 24 of the said Act shall be applicable as if the said enactments were enactments within the meaning of section 6, section 8 and section 24 of the said Act and had been repealed and re-enacted by this Act:

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

Provided further, but subject to the preceding proviso, any permit, pass, licence or authorisation made or issued under any of the repealed enactments shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been made or issued under the corresponding provisions of this Act, and shall continue to be in force accordingly, unless and until it expires or is superseded by anything done or any action taken under this Act.

(2) On the repeal of the Bombay Prohibition Act, 1949, in the '[Belgaum area]¹ of the '[State of Karnataka]¹ under sub-section (1), the Indian Opium Act, ²[1878]²

(Central Act I of 1878), as it was in force in the '[Belgaum area]' before the commencement of the Bombay Prohibition Act, 1949, shall revive and be in force in such area.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(3) From the date this Act comes into force in the other areas of the '[State of Karnataka]' under sub-section (4) of section 1, the enactments specified in Schedule B shall, to the extent they are in force in such areas, stand repealed:

Provided that such repeal shall not affect—

- (a) the previous operation of any such enactment or anything duly done or suffered thereunder;
- (b) any right, privilege, obligation or liability acquired, accrued, or incurred under such enactment;
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such enactment;
- (d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;
- (e) the levy of any duty or fee and the recovery of any duty or fee leviable under any such enactment; and any such investigation, legal proceeding or remedy may be instituted or enforced and any such penalty, forfeiture, or punishment may be imposed, and any such duty or fee may be levied or recovered, as if such enactment had not been repealed:

Provided further, but subject to the preceding proviso, any appointment, notification, notice, order, rule or form made or issued under any such enactment shall continue to be in force and deemed to have been made or issued under this Act, unless and until it is superseded by anything done or any action taken under this Act, notwithstanding the fact that the authority competent to make or issue such notification, notice, order, rule or form is different from that authorised in the enactment repealed and notwithstanding also that such notification, notice, order, rule or form was made or issued in a different form or name.

130. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the provisions of the Acts in force immediately before the commencement of this Act, the State Government may, by notification in the official Gazette, make such provisions as appear to it to be necessary or expedient for removing the difficulty.

(2) If any difficulty arises in giving effect to the provisions of this Act (other than in relation to the transition from the provisions of the Acts in force before the

commencement of this Act), the State Government may, by notification, make such provisions, not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.

SCHEDULE A.

[See Sections 1 (3) and 129 (1)]

1. The Mysore Prohibition Act, 1948 (Mysore Act XXVII of 1948).
2. The Bombay Prohibition Act, 1949 (Bombay Act XXV of 1949).
3. The Madras Prohibition Act, '[1937]' (Madras Act X of '[1937]').
4. The Coorg Prohibition Act, 1956 (Coorg Act I of 1956).

1. Substituted by Act 10 of 1967 w.e.f.24.8.1967

SCHEDULE B.

[See Section 129 (3)]

1. The Mysore Excise Act, 1901 (Mysore Act V of 1901).
2. The Abkari Act, 1316-F (Hyderabad Act No. I of 1316-F).
3. The Intoxicating Drugs Act, 1333-F (Hyderabad Act IV of 1333-F).
4. The Madras Abkari Act, 1886 (Act I of 1886).

सत्यमेव जयते

THE KARNATAKA HEALTH CESS ACT, 1962
ARRANGEMENT OF SECTIONS

Statement of Object and Reasons

Sections :

1. Short title, extent and commencement.
2. Definitions.
3. Levy of health cess.
4. Recovery of health cess.
- 4A. Local authorities entitled to cost of collection of health cess.
5. Cess to be collected to the nearest paisa.
6. Levy of cess under other Acts not affected.
7. Power to make rules.
8. Repeal.

SCHEDULE A.

SCHEDULE B.

* * * * *

STATEMENT OF OBJECTS AND REASONS

I

Act 28 of 1962.— In accordance with the provisions of the Mysore Health Cess Act, 1951, health cess at the rate of half anna in the rupee is being levied on all items of land revenue in the area of the former State of Mysore. Provision also exists in the Act to levy the cess at a rate not exceeding one anna in the rupee on other items of revenue. In the merged areas of Bombay, Coorg, Hyderabad and Madras no health cess is being levied. Levy of this cess throughout the new State of Mysore is considered necessary to implement a programme of adequate health service to the citizens of the State and unless suitable enactment applicable to the entire State is made, no cess can be levied in the merged areas.

Hence this Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 27th August 1962 as No. 165 at page. 5.)

II

Amending Act 19 of 1968.—The Explanation to item 1 of Schedule A to the Mysore Health Cess Act, 1962 (Mysore Act 28 of 1962) and item 2 of the said Schedule

relating to levy of health cess on water rate are held to be invalid in certain decisions of courts. In view of this, they are proposed to be omitted from the said Schedule. It is also proposed to clarify that the levy of health cess under item 3 of Schedule A is on cinematograph shows only. Incidentally reference to 'naya paisa' is proposed to be made in terms of 'Paisa'.

Hence this Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 26th April 1968 as No. 698 at page. 42.)

III

Amending Act 33 of 76.—At present, Education Cess of five paise in the Rupee and Health Cess of nine paise in the Rupee are levied on Land Revenue, Excise Duty and Property and Profession Taxes collected by the Municipalities.

The said rates were fixed long ago. It is necessary to augment the revenues of the State, specially for meeting the increasing expenditure on provision of nutrition to the school-going children through mid-day meals and for a more intensive programme of construction of primary school buildings in rural areas.

It is therefore proposed to amend the Karnataka Compulsory Primary Education Act, 1961, and the Karnataka Health Cess Act, 1962, to raise the rates of Education Cess and Health Cess respectively.

Hence the Bill.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 30th March 1976 as No. 1743 at page 3.)

सत्यमेव जयते

'[KARNATAKA]' ACT No. 28 OF 1962

(First published in the '[Karnataka Gazette]' on the Twenty-fourth day of September, 1962.)

THE '[KARNATAKA]' HEALTH CESS ACT, 1962.

(Received the assent of the Governor on the Twenty-second day of September, 1962.)

(As amended by Karnataka Acts 19 of 1968 & 33 of 1976.)

An Act to provide for the levy of health cess on certain items of revenue in the '[State of Karnataka]'.

WHEREAS it is expedient to provide for the levy of a health cess on certain items of revenue in the '[State of Karnataka]';

BE it enacted by the 1[Karnataka State]1 Legislature in the Thirteenth Year of the Republic of India as follows:—

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

1. Short title, extent and commencement.—(1) This Act may be called the 1[Karnataka]1 Health Cess Act, 1962.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(2) It extends to the whole of the '[State Karnataka]'.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(3) It shall be deemed to have come into force on the first day of April 1962.

2. Definitions.—In this Act,—

(1) "local authority" means a municipal corporation, a municipal committee, a town committee, a municipal council, a borough municipal council, a sanitary or town board, a notified area committee, a taluk development board, a village panchayat or any authority established for the purpose of local self-government or village administration;

(2) "notification" means a notification published in the official Gazette.

3. Levy of health cess.—There shall be levied and collected a health cess at the rate of 1[fifteen paise]1 in the rupee on,—

1. Substituted by Act 33 of 1976 w.e.f. 1.4.1976.

(i) all items of land revenue;

(ii) the items of State Revenues mentioned in Schedule A; and

(iii) the items of taxes mentioned in Schedule B levied under any law for the time being in force by a local authority.

4. Recovery of health cess.—The health cess payable under section 3 shall be levied, assessed and recovered along with the items of land revenue, State revenue or tax on which such cess is levied, and the provisions of the law and the rules, orders and notifications made or issued thereunder for the time being in force, shall apply to the levy, assessment and recovery of the health cess as they apply in respect of the levy, assessment and recovery of the said items of land revenue, State revenue or tax.

[4A. Local authorities entitled to cost of collection of health cess.—Where the health cess under this Act is recovered by a local authority, such local authority shall be entitled to deduct ten per cent of the amount recovered as the cost of collection, and the balance shall be paid to the State Government.]¹

1. Section 4A Inserted by Act 19 of 1968 w.e.f. 7.11.1968

5. Cess to be collected to the nearest '[paisa]'.—In the determination of the amount of health cess payable under this Act, fractions of a '[paisa]' less than half a '[paisa]' shall be disregarded and fractions of a '[paisa]' equal to or exceeding half a '[paisa]' shall be regarded as one '[paisa]'.

1. Substituted by Act 19 of 1968 w.e.f. 7.11.1968

6. Levy of cess under other Acts not affected.—Nothing in this Act shall affect the operation of the provisions of any other Act and the levy of the health cess under this Act is in addition to, and not in lieu of, any other duty or cess that may be levied under any other law for the time being in force.

7. Power to make rules.—(1) The State Government may, by notification, make rules for the purpose of carrying out the provisions 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 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.

8. Repeal.—The Mysore Health Cess Act, 1951 (Mysore Act No. XVIII of 1951) is hereby repealed.

SCHEDULE A.

1. Duties of excise leviable by the State under any law for the time being in force in any area of the State, on the following goods manufactured or produced in the State and countervailing duties levied on similar goods manufactured or produced elsewhere:—

(a) Alcoholic liquors for human consumption:

(b) Opium, Indian hemp and other narcotic drugs and narcotics.

¹[Explanation x x x]¹

¹[2. x x x]¹

1. Omitted by Act 19 of 1968 w.e.f. 7.11.1968

3. Tax on cinematograph shows leviable by the State ¹[under section 4 of the ²[Karnataka]²Entertainments Tax Act, 1958]¹.

1. Substituted by Act 19 of 1968 w.e.f. 1.4.1962

2. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

SCHEDULE B.

The following taxes leviable by local authorities under any law for the time being in force, namely:—

1. Taxes on lands and buildings.

2. Taxes on vehicles.

¹[3. x x x]¹

1. Omitted by Act 33 of 1976 w.e.f. 1.4.1976

¹[3.]¹ Taxes on advertisements.

1. Re-numbered by Act 33 of 1976 w.e.f. 1.4.1976

सत्यमेव जयते

THE KARNATAKA HOME GUARDS ACT, 1962
ARRANGEMENT OF SECTIONS

Statement of Object and Reasons

Sections:

1. Short title and extent.
2. Definitions.
3. Constitution of Home Guards and appointment of Commandant General and Commandants.
4. Appointment of Members.
5. Functions and duties of members.
- 5A. Obligation of employer to permit Home Guards to join Duty.
6. Powers, protection and control.
7. Control by officers of police force.
8. Certificate, arms, etc., to be delivered up by person ceasing to be a member.
9. Punishment of members for neglect of duty, etc.
10. Punishment.
11. Disciplinary action against Commandant or the Commandant General.
12. Powers of State Government to make rules.
13. Members of the Home Guards to be public servants.
14. Members of the Home Guards not disqualified from being members of local authorities.
15. Amendment of Karnataka Act 4 of 1957.
16. Repeal of certain Acts and savings.
17. Repeal of Karnataka Ordinance No. 4 of 1962.

* * * * *

STATEMENT OF OBJECTS AND REASONS

I

Act 35 of 1962.- At present the Home Guards Organisation is in existence only in the Bombay-Karnataka Districts of the State. In view of the present emergency it is considered necessary to have a voluntary body of persons throughout the State to discharge duties in relation to the protection of persons, the security of property and

preservation of public order in emergency. Hence, it is proposed to organise Home Guards in the entire State. In order to effectively control and administer the Organisation it is necessary to have a uniform law. In view of the urgency and as the Legislature was not in session, the Mysore Home Guards Ordinance, 1962, was issued. The present Bill is intended to replace the said ordinance.

Except for the two clauses relating to repeal and savings, and the addition of a provision for laying rules made under the Act before the Houses of Legislature, in other respects the provisions of the Bill are identical with the provisions of the Ordinance.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 1st December 1962 as No. 238 at page. 8.)

II

Amending Act 11 of 1977.—Karnataka State Home Guards is a statutory organization in the State and the services of Home Guards have become indispensable and decisive in maintaining peace and tranquility at elections, Railway Strikes and Political and Labour Demonstrations. The Members of Home Guards, excepting a few full time paid Officers, are all Volunteers employed in Private and Public Undertakings. The Home Guards belong to different traders, professions such as Doctors, Lawyers, Educationists, Engineers, Businessmen, Central and State Government Servants and Farmers. When such members are called on duty in emergent situations either to maintain public peace and order or to safeguard public property, difficulty is experienced to call them on duty because the Employers do not treat their absence as on duty. Consequently, the Employees will have to face loss of wages, salary etc., for the period they remain absent. In some cases when such persons respond to the call serve, as Home Guards even Departmental Proceedings were instituted against them for their absence from duty.

There is no provision in the Home Guards Act, 1962 (Karnataka Act 35 of 1962), providing protection against such contingencies to the Home Guards. Therefore, with a view to protect the employees reporting themselves to the call-up from loss of salary, wages, etc., it is felt necessary that a provision be made to make it obligatory on the part of Employers to treat the period of absence at their offices while on Home Guards duty to pay their pay and allowance they are entitled to, at the place of employment, as if they are on duty.

Since the Karnataka Legislature was not in session the Karnataka Home Guards (Amendment) Ordinance, 1977 was promulgated.

This Bill Seeks to replace the said Ordinance.

(Published in the Karnataka Gazette (Extraordinary) Part IV-2A, dated 26th March 1977 as No. 235 at page. 4.)

III

Amending Act 19 of 2003.— It is considered necessary to amend the Karnataka Home Guards Act, 1962 (Karnataka Act 35 of 1962) to provide for,-

- (i) the procedure for selection and appointment of Commandants of Home Guards;
- (ii) qualification, conditions of service and the term of office of the Commandant of Home Guards.

Consequential amendments are also proposed.

Hence the Bill.

[LA Bill No.1 of 2003]

[Entry 1 and 2 of List II of the Seventh Schedule to the Constitution of India]

IV

Amending Act 20 of 2011.— It is considered necessary to amend the Karnataka Home Guards Act, 1962 to provide for extension of office of the Commandant for a period of five years and further period of two terms five years each and fixing the maximum age limits to the post of Commandants.

Hence the Bill.

[LA Bill No.16 of 2011, File No. Samvyashae 37 Shasana 2010]

[Entries 1 and 2 of List II of the Seventh Schedule to the Constitution of India]

सत्यमेव जयते

¹[KARNATAKA ACT]¹ No. 35 OF 1962

(First published in the ¹[Karnataka Gazette]¹ on the Twenty-seventh day of December, 1962.)

THE ¹[KARNATAKA]¹ HOME GUARDS ACT, 1962.

(Received the assent of the Governor on the Eighteenth day of December, 1962.)

(As Amended by Karnataka Act 11 of 1977, 19 of 2003 and 20 of 2011)

An Act to provide for the constitution of Home Guards in the ¹[State of Karnataka]¹.

WHEREAS it is expedient to provide a volunteer organization for use in emergencies and for other purposes in the ¹[State of Karnataka]¹;

BE it enacted by the ¹[Karnataka State]¹ Legislature in the Thirteenth Year of the Republic of India as follows:—

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

1. Short title and extent.—(1) This Act may be called the ¹[Karnataka]¹ Home Guards Act, 1962.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(2) It extends to the whole of the ¹[State of Karnataka]¹.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

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

(a) "Home Guard" means a person who is appointed as a Home Guard under this Act;

(b) "prescribed" means prescribed by rules made under this Act.

3. Constitution of Home Guards and appointment of Commandant General and Commandants.—(1) The State Government shall constitute a volunteer body called the "Home Guards", the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property and the preservation of public order or tranquility, as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.

(2) ¹[The State Government may from the list of eligible persons sent by the Committee under sub-section (2B)]¹ appoint as many Commandants as it may consider necessary for the proper governance and conduct of the Home Guards and shall specify the areas over which each such Commandant shall have jurisdiction.

1. Substituted by Act 19 of 2003 w.e.f. 22.04.2003.

¹[(2A) There shall be a Committee consisting of the following members for

selecting persons possessing prescribed qualification to be appointed as Commandants under sub-section (2), namely:-

- (a) The Secretary to Government, Home and Transport Department.
- (b) The Commandant General, Home Guards and Civil Defence.
- (c) The Deputy Commandant General, Home Guards and Civil Defence.

(2B) The Committee referred to in sub-section (2A) shall after following such procedure as may be prescribed prepare a list of eligible persons to be appointed as commandants under sub-section (2) and send the list of such eligible persons to the State Government.

[(2C) subject to the pleasure of the State Government the term of office of the commandant shall ordinarily be for five years and it may be extended for a further period of two terms of five years each.

Provided that no person shall be eligible for appointment as commandant or shall hold such office on his attaining the age of sixty years.]¹

1. Substituted by Act 20 of 2011 w.e.f. 06.04.2011.

(2D) The terms and conditions of appointment of the Commandants shall be such as may be prescribed.]¹

1. Inserted by Act 19 of 2003 w.e.f. 22.04.2003

(3) The State Government shall appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of all the Home Guards in the State,

4. Appointment of Members.—(1) Subject to the approval of the Commandant General, the Commandants may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.

(2) Notwithstanding anything contained in sub-section (1), the Commandant General may appoint a member of the Home Guards to any post under his control.

(3) Every member of the Home Guards shall on appointment receive a certificate of appointment which shall be in such form and shall be issued by such authority as may be prescribed, and thereupon he shall have the powers, privileges and protection conferred, and discharge the duties imposed, on a Home Guard by or under this Act.

5. Functions and duties of members.—(1) The Commandant General may at any time call out any member of the Home Guards for training, or to discharge any of the functions or duties assigned to the Home Guards in any part of the State in accordance with the provisions of this Act and the rules made thereunder.

(2) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to him by or under this Act.

(3) The Deputy Commissioner or the Superintendent of Police of a District may at any time call out a member of the Home Guards to discharge any of the functions or duties assigned to him by or under this Act.

[5A. Obligation of employer to permit Home Guards to join duty.—(1) Subject to such rules as may be prescribed, every employer shall permit a Home Guard, who is for the time being employed by or under him, to join, his duty as such, and notwithstanding anything contained in any law or agreement between him and such Home Guard, the employer shall be liable to pay to such Home Guard, for the period of his duty as such Home Guard, not exceeding sixty days in a year, the pay and allowances, as if such Home Guard had not been called out to join his such duty.

Explanation.—For the purpose of this sub-section, duty includes any training as such Home Guard.

(2) No employer shall dismiss, remove or suspend any employee or take any other action which may prejudice such employee only by reason of his being a member of the Home Guards.

(3) Whoever contravenes the provisions of subsection (1) or (2) shall be punished with fine which may extend to one thousand rupees.

(4) Nothing in this section shall apply to an employer unless he had been informed by the employee of his being, or by the concerned Commandant of such employee being, a Home Guard at the time of applying for employment under such employer or at the time of enrolment as a member of the Home Guards while being such employee.]¹

1. Section 5A inserted by Act 11 of 1977 w.e.f. 28.1.1977

6. Powers, protection and control.—(1) A member of the Home Guards when called out under section 5 shall have the same powers, privileges and protection as an officer of police appointed under the ¹[Karnataka Police Act, 1963]¹.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(2) No prosecution shall be instituted against a member of the Home Guards in respect of anything done or purporting to be done in the exercise of his powers or the discharge of his functions or duties as such member, except with the previous sanction of the Commandant General.

7. Control by officers of police force.—The members of the Home Guards when called out under section 5 in aid of the police force, shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed.

8. Certificate, arms, etc., to be delivered up by person ceasing to be a member.—(1) Every person, who, for any reason ceases to be a member of the Home Guards or resigns his membership, shall forth-with deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothings and other articles which have been issued to him as such member.

(2) Any Magistrate and for special reasons, which shall be recorded in writing at the time, any police officer not below the rank of Deputy Superintendent of Police or Assistant Superintendent of Police, may issue a warrant to search for and seize wherever they may be found any certificate, arms, accoutrements, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of '[the Code of Criminal Procedure, 1973]¹ by a Police Officer or if the Magistrate or the Police Officer issuing the warrant so directs, by any other person.

1. Substituted by Act 19 of 2003 w.e.f. 22.04.2003

(3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was issued.

9. Punishment of members for neglect of duty, etc.—(1) The Commandant shall have the powers to suspend, reduce or dismiss, or to impose fine not exceeding a sum of fifty rupees on any member of the Home Guards under his control, if such member neglects or refuses to discharge his functions and duties as a member of the Home Guards or to obey any lawful order or direction given to him for the due performance of his functions and duties or is guilty of any breach of discipline or misconduct.

(2) The Commandant General may in respect of any member of the Home Guards appointed to a post under his control impose any penalty specified in sub-section (1), and may also dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge.

(3) Notwithstanding anything contained in this Act, the Commandant General or the Commandant may discharge any member of the Home Guards at any time subject to such conditions as may be prescribed, if in the opinion of the Commandant General or the Commandant, as the case may be, the services of such member are no longer required.

(4) When the Commandant General or the Commandant passes an order suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (1) or sub-section (2) he shall record such order together with the reasons therefor, and no such order shall be passed by the Commandant General or the

Commandant unless the person concerned is given a reasonable opportunity to be heard.

(5) (a) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General, and any member of the Home Guards aggrieved by an order of the Commandant General may appeal against such order to the State Government.

(b) An appeal under clause (a) shall be filed within thirty days from the date on which the order is communicated to the member of the Home Guards.

(6) The Commandant General or the State Government, may either suo motu or on application call for and examine the record of any order passed by any officer subordinate to him or it under this Act for the purpose of satisfying himself or itself as to the legality or propriety of such order and may pass such order with reference thereto as he or it may think fit.

(7) Any penalty on a member of the Home Guards under this section shall be in addition to any punishment to which such member is liable under section 10 or any other law for the time being in force.

10. Punishment.—(1) If any member of the Home Guards on being called out under section 5, without reasonable excuse neglects or refuses to obey such order, or to discharge his functions as a member of the Home Guards, or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction, be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both.

(2) If any member of the Home Guards willfully neglects or refuses to deliver up his certificate of appointment or of office or any other article in accordance with the provisions of sub-section (1) of section 8, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

(3) No proceedings shall be instituted under sub-section (1) or sub-section (2) without the previous sanction of the Commandant.

(4) A police officer may arrest without warrant any person who commits an offence punishable under this section.

11. Disciplinary action against Commandant or the Commandant General.—The State Government may at any time, subject to such rules as may be prescribed, dismiss, remove, suspend or reduce to a lower post or rank, any Commandant or the Commandant General, whom it considers to be remiss or negligent in the discharge of his duty or otherwise unfit for the same and may order the

recovery from the pay or allowances of any such officer of the whole or any part of any pecuniary loss caused to the State Government by his negligence or breach of orders.

12. Powers of State Government to make rules.—(1) The State 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 or regulate the following matters, namely:—

(a) the exercise by any officer of the Home Guards of the powers conferred by section 5 on the Commandant and the Commandant General;

¹[(aa) the qualification and procedure for selection of Commandants under subsection (2B) of section 3 and the terms and conditions of their appointment.]¹

1. Inserted by Act 19 of 2003 w.e.f. 22.04.2003

(b) the exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;

(c) the organisation, appointment, conditions of service, functions, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service;

(d) the exercise by members of the Home Guards of any of the powers exercisable under section 5;

(e) the procedure to be followed in taking disciplinary action against the Commandants or the Commandant General;

(f) generally for giving effect to the provisions 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 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 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 done under that rule.

13. Members of the Home Guards to be public servants.—The members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

14. Members of the Home Guards not disqualified from being members of local authorities.—Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified

for being chosen as and for being a member of any local authority merely by reason of the fact that he is a member of the Home Guards or that he holds an office of profit under the Government by virtue of his being a member of the Home Guards.

15. Amendment of '[Karnataka Act]' 4 of 1957.—In section 3 of the '[Karnataka]' Legislature (Prevention of Disqualification) Act, 1956, after clause (b), the following clause shall be inserted, namely:—

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

"(bb) the office of a member of the Home Guards constituted under the '[Karnataka]' Home Guards Act, 1962;"

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

16. Repeal of certain Acts and savings.—The Bombay Home Guards Act, 1947 (Bombay Act III of 1947), the Mysore Home Guards Act, 1941 (Mysore Act XIV of 1941), the Madras Home Guards Act, 1948 (Madras Act I of 1948) and the Coorg Home Guards Act, 1950 (Coorg Act I of 1950) are hereby repealed:

Provided that section 6 of the '[Karnataka]' General Clauses Act, 1899 ('[Karnataka Act]' III of 1899) shall be applicable in respect of such repeal and sections 8 and 24 of the said enactment shall be applicable as if the said Acts had been repealed and re-enacted by this Act:

Provided further that the members of the Home Guards constituted under any of the repealed Acts immediately before the coming into force of this Act, shall be deemed to be the members of the Home Guards constituted under this Act.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

17. Repeal of '[Karnataka]' Ordinance No. 4 of 1962.—(1) The '[Karnataka]' Home Guards Ordinance, 1962 is hereby repealed.

1. Adapted by the Karnataka Adaptations of Laws Order 1973 w.e.f. 1.11.1973

(2) Notwithstanding such repeal anything done or any action taken (including any notification issued or order, rule or appointment made) under the said Ordinance shall be deemed to have been done or taken, in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken.

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