

# **The Punjab Excise Act, 1914**

## **CHAPTER I**

### *Preliminary and definitions.*

1. **Short title.** - (1) This Act may be called the Punjab Excise Act, 1914 and
- (2) **Extent and commencement.** - It extends to the whole of Punjab / Haryana.
- (3) It shall come into force on such date as the State Government may be notification direct.

### **NOTES**

1. **The date of enforcement.** - This Act came into force on 1st February, 1914. It was notified to the public in Punjab Government Gazette Notification No. 112 dated 23.1.1914.

2. **Statement of Objects and Reasons.** – Up to 1905 the possession, manufacture, circulation, distribution, sale, import, export and transport of the excisable intoxicants was being controlled/governed under the Excise Act, 1895 (XII of 1986). From the public and the officials of the Deptt. many difficulties were being expressed in effecting a proper control and distribution and in checking the offences. While the public was interested in any easy excess to the controlled intoxicants, at the same time on the other hand the Excise Officers wanted a more effective legislation to check and apprehend offences/offenders effectively. The British Rules in India approached 'The Crown' in Britain in this connection.

The Government of India, accordingly constituted and appointed a Committee for conducting a thorough investigation to find out the defects in the then prevailing systems and the scheme of the Excise Act, 1895 to meet with the demand of the changed circumstances in the public as well as to remove the defects coming in the way of the Excise Officers in giving effect to the objects of the Act. The Committee was desired to suggest a rational, effective and profitable change in the prevailing system which may earn maximum possible revenue to the government and help an effective check of the offences.

The restrictions imposed by laws over the use and distribution the manufacture and sale etc. of the intoxicants (mainly the liquor) was questioned in England. The public felt it a restriction over the human rights to avail and enjoy the natural resources freely. On a challenge to such control the Filed, J. in *Crowleg v. Ghrhistensen*, (1980) 34 Law Ed 620 at page 623 replied the contentions raised in this behalf as under:-

"There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury is true, falls upon him in his health which the habit undermines, in his morals, which it weakens, and in the self- abasement which it creates. But as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian

community, there are few sources of crime and misery to society equal to the drum shop, where intoxicating liquors, in small quantities, to be drunk at the time are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquor in this way has therefore, been at all times, by the courts of every State considered as the proper subject of legislative regulation. Not only may a license fee be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of person to whom they may be sold, and the hours or the day, and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited is a question of public morality, and not of federal law. The police power of the State is fully competent to regulate the business to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquor by retail, it is not a privilege of citizen of the State of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. The authority may vest in such officers as it may deem proper the power of passing upon application for permission to carry it on, and to issue licenses for that purpose."

The necessity for legislation to give effect to the recommendations of the Indian Excise Committee of 1905-06 was brought to public notice in connection with Bengal and United Provinces Excise Act of 1909 and 1910, and in explanation of similar legislation for the Province of the Punjab it will suffice to reproduce the following extracts from the Statement of objects and Reasons appended to the Bill which became law as United Provinces Act, IV of 1910:-

In 1905 an Excise Committee was appointed by the Government of India to investigate the various systems of excise administration obtaining in each province of British India, and to report how far they calculated to give the fullest practical effect to the general policy of the Government of India in excise matters as declared in resolution No. 5001 Exc; of the Finance Department, dated the 7th September, 1905.

In connection with this investigation the Committee was instructed to consider the various defects in the Excise Act, 1895 (XII of 1896), which had been brought to notice rendered it desirable that the Act in question should be completely repealed and, if so, to indicate the main lines on which fresh legislation was required.

The Committee after a careful scrutiny of the Act decided in favour of repeal. They pointed out that the Act was unsuited to modern conditions, and that it was an obstacle in the way of improved methods of excise administration.

Among other defects, the following were specially brought to notice :-

- (a) that the Act provides only for the distillery system in its crude form;
- (b) that it ignores the subject of the wholesale vend or liquor;
- (c) x x x x
- (d) that the procedure laid down does not provide sufficiently for the detection of offences and the arrest of offenders;
- (e) that the power of inspection is unnecessarily restricted; and

(f) that the provisions for the making of statutory rules are imperfect.

The Committee expressed the opinion that a fresh enactment of general application ought to be framed and that the new law should proceed on the lines followed in the Madras Abkari Act of 1886. That enactment is permissive in character, and while it requires that the manufacture, possession and sale of excisable articles shall be covered by license granted by due authority, in other respects it merely indicates the broad lines on which the Abkari System is to be conducted and the nature of the control which may be exercised, leaving points of detail to be determined by rules framed under the Act and having the force of law.

As contrasted with the Madras Act, the Excise Act, 1896, is not enabling but restrictive; and in common with all other Acts, drafted on the same rigid model, it is open to the objection that by providing only for specific systems, it whether checks or hinders the adoption of improved methods suggested by further experience. Every new development which appears has to be met by recourse to fresh legislation.

The Government of India have accepted the conclusions of the Excise Committee as to the necessity for a new enactment and have approved of the lines on which, as suggested by the Committee, the new Act should be framed. They have, however, decided that instead of an Act of general application being passed, each province should legislate for itself.

As in the case of United Provinces Bill the present Punjab draft has been modeled on the draft Bill prepared by the Excise Committee but consideration has also been paid to the modifications of that draft which have been introduced in the recent Bengal and United Provinces Legislation. The framers of the present Bill have also profited by the discussions which have taken place in connection with Central Provinces Excise Bill. The particular circumstances of the Excise Administration of the Punjab have been very carefully considered and where necessary a departure from the models referred to above has been made to meet them.

**3. Why drastically regulate the drink trade?** - the Social rationale - on Brandies brief. - Anywhere on our human planet the sober imperative of moderating the consumption of inebriating methane substances and manacling liquor business towards that end, will meet with axiomatic acceptance. Medical, criminological and sociological testimony on a cosmic scale bears out the tragic miscellany of traumatic consequences of shattered health and broken homes of crime escalation with alcohol as the hidden villain or aggressively promotional anti-hero, of psychic break-downs, insane cravings and efficiency impairment, of pathetic descent to doom sans sense, sans shame, sans everything, and host of other disasters individual, familial, genetic and societal.

The alcoholics will chime in with A. E. Hoesman:

"And malt does more than Milton can to justify God's ways to man....."

But the wisdom of the ages oozes through Thomas Becon who wrote:

"For when the wine is in, the wit is out."

Dr. Walter Reckless, a criminologist of international repute who had worked in India for years has in "The Crime Problem" rightly stressed;

"Of all the problems in human society, there is probably none which is as closely related

to criminal behaviour as is drunkenness. It is hard to say whether this close relationship is a chemical one, a psychological one, or a situational one. Several different levels of relationship between ingestion of alcohol and behaviour apparently exist. A recent statement by the National Council on Crime and Delinquency quite succinctly describes the effect of alcohol on behaviour: Alcohol acts as a depressant; it inhibits self control before it curtails the ability to act; and an individual's personality and related social and cultural factors assert themselves during drunken behaviour.... Although its dangers are not commonly understood or accepted by the public, ethyl alcohol can have perhaps the most serious consequences of any mind-and-body-altering drug. It causes addiction in chronic alcoholics, who suffer consequences just as serious, if not more serious than opiate addicts. It is by far the most dangerous and the most widely used of any drug."

The President's Commission on Law Enforcement and Administration of Justice made the following pertinent observations:

"The figures show that crimes of physical violence are associated with intoxicated persons.....Thus the closest relationship between intoxication and criminal behaviour (except for public intoxication) has been established for criminal categories involving assaultive behavior. This relationship is especially high for lower class Negroes and Whites. More than likely, aggression in these groups is weakly controlled and the drinking of alcoholic beverages serves as a triggering mechanism for the external release of aggression. There are certain types of key situations located in lower class life in which alcohol is a major factor in triggering assaultive behavior. A frequent locale is the lower class tavern, which is an important social institution for the class group. Assaultive episodes are triggered during the drinking situation by quarrels that center around defaming personal honor, threats to masculinity, and questions about one's birth legitimacy. Personal quarrels between husband and wife, especially after the husband's drinking, frequently result in assaulting episodes, in the lower-lower class family."

The steady flow of drunkenness cases through the hands of the police, into our lower courts, and into our jails and workhouses has been labeled the "revolving" door, because a very large part of this flow of cases consists of chronic drinkers who go through the door and out, time after time. On one occasion when the author was visiting a Saturday morning session of a misdemeanor court, there was a case of an old "bum" who had been in the local workhouse 285 times previously."

An Indian author, Dr. Sethna dealing with society and the criminal, has this to say; 1

"Many crimes are caused under the influence of alcohol or drugs. The use of alcohol, in course of time, causes a great and irresistible craving for it. To retain the so-called 'satisfaction', derived from the use of alcohol or drugs, the drunkard or the drug -addict has got to go on increasing the quantities from time to time; such a state of affairs may lead him even to commit thefts or frauds to get the same otherwise. If he gets drunk so heavily that he cannot understand the consequences of his acts he is quite likely to do some harmful act - even an act of homicide. Very often, crimes of violence have been committed in a state of intoxication. Dr. Hearly is of the opinion that complete elimination of alcohol and harmful drug habits would cause a reduction in crime by at least 20 per cent; not only that, but there would also be cumulative effect on the generations to

come, by diminishing poverty, improving home conditions and habits of living and environment, and perhaps even an improvement in heredity itself.

Abstinence campaigns carried out efficiently and in the proper manner show how crime drops. Dr. Hearly cites Baer, who says that Father Mathew's abstinence campaigns in Ireland, during 1837-1842, reduced the use of spirits 50 per cent, and the crimes dropped from 64,520 to 47,027. According to Evangeline Booth, the Commander of the Salvation Army, "In New York before prohibition, the Salvation Army would collect from 1,200 to 1,300 drunkards in a single night and seek to reclaim them. Prohibition immediately reduced the gathering to 400 and the proportion of actual drunkards from 95 per cent to less than 20 per cent". And "a decrease of two thirds in the number of derelicts, coupled with a decrease in the number of drunkards almost to the vanishing point, certainly lightened crime and charity bills. It gave many of the erstwhile drunkards new hope and a new start". So says E. E. Covert, in an interesting article on prohibition."

The ubiquity of alcohol in the United States has led to nation wide sample studies and they make startling disclosures from a criminological angle. For instance, in Washington, D. C. 76.5% of all arrests in 1965 were for drunkenness, disorderly conduct and vagrancy, while 76.7% of the total arrests in Atlanta were for these reasons.

Of the 8 million arrests in 1970 almost one-third of these were alcohol-related. Alcohol is said to affect the lives of 9 million persons and to cost \$ 10 billion in lost work time and an additional \$ 5 billion in health and welfare costs."

Richard D. Knudten stated "Although more than 35% of all annual arrests in the United States are for drunkenness, additional persons committing more serious crimes while intoxicated are included within the other crime categories like drunken driving, assault, rape and murder.

President .Brezhnev bewailed the social maladies of increasing alcoholism. Nikita Kruschev was unsparing:

"Drunks should be 'kicked out of the party' not moved from one responsible post to another."

Abraham Lincoln, with conviction and felicity said that the use of alcohol beverages had many defenders but no defence and intoned:

"Whereas the use of intoxicating liquor as a beverage is productive of pauperism, degradation and crime, and believing it is our duty to discourage that which produces more evil than good, we, therefore, pledge ourselves to abstain from the use of intoxicating liquor as a beverage."

In his famous Washington's birthday address said:

"Whether or not the world would be vastly benefited by a total and final banishment from it of all intoxicating drinks seems to me not now an open question. Three-fourths of mankind confess the affirmative with their lips, and I believe all the rest acknowledge it in their hearts."

Jack Hobbs, the great cricketer, held;

"The greatest enemy to success on the cricket field is the drinking habit."

And Don Bradman than whom few batsmen better wielded the willow, encored and said:

"Leave drink alone. Abstinence is the thing that is what made me."

Sir Andrew Clark, in Lachrymal language spun the lesson from hospital beds:

"As I looked at the hospital wards today and saw that seven out of ten often owed their diseases to alcohol, I could but lament that the teaching about this question was not more direct, more decisive, more home-thrusting than ever it had been."

George Bernard Shaw, a provocative teetotaler, used tart words of trite wisdom:

"If a natural choice between drunkenness and sobriety were possible, I would leave the people free to choose. But then I see an enormous capitalistic organization pushing drink under people's noses of every corner and pocketing the price while leaving me and others to pay the colossal damages, then I am prepared to smash that organisation and make it as easy for a poor man to stay sober, if he wants to, as it is for his dog.

Alcohol robs you of that last inch of efficiency that makes the difference between first-rate and second-rate.

I don't drink beer - first, because I don't like it; and second, because my profession is one that obliges me to keep in critical training, and beer is fatal both to training and to criticism.

Only teetotalers can produce the best and sanest of which they are capable.

Drinking is the chloroform that enables the poor to endure the painful operation of living.

It is in the last degree disgraceful that a man cannot provide his own genuine courage and high spirits without drink.

I should be utterly ashamed if my soul had shriveled up to such an extent that I had to go out and drink a whisky.

The constitutional test of reasonableness, built into Art. 19 and of arbitrariness implicit in Art. 14. has a relativist touch. We have to view the impact of alcohol and temperance on a given society; and for us, the degree of constitutional restriction and the strategy of meaningful enforcement will naturally depend on the Third World setting, the ethos of our people, the economic compulsions of today and of human tomorrow. Societal realities shape social justice. While the universal evil in alcohol has been indicated the particularly pernicious consequence of the drink evil in India may be useful to remember while scanning the rationale of an Indian temperance measure. Nearly four decades ago, Gandhiji, articulating the inarticulate millions' well being wrote:

"The most that tea and coffee can do is to cause a little extra expense, but one of the most greatly felt evils of the British Rule is the importation of alcohol.. .... that enemy of mankind, that curse of civilization-in some form or another. The measure of the evil wrought by this borrowed habit will be properly gauged by the reader when he is told that the enemy has spread throughout the length and breadth of India, in spite of the religious prohibition for even the touch of a bottle containing alcohol pollutes the Mohamedan, according to his religion, and the religion of the Hindu strictly prohibits the use of alcohol in any form whatever, and yet alas, the Government, it seems, instead of

stopping, aiding and abetting the spread of alcohol. The poor there, as everywhere, are the greatest sufferers. It is they who spend what little they earn in buying alcohol instead of buying good food and other necessaries. It is that wretched poor man who has to starve his family, who has to break the sacred trust of looking after his children, if any, in order to drink himself into misery and premature death. Here be it said to the credit of Mr. Caine, the ex-Member for Barrow, that, he undaunted, is still carrying on his admirable crusade against the spread of the evil, but what can the energy of one man, however powerful, do against the inaction of an apathetic and dormant Government."

Parenthetically speaking, many of these thoughts may well be regarded by Gandhians as an indictment of governmental policy even today.

The thrust of drink control has to be studied in a Third World country, developing its human resources and the haven it offers to the poor, especially their dependants. Gandhiji again:

"For me the drink question is one of dealing with a growing social evil against which the State is bound to provide whilst it has got the opportunity. The aim is patent. We want to wean the labouring population and the Harijans from the curse. It is a gigantic problem, and the best resources of all social workers, especially women, will be taxed to the utmost before the drink habit goes. The prohibition I have adumbrated is but beginning (undoubtedly indispensable) of the reform. We cannot reach the drinker so long as he has the drink shop near his door to tempt him."

Says Dr. Sethna in his book already referred to :

"And in India, with the introduction of prohibition we find a good decline in crime. There are, however, some persons who cannot do without liquor. Such persons even to the extent of making illicit liquor and do not mind drinking harmful rums and spirits. The result is starvation of children at home, assaults and quarrels between husband and wife, between father and child, desertion, and other evils resulting from the abuse of alcohol.

The introduction of prohibition in India actually caused a considerable fall in the number of crimes caused by intoxication. Before prohibition one often had to witness the Miserable spectacle of poor and ignorant persons-millhands laborers, and even the unemployed with starving families at home - frequenting the pithas (liquor and adulterated toddy shops) drinking, burning, and harmful spirits, and adulterated toddy, which really had no vitamin B value; these persons spent the little they earned after a hard day's toil, or what little that had remained with them or what they had obtained by some theft, trick fraud or a borrowing they spent away all that, and then, at home, left wife and children starving and without proper clothes, education, and other elementary necessaries of life.

The labour Welfare Department of the State Governments and of the Municipalities are rendering valuable service, through their labour welfare officers who work at the centres assigned to them, impressing upon the people how the use of alcohol is ruinous and instructing them also how to live hygienically; there are lectures on the evils of drug and during habits.

Partial prohibition of hot country liquors was introduced by the Congress Ministers in Bombay, Bihar, Madras (in Salem; Chittor, Cuddapah and North Arcot Districts) when they first came into power. In C. P. and Berar, prohibition covered approximately one-fourth of the area and population of the State. In Assam, prohibition is directed mainly against opium. In Deccan Hyderabad on 3rd Jan., 1943, a Firman was issued by his Exalted Highness the Nizam, supporting the temperance movement. Jammu and Kashmir came also on the move towards prohibition. Since 1949 State Governments determined the policy of introduction of total prohibition.

On April 10, 1948, the Central Advisory Council for Railways, under the Chairmanship of the Hon'ble Dr. John Matthai, agreed to the proposal to ban the serving of liquor in refreshment rooms at railway stations and dining cars.

In Madras, prohibition was inaugurated on 2nd Oct., 1948, by the Premier, the Hon'ble Mr. O. P. Ramaswami Reddiar who pronounced it a red letter day.

In 1949, West Punjab took steps for the establishment of prohibition. In 1949, nearly half the area of the Central Provinces and Berar got dry, and it was proposed to enforce prohibition throughout the State.

In Bombay the Prohibition Bill was passed and became Act in 1949, and Bombay got dry by April 1950.

The number of offences under the Abkari Act is notoriously high. It shows the craving of some persons for liquor in spite of all good efforts of legal prohibition. The remedy lies in making prohibition successful through education (even at the school state), suggestion, re-education.

The Tek Chand Committee surveyed the civilizations from Babylon through China, Greece, Rome and India. X-rayed the religions of the world and the dharmasastras and concluded from this conspectus that alcoholism was public enemy. Between innocent first sip and nocent never stop alcoholism only time is the thin partition and, inevitability the sure nexus, refined arguments to the contrary notwithstanding.

In India, some genteel socialites have argued for the diplomatic pay-off from drinks and Nehru has negatived it :

"Not only does the health of a nation suffer from this (alcoholism), but there is a tendency to increase conflicts both in the national and the international sphere.

I must say that I do not agree with the statement that is sometimes made-even by our ambassadors - that drinks attract people to parties and if there are no drinks served people will not come. I have quite frankly told them that if people are only attracted by drinks, you had better keep away such people from our missions. I do not believe in this kind of diplomacy which depends on drinking and, if we have to indulge in that kind of diplomacy, others have had more training in it and are likely to win."

Of course, the struggle for Swaraj went beyond political liberation and demanded social transformation. Redemption from drink evil was woven into this militant movement and

Gandhiji was the expression of this mission.

"I hold during to be more damnable than thieving and perhaps even prostitution. Is it not often the parent to both? I ask you to join the country in sweeping out of existence the drink revenue and abolishing the liquor shops.

Let me, therefore, re-declare my faith in undiluted prohibition before I land myself in deeper water. In was appointed dictator for one hour for all India, the first thing I would do would be to close without compensation all the liquor shops, destroy all the toddy palms such as I know them in Gujarat, compel factory owners to produce humane conditions for their workmen and open refreshment and recreation rooms where these workmen would get innocent drinks and equally innocent amusements. I would close down the factories if the owners pleaded for want of funds."

It has been a plank in the national programme since 1920. It is coming, therefore, in due fulfillment of the national will definitely expressed nearly twenty years ago.

Sociological Journey to interpretive Destination - This long excursion may justly be brought to a close by an oft repeated but constitutionally relevant quotation from Field, J. irresistible attractive for fine-spun feeling and exquisite expression.

"There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury, if it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with those dependant upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram-shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at those retail liquor saloons than to any other source. The sale of such liquors in this way has, therefore, been, at all times, by the courts of every State, considered as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day, and the days of the week, on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of federal law. The police power of the State fully competent to regulate the business to mitigate its evils or to suppress it entirely, there is no inherent right in a citizen to thus sell intoxicating liquors by retail it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as. it may deem proper and power of

passing upon application for permission to carry it on, and to issue licenses for that purpose. It is a matter of legislative will only."

The panorama of view, insights and analyses we have tediously projected serves the socio-legal essay on adjudicating the reasonableness and arbitrariness of the impugned shut down order on Tuesdays and Fridays. Whatever our personal views and reservations on the philosophy, the politics, the economics and the pragmatics of prohibition, we are called upon to pass on the vires of the amended order. "We, the people of India', have enacted Article 47 and 'we, the Justices of India' cannot 'lure it back to cancel half a line' or 'wash out a word of it', especially when progressive implementation of the policy of prohibition is, by Arts. 38 and 47 made fundamental to the country's governance. The Constitution is the property of the people and the courts know how is to apply the Constitution, not to assess it. In the process of interpretation, Part IV of the Constitution must enter the soul of Part III and the laws, as held by the Court in *State of Kerala v. N. M. Thomas*, (1976) 1 SCR 906' (AIR 1976 SC 490) and earlier. The dynamics of statutory construction, in a country like ours, where the pre-Independence Legislative package has to be adapted to the vital spirit of the Constitution, may demand that new wine be poured into old bottles, language permitting. We propound no novel proposition and recall the opinion of Chief Justice Winslow of Wisconsin upholding as constitutional Workmen's Compensation Act of which he said:

"when an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind surrounded by eighteenth century conditions and ideals? Clearly not. This were a command of half the race in its progress, to stretch the state upon a veritable bed of procrustes. Where there is no express command or prohibition, but only general language of policy to be considered, the conditions prevailing at the time of its adoption must have their due weight but the changed social, economic and governmental conditions of the time, as well as the problems which the changes have produced, must also logically enter into the consideration and become influential factors in the settlement of problems of construction and interpretation."

That this doctrine is to be deemed to apply only to "due process" and "police power" determinations, see especially concurring opinions of Marshall, 1. and Barnes, J.

In short, while the imperial masters were concerned about the revenues they could make from the liquor trade they were not indifferent to the social control of this business which, if left unbridled, was fraught with danger to health, morals, public order and the flow of life without stress or distress. Indeed, even collection of revenue was intertwined with orderly milieu; and these twin objects are reflected in the scheme and provisions of the Act. Indeed, the history of excise legislation in this country has received judicial attention earlier and the whole position has been neatly summarised by *Chandrachud J.*, (as he then was) if we may say so with great respect, and a scissor-and-paste operation is enough for our purpose:

"Liquor licensing has a long history. Prior to the passing of the Indian Constitution the licensees mostly restricted their challenge to the demand of the Government as being in excess of the condition of the license or on the ground that the rules in pursuance of which such conditions were framed were themselves beyond the rule-making power of the authority concerned. The provisions of the Punjab Excise Act, 1914, like the provi-

sions of similar Acts in force in other States, reflect the nature and the width of the power in the matter of liquor licensing. We will notice first the relevant provisions of Act under consideration.

Section 5 of the Act empowers the State Government to regulate the maximum or minimum quantity of any intoxicant which may be sold by retail or wholesale. Section 8 (a) vests the general superintendence and administration of all matters relating to excise in the Financial Commissioner, subject to the control of the State Government. Section 16 provides that no intoxicant shall be imported, exported or transported except after payment of the necessary duty or execution of a bond for such payment and in compliance with such conditions as the State Government may impose. Section 17 confers upon the State Government the power to prohibit the import or export of any intoxicant into or from Punjab or any part thereof and to prohibit the transport of any intoxicant. By S. 20 (1) no intoxicant can be manufactured or collected, no hemp plant can be cultivated, no tari producing tree can be tapped, no tari can be drawn from any tree and no person can possess any material or apparatus for manufacturing an intoxicant other than tari except under the authority and subject to the terms and conditions of a license granted by the Collector. By sub-sec. (2) of S. 20 no distillery or brewery can be constructed or worked except under the authority and subject to the terms and conditions of a license granted by the Financial Commissioner. Section 24 provides that no person shall have in his possession any intoxicant in excess of such quantity as the State Government declares to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of a license or permit. Sub-sec (4) of S. 24 empowers the State Government to prohibit the possession of any intoxicant or restrict its possession by imposing such conditions as it may prescribe. Section 26 prohibits the sale of liquor except under the authority and subject to the terms and conditions and subject to the terms and conditions of a license granted in that behalf.

Section 27 of the Act empowers the State Government to "lease" on such conditions and for such period as it may deem fit or retail, any country liquor or intoxicating drug within any specified local area. On such lease being granted the Collector, under sub sec (2), has to grant to the lessee a license in the form of his lease.

Section 34 (l) of the Act provides that every license, permit or pass under the Act shall be granted (a) on payment of such fees, if any, (b) subject to such restrictions and on such conditions, (c) in such form and containing such particulars, and (d) for such period as the Financial Commissioner may direct. By S. 35 (2), before any license is granted for the retail sale of liquor for consumption on any premises the Collector has to ascertain local public opinion in regard to the licensing of such premises. Section 36 confers power on the authority granting any license to cancel or suspend it if, inter alia, any duty or fee payable thereon has not been duly paid.

Section 56 of the Act empowers the State Government to exempt any intoxicant from the provisions of the Act. By S. 58 the State Government may make rules for the purpose of carrying out the provisions of this Act. Sec. 59 empowers the Financial Commissioner by Cl. (a) to regulate the manufacture, supply, storage or sale of any intoxicant.

The Prohibition and Excise Laws in force in other States contain provisions substantially similar to those contained in the Punjab Excise Act. Several Acts passed by State Legislatures contain provisions rendering it unlawful to manufacture, export, import, transport or sell intoxicating liquor except in accordance with a license, permit or pass granted in that behalf. The Bombay Abkari Act 1878; the Bombay Prohibition Act, 1949, the Bengal Excise Acts of 1878 and 1909; the Madras Abkari Act 1886; the Laws and Rules contained in the Excise Manual United Province, the Eastern Bengal and Assam Excise Act, 1910; the Bihar and Orissa Excise Act 1915; the Cochin Abkari Act as amended by the Kerala Abkari Laws Act 1964; the Madhya Pradesh Excise Act 1915, are instances of State legislation by which extensive powers are conferred on the State Government in the matter of liquor licensing.

The trade of liquor has instinct with injury to individual and community and has serious side-effects recognised everywhere in every age. Not to control alcohol business is to abdicate the right to rule for the good of the people. Not to canalise the age and sex of consumers and servers, the hours of sale and cash-and-carry basis, the punctuation and pause in days to produce partially the 'dry' habit -is to fail functionally as a welfare State. The whole scheme of the statute proclaims its purpose of control in time and space and otherwise. Section 58 vests in Government the power for more serious restrictions and laying down of principles. Details and lesser constraints have been left to the rule-making power of the Financial Commissioner. The complex of provisions is purpose-oriented, considerably re-inforced by Art. 47. Old statutes get invigorated by the Paramount Parchment. Interpretation of the text of pre-constitution enactments can legitimately be infused with the concerns and commitments of the Constitution, as an imperative exercise. Thus, it is impossible to maintain that no guidelines are found in the Act.

The search for guidelines is not a verbal excursion. The very subject-matter of the statute - intoxicants - eloquently impresses the Act with a clear purpose, a social orientation and a statutory strategy. If bread and brandy are different the point we make argues itself. The goal is promotion of temperance and, flowing there out, of sobriety, public order, individual health, crime control, medical bills, family welfare, curbing of violence and tension, restoration of the addict's mental, moral and physical personality and interdict on impoverishment, in various degrees, compounded. We have extensively quoted supportive literature; and regulation of alcohol per se furnishes a definite guideline. If the Section or the Rule intended to combat an evil is misused for a perverse, ulterior or extraneous object that action, not the law, will be struck down. In this view, discrimination or arbitrariness is also excluded.

A final bid to stigmatize the provision (Sec. 59 (f) (v)) was made by raising consternation. The power to fix the days and hours is so broad that the authority may fix six to seven days or 23 out of 24 hours as 'dry' days or closed hours and thus cripple the purpose of the license. This is an ersatz apprehension, a caricature of the provision and an assumption of power run amok. An Abkari law, as here unfolded by the scheme (chapters and sections further amplified by the rules framed there under during the last 64 years) is not a Prohibition Act with a mission of total prohibition. The obvious object is to balance temperance with tax, to condition and curtail consumption without liquidating the liquor business, to experiment with phased and progressive projects of prohibition without total ban on the alcohol trade or individual intake. The temperance movement leaves the door half-closed, not wide ajar; the

prohibition crusade banishes wholly the drinking of intoxicants. So it follows that the limited temperance guideline writ large in the Act will monitor the use of the power. Operation Temperance, leading later to the former, may be a strategy within the scope of the Abkari Act.

Both may be valid but we do not go into it. Suffice it to say that even restrictions under Art. 19 may, depending on situations, be pushed to the point of prohibition consistently with reasonableness. The chimerical fear that 'fix the days' means even 'ban the whole week,' is either pathological or artificial, not certainly real under the Act. We are not to be understood to say that a complete ban is without the bounds of the law - it turns on a given statutory scheme.

We have no hesitation, in our hearts and our heads, to hold that every systematic, profit oriented activity, however sinister, suppressive or socially diabolic cannot, ipso facto, exalt itself into a trade. Incorporation of Directive principles of State Policy casting the high duty upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice - social, economic and political- shall inform all the institutions of the national life, is not idle print but command to action. We can never forget, except at our peril, that the Constitution obligates the State to ensure an adequate means of livelihood to its citizens and to see that the health and strength of workers men and women, are not abused, that exploitation, normal and material, shall be extradited. In short, State action defending the weaker sections from social injustice and all forms of exploitation and raising the standard of living of the people, necessarily imply that economic activities, attired as trade or business or commerce, can be de-recognised as trade or business. At this point, the legal culture and the public morals of a nation may merge, economic, justice and taboo of traumatic trade may meet and jurisprudence may frown upon day dark and deadly dealings. The constitutional refusal to consecrate exploitation as 'trade' in a socialist Republic like ours argued itself."

**4. Prohibition - Duty of State Government.** - Article 19(1 )(g) provides that all citizens shall have the right to practice any profession or to carry on any occupation, trade or business. This right conferred by the aforesaid provision is circumscribed by the provisions of clause (6) of the very Article which reads as follows:

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the States from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to -

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

Thus Article 19( 1 )(g) read with Article 19(6) spells out a fundamental right of the citizens to

practice any profession or to can)' on any occupation, trade or business so long as it is not prohibited or is within the framework of the regulation, if any, if such prohibition or regulation has been imposed by the State by enacting a law in the interests of the general public. It cannot be disputed that certain professions, occupations, trades or businesses which are not in the interests of the general public may be completely prohibited while others may be permitted with reasonable restrictions on them. For the same purpose, viz., to subserve the interests of general public, the reasonable restrictions on the carrying on of any profession, occupation, trade etc., may provide that such trade, business etc., may be carried on exclusively by the State or by a Corporation owned or controlled by it. The right conferred upon the citizens under Article 19(1)(g) is thus subject to the complete or partial prohibition or to regulation, by the State. However, under the provisions of Article 19(6) the prohibition, partial or complete, or the regulation, has to be in the interests of the general public.

Article 47 which is one of the Directive Principles of the State Policy reads as follows:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

This Article enjoins upon and in turn enables the State to take measures to raise the level of nutrition and the standard of living of its people and to improve the public health. Towards this end, the State is required to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health. The prohibition may be complete or partial and it would also include regulation. It cannot be disputed that liquor is one such drink.

5. Reasonable Restrictions on trade of liquor. - 30. In *Cooverjee B. Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmer & Ors.*, where the vires of Excise Regulation 1 of 1915 was under challenge on the ground of violation of Article 19(1)(g), the Constitution Bench of five learned Judges, among other things, held that:

In order to determine the reasonableness of restrictions, envisaged by Article 19(6), regard must be had to the nature of the business and the conditions prevailing in that trade. These factors would differ from trade to trade and no hard and fast rule concerning all trades can be laid down. It cannot also be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours they endanger, and some by the dangers accompanying them require regulation as to the locality in which they may be conducted. Some, by the dangerous character of the articles used, manufactured or sold, require also special qualification in the parties permitted to use them, manufacture or sell them. The Court

in this connection referred to the observations of Field, 1. in *P. Crowley v. Henry Christensen*, [34 L.ed. 620] a part of which is as follows:

" ... The sale of such liquors in this way has, therefore, been at all times by the courts of every State considered as the proper subject of legislative regulation ... Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality and not of federal law. The police power of the State is fully competent to regulate the business - to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of the citizens of the State or a citizen of the United States. As it is, a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils.....It is a matter of legislative will only".

The elimination and exclusion from business is inherent in the nature Of liquor business and it will hardly be proper to apply to such a business principle applicable to trade which all could carry on. The provisions of the law cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business of liquor. The Court for this purpose relied upon the following observations of Lord Porter in *Commonwealth of Australia v. The Bank of New South Wales*. [1950 AC 235]:

"Yet about this as about every other proposition in this field, a reservation must be made. For their Lordships do not intend to lay it down that in no circumstances would exclusion of competition so as to create a monopoly either in a State or Commonwealth agency or in some other body be justified. Every case must be judged on its own facts and its own setting of time."

When the contract is thrown open to public auction, it cannot be said that there is exclusion of competition and thereby monopoly is created.

6. Business of Liquor is not a fundamental Right. - In *Krishna Kumar Narula v. State of Jammu and Kashmir*, the question whether the right to carry on business of liquor is a fundamental right fell directly for consideration before a Constitution Bench of five learned Judges.

The facts were that the appellant was carrying on business in liquor in his hotel under an annual license issued under Section 20 of the Jammu and Kashmir Excise Act, 1958. He had applied for a fresh license for another year. Meanwhile, the Excise Department received complaints from the inhabitants of the locality objecting to the location of the bar in that locality. The complaints were inquired into and the appellant was informed by the Commission that the license will not be issued unless he shifted the premises to some other approved locality. Writ Petition filed by the appellant for quashing the order of the Commissioner was dismissed by the High Court. While dealing with the appeal against the High Court's order, this Court commenting on the combined reading of clauses (1) and (6) of Article 19 observed as follows:

"A combined reading of clauses (1) and (6) of Article 19 makes it clear that a citizen has a fundamental right to carry on any trade or business, and the State can make a law imposing reasonable restrictions on the said right in the interests of the general public. It is, therefore, obvious that unless dealing in liquor is not trade or business, a citizen has

a fundamental right to deal in that commodity. The learned Advocate General contended that dealing in liquor was not business or trade, as the dealing in noxious and dangerous goods like liquor was dangerous to the community and subversive of its morals. The acceptance of this broad argument involves the position that the meaning of the expression 'trade or business' depends upon and varies with the general acceptance at a particular point of time in our country. Such an approach leads to incoherence in thought and expression. Standards of morality can afford a guidance to impose restrictions, but cannot limit the scope of the right. So too, a Legislature can impose restrictions on, or even prohibit the carrying on of a particular trade or business and the Court, having regard to the circumstances obtaining at a particular time or place may hold the restrictions or prohibition reasonable. The question, therefore, is, what is trade or business? Though the word 'business' is ordinarily more comprehensive than the word 'trade', one is used as synonymous with the other. It is not necessary to bring out the finer points of distinction between the said two concepts in this case. In the words of S. R. Das, J., as he then was, in *Narain Swadeshi Weaving Mills v. The Commissioner of Excess Profits Tax*, the word 'business' connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. Even accepting this test, if the activity of a dealer, say, in ghee is business; then how does it cease to be business if it is in liquor? Liquor can be manufactured, brought or sold like any other commodity. It is consumed throughout the world, though some countries restrict or prohibit the same on economic or moral grounds. The morality or otherwise of a deal does not affect the quality of the activity though it may be a ground for imposing a restriction on the said activity. The illegality of an activity does not affect the character of the activity but operates as a restriction on it. If a law prohibits dealing in liquor, the dealing does not cease to be business, but the said law imposes a restriction on the said dealing."

The Court then referred to the decision in *T. B. Ibrahim v. Regional Transport Authority, Tanjore*, according to the respondent- State there, it was held in that case that dealing in liquor was not a business or trade within the meaning of Article 19 of the Constitution and there is no fundamental right in a citizen to carry on the business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interests of public convenience. The Court observed that in that case this Court did not say that there was no fundamental right to do business but only held that a citizen could not claim that his fundamental right could not be restricted in public interests.

Nor, according to the Court, did the decision in *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer*, lay down any such proposition. According to the Court, in that case this Court held that the impugned regulation was a reasonable restriction within the meaning of Article 19 (6). Referring to the extract from the judgment of Field, J. in *Crowlene v. Christensen* referred to in that judgment and the concurrence expressed by the Court there with the said observations, the Court observed that the said passage from the judgment of Field, J. had nothing to do with the construction of Article 19 (1) (g) of the Constitution. According to the Court, there the learned Judge was considering the scope of the "police power" and the said observations were made in that context and those observations were applied by this Court in *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer*, in considering the reasonableness of the restrictions

imposed upon the fundamental rights. According to the Court, the perusal of the entire judgment shows that the Court had indeed conceded the fundamental right but held that the said regulation operated as reasonable restriction on the said rights.

Similarly, according to the Court the following observations of this Court in *State of Assam v. A. N. Kidwai, Commissioner of Rills Division and Appeals, Shillong, 1957 SCR 295* had no relevance to the inquiry, viz., whether there was a fundamental right to carry on business in liquor. The said observations are as follows:

"A perusal of the Act and rules will make it clear that no person has any absolute right to sell liquor and that the purpose of the Act and the rules is to control and restrict the consumption of intoxicating liquors, such control and restriction being obviously necessary for the preservation of public health and morals, and to raise revenue."

According to the Court, the said observations only mean that no absolute right to sell liquor was given to any person under the Act and that the said right was controlled by the provisions of the said Act. The Court further held that the respondent-State there could not draw any support from the decision of this Court in *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, 1958 SCR 1240* because the question there was in regard to the scope of Articles 226 and 227 of the Constitution vis-a-vis the orders passed by the appropriate authorities under the Eastern Bengal and Assam Excise Act, 1910 although in that case two decisions of this Court, viz., *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer, AIR 1954 SC 220 : 1954 SCR 853*. = *State of Assam v. A. N. Kidwai, Commissioner of Hills Division and Appeals, Shillong, 1957 SCR 295* were noticed~ and it was observed that there was no inherent right to the settlement of liquor shops. According to the Court no question of fundamental right under Article 19 (1) arose in that case and hence the said observations were unhelpful to the State.

The Court also found that the following observations made in the *R. M. D. State of Bombay v. R.M.D. Chamarbaugwala, 1957 SCR 874* were also not helpful to the State because that decision only laid down that gambling was not business or trade:

"we find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of the hard earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by our Constitution makers to be raised to the status of trade, commerce or inter course and to be made the subject-matter of a fundamental right guaranteed by Article 19( 1 )(g)."

Since the Court was not concerned with gambling, the said observations were not relevant. The Court then concluded with the scrutiny of the earlier decisions of this Court referred to above, that they did not support the contention that dealing in liquor was not business or trade. According to the Court, in those decisions this Court was only considering the provisions of the various Acts which conferred a restricted right to business. None of the decisions held that a right to do business in liquor was not a fundamental right. The Court, therefore, held that dealing in liquor was business and a citizen has a right to do business in that commodity; but a State can make a law imposing reasonable restrictions on the said right in public interest. We will have an occasion to deal with the Court's observations and

conclusions in this case at the appropriate stage hereinafter.

To proceed further with the decisions of this Court in chronological order, we may now refer to the next decision, viz., *State of Orissa and others v. Harinarayan Jaiswal and others*, which is a decision of two learned Judges. The facts were that the first respondent was carrying on business of country liquor in exercise of the powers conferred by Section 29 (2) of the Bihar and Orissa Excise Act, 1915. The appellant-State issued an order and in pursuance of that order a date was notified for selling by public auction the exclusive privilege of selling by retail, country liquor in eight shops. The respondent was the highest bidder but his bid was rejected because the Government was of the view that inadequate prices had been offered as a result of collusion between the bidders. Thereafter, tenders were called for and the appellant accepted the tender in respect of one shop and rejected the others as it was again of the opinion that price offered was inadequate. Thereafter, the remaining seven shops were sold by private negotiations for substantially higher prices. The High Court had allowed the writ petition filed by the respondent and in appeal this Court referred to the decisions which we have cited above including the decision in *K.K. Narula v. State of Jammu and Kashmir*, 1967(3) SCR 50 : AIR 1967 SC 1368 Hedge, 1. speaking for the Court held as follows:

"It is true that this Court has ruled that the right to trade in intoxicating drugs is also a right to carry on any trade or business within the meaning of Article 19(1)(g) - see *Krishna Kumar Narula v. Jammu Kashmir State and others*. At the same time, it was held by this Court in *Cooverjee B. Bhfrucha v. The Excise Commissioner and the Chief Commissioner, Ajmer and others*. that for determining reasonable restrictions within the meaning of Article 19 (6) of the Constitution the right given under clause 19(1)(g), regard must be had to the nature of the business and the conditions prevailing in a particular trade; State has power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public and there is no inherent right in a citizen to sell intoxicating liquors by retail."

In *Amar Chandra Chakraborty v. Collector of Excise, Government of Tripura and others*,<sup>2</sup> which is a decision of Constitution Bench of five learned Judges, the challenge was to the Excise Collector's order withdrawing liquor license before expiry of time. Referring to the decision in *K. K. Narula v. State of Jammu and Kashmir*, 1967(3) SCR 50: AIR 1967 SC 1368 the Court held there as follows:

" .. .It is no doubt true that this Court in the case cited held that dealing in liquor is business and a citizen has a right to do business in that commodity but it was added that the State can make a law imposing reasonable restrictions on the said right in public interest. In dealing with reasonable restrictions no abstract standard or general pattern is possible to lay down. In each case, regard has to be had to the nature of trade or business, the conditions prevailing in such trade or business the nature of the infringement alleged, and the underlying purpose of the restriction the imposition of which is alleged to constitute an infringement."

The Court then referred to the contention on behalf of the appellant that the provisions of Section 43 of the Bengal Excise Act, 1909 which empowered the licensing authority to withdraw the license for any reason whatsoever not falling under Section 42 of that Act, were unreasonable and violative of the appellant's fundamental right under Article 19, and held as follows:

" ... It is no doubt true that in Section 43, there is no express mention of the precise grounds on which the license can be withdrawn. But in our opinion keeping in view the nature of the trade or business for which the grant of license under the Act is provided the cause contemplated by Section 43 must be such as may have reasonable nexus with the object of regulating this trade or business in the general interest of the public. In the determination of reasonableness of restrictions on trade or business regard must be had to its nature, the conditions prevailing in it and its impact on the society as a whole. These factors must inevitably differ from trade to trade and no general rule governing all trades or businesses is possible to lay down. The right to carry on lawful trade or business is subject to such reasonable conditions as may be considered essential by the appropriate authority for the safety, health, peace, order and morals of the society. Article 47 of our Constitution directs the State to endeavour to prohibit consumption of intoxicating drinks or drugs which are injurious to health except for medicinal purposes. In the case of country liquor, therefore, the question of determining reasonableness of the restriction may appropriately be considered by giving due weight to the increasing evils of excessive consumption of country liquor in the interests of health and social welfare. Principles applicable to trades which all persons carry on free from regulatory controls do not apply to trade or business in country liquor: this is so because of the impact of this trade on society due to its inherent nature."

In *Nashirwar etc. etc. v. State of Madhya Pradesh*, which is a judgment of three learned Judges, while dealing with the question whether the State has power to grant liquor license by public auction and whether the said power violated fundamental right under Article 19 (1)(g) of the Constitution, the Court held as follows:

"There are three principal reasons to hold that there is no fundamental right of citizens to carry on trade or to do business in liquor. First, there is the police power of the State to enforce public morality to prohibit trades in noxious or dangerous goods. Second, there is power of the State to enforce an absolute prohibition of manufacture or sale of intoxicating liquor. Article 47 states that the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health. Third, the history of excise laws shows that the State has the exclusive right or privilege of manufacture or sale of liquor.

In *State of Bombay v. F.N. Balsara*, 1951 SCR 682 this Court referred to Article 47 and said that the idea of prohibition was connected with public health. The challenge to a prohibition law under our Constitution was made under Article 14 and 19 in Balsara's case, This Court held that absolute prohibition of manufacture or sale of liquor is permissible and the only exception can be for medicinal preparations. The concept of inherent right of citizens to do business in liquor is antithetical to the power of the State to enforce prohibition laws in respect of liquor.

Das, C.J. in *State of Bombay v. R.M.D. Chamarbaugwalla*, [1957 SCR 874] said that gambling could not be regarded as trade or business within the meaning of Article 19 (1)(f) and (g) and Article 301. Inherently vicious activities cannot be treated as entitling citizens to do business or trade in such activities. No one can deal in counterfeit coins or currency notes. Das C.J. held that activities which are criminal, or dealing in articles or

goods which are *res extra commercium* could not have been intended to be permitted by Article 19 (1) (f) and (g) relating to fundamental rights to trade or business."

Referring to *KK Narula v. State of Jammu and Kashmir*, 1967(3) SCR 50: AIR 1967 SC 1368 the Court held that it was not correct to read the said decision to mean that there was a fundamental right to do business in liquor. According to the Court, the said decision was that dealing in liquor is business and a citizen had a right to do business in that commodity and the State could impose reasonable restrictions on that right in public interest. If the State could prohibit business in liquor as held in *State of Bombay v. F.N. Balsara*, 1951 SCR 682 that established that the State had exclusive right or privilege to manufacture, possess, or sell intoxicating liquor and, therefore, the State granted a right or privilege to persons in the shape of license or lease. The Court then referred to *State of Orissa v. Harinarayan Jaiswal*, 1971(2) SCC 236 and stated that case had explained *KK Narula v. State of Jammu and Kashmir*, 1967(3) SCR 50: AIR 1967 SC 1368. The Court then observed as follows:

"Trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible with other trades are lawful and reasonable so far as the trade in liquor is concerned. that is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public morality, public interest and harmful and dangerous character of the liquor. The State possesses the right of complete control over all aspects of intoxicants, viz., manufacture, collection, sale and consumption. The State has exclusive right to manufacture and sell liquor and to sell the said right in order to raise revenue. That is the view of this Court took in Bharucha's case and Jaiswal's case."

The Court also held that since in *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer*, in no uncertain terms this Court had repelled the citizens' contention of inherent right to sell intoxicating liquor and since Cooverjee's case was a Constitution Bench decision, K.K. Narula's case which is also a Constitution Bench decision, cannot be said to have overruled the decision in Cooverjee's case.

In *Har Shankar and others etc. etc. v. The Dy. Excise and Taxation Commissioner and other*, which is a decision of Constitution Bench of five learned Judges, the question whether a citizen had a fundamental right to trade in intoxicants and whether State had power to prohibit absolutely every form of activity relating to intoxicants, fell directly for consideration. While dealing with it, after referring to all the earlier decisions including the decision in K.K. Narula v. State of Jammu and Kashmir, 1967(3) SCR 50: AIR 1967 SC 1368 the Court held as follows:

"These unanimous decisions of five Constitution Benches uniformly emphasised after a careful consideration of the problem involved that the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from the business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilised communities. The contention that the citizen had either a natural or a fundamental right to carry on trade or business in liquor thus stood rejected.

But, in spite of the weight of this authority, a Constitution Bench struck a different note in *Krishna Kumar Narula etc. v. State of Jammu and Kashmir and others*..... " It would, however, appear that the learned Judges of the High Court had differed on the question whether the appellant had a fundamental right to do business in liquor and this Court desired 'to make the position dear' in order to "avoid further confusion in the matter". The decisions in Cooverjee's case, Kidwai's case and Nagendra Nath's case were cited before the Court but it look the view that they did not support the contention that dealing in liquor was not business or trade or that a right to do business in liquor was not a fundamental right... ..'

The Court then referred to the decision in *State of Bombay v. R.M.D. Chamarbaugwala*, 1957 SCR 874 and observed as follows:

"This decision was also cited before the Court in Krishna Kumar's case but it said: "This decision only lays down that gambling is not business or trade. We are not concerned in this case with gambling." With great respect, the reasons mentioned by Das, C.J. for holding that there can be no fundamental right to do trade or business in an activity like gambling apply with equal force to the alleged right to trade in liquor and those reasons may not be brushed aside by restricting them to gambling operations."

"In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in Balsara's case, Cooverjee's case, Kidwai's case, Nagendra nath's case, Amar Chakraborty's case and the R.M.D.C. case, as interpreted in Harinarayan Jaiswal's case and Nashirwar's case. There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In "American Jurisprudence", Volume 30 it is stated that while engaging in liquor traffic is not inherently lawful, nevertheless it is a privilege and not a right, subject to governmental control [page 538]. This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime. [pp. 539, 540, 541].

It was unnecessary in Krishna Kumar Narula's case to examine the question from this broader point of view, as the only contention bearing on the constitutional validity of the provision impugned therein was not permitted to be raised as it was not argued in the High Court. The discussion of the question whether a citizen has a fundamental right to do trade or business in liquor proceeded in that case, avowedly, from a desire to clear the confusion arising from the "different views" expressed by the two Judges of the High Court. This may explain why the Court restricted its final conclusion to holding that dealing in liquor is business and the citizen has a right to do business in that a commodity. The Court did not say, though such an implication may arise from its conclusion, that the citizen has a fundamental right to do trade or business in liquor. If we may repeat, Subba Rao, C.J. said:

"We, therefore, hold that dealing in liquor is business and a citizen has a right to do business in that commodity; but the State can make a law imposing reasonable restrictions on the said right, in public interest."

It is significant that the judgment in Krishna Kumar Narula's case does not negate the right of the state to prohibit absolutely all forms of activities in relation to intoxicants. The wider right to prohibit absolutely would include the narrower right to permit dealing in intoxicants on such terms of general application as the State deems expedient."

In *Lakhanlal etc v. State of Orissa and others*, which is a decision of two learned Judges, the Court after referring to the decisions in Cooverjee's case, K.K. Narula's case and Har Shankar's case reiterated that there was no fundamental right to trade or business in intoxicants and that in all their manifestations these rights were vested in the State and indeed without such vesting there could be no effective regulation of various forms of activities in relation to intoxicants.

In *Sat Pal and Co. etc. v. Lt. Governor of Delhi and others*,<sup>2</sup> which is a decision of two learned Judges, it was observed that if there is no fundamental right to carry on trade or business in liquor, there is no question of its abridgement of any restriction which can be styled as unreasonable. The Court reiterated the view taken in Har Shanker's case that the State under its regulatory power has a right to control or even to prohibit absolutely every form of activity in relation to intoxicants apart from anything else, its import too. This power of control is a question of society's right to self-protection and it rests upon the right of the State to act for the health, moral and welfare of the people. Liquor traffic is a source of pauperism and crime.

In *Southern Petroleum and Chemicals, Trichur and others v. State of Kerala and others*,<sup>3</sup> which is a decision of three learned Judges, the Court held that no citizen has any fundamental right guaranteed under Article 19 (1) (g) of the Constitution to carry on trade in any noxious and dangerous goods like intoxicating drugs or intoxicating liquors.

In *State of M.P. and others v. Nandlal laiswal and others*,<sup>4</sup> the Bench of two learned Judges reiterated that it is well-settled by several decisions of this Court including the decision in Har Shankar's case that there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants and its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor.

In *Doongaji and Co. v. State of Madhys Pradesh and others*,<sup>5</sup> a Bench of two learned Judges while dealing with the question whether, after the expiration of the license given to the appellant, fixation of the prices of the plant and machinery of the distillery and the attached warehouses and stock-in-trade and payment thereof to the appellant, was a condition precedent to taking possession thereof and giving delivery to the new licensee which was a State owned Corporation found on facts that the appellant had no exclusive possession of the distillery which always remained with the Excise Department and the

appellant was only working out the contract of manufacturing rectified spirit in the distillery and wholesale supply of the same to the retail vendors within the area attached to it. Due to non-cooperation of the appellant, possession was taken and delivered to the incoming licensee as per the Rules and the appellant was not entitled to restitution. In that connection, the Court observed as follows:

"It is settled law by several decisions of this Court that there is no fundamental right to a citizen to carry on trade or business in liquor. The State under its regulatory power has power to prohibit absolutely any form of activity in relation to an intoxicant, its manufacture, possession, import and export. No one can claim, as against the State, the right to carry on trade or business in any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor. Further when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14 and any infringement in this behalf at its pleasure is arbitrary violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to rigour of Article 14."

**7. Extension of applicability of the Act to States and Union Territories of Delhi and Chandigarh.** - By Punjab Laws (Extension No.4) Act, 1958 Punjab Act No. 18 of 1958 the Punjab Excise Act 1914 has been extended to the State of Patiala and East Punjab States Union as given in Schedule I of the said Act. This Extension Act of 1958 received the assent of the President on 5th May, 1958 and was first published in the Punjab Gazette Extraordinary dated May 15th, 1958, Vaisakha 25, 1880 Ska. This Act as amended has been extended to the Union Territory of Delhi subject to certain modifications, vide Ministry of Home Affairs, Notification No. G.S.R. 1114, dated September 30, 1959 published in the Gazette of India, Part II Section 3(i) dated October 10th, 1959/Asvina 18, 1881. The Act also extends to Union Territory of Chandigarh.

8. Power of State Government to carry on trade or business. - 16. Article 298 of the Constitution provides as follows:

"298. *Power to carry on trade, etc.* - The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that -

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business of such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

Thus both the Union and the State Governments have within their respective spheres, power to carry on trade or business.

Article 301 reads as:

"301. *Freedom of trade, commerce and intercourse.* - Subject to the other provisions of

this part, trade, commerce and intercourse throughout the territory of India shall be free."

The right given by this Article to freely carry on trade, commerce and intercourse throughout the territory of India is undisputedly subject to the same restrictions as is the right under Article 19 (1) (g).

Apart from the restrictions placed on the right under Article 301, by the provisions of Articles 19 (6), 47, 302 and 303, the provisions of Article 304 also place such restrictions on the said right. So do the provisions of Article 305, so far as they protect existing laws and laws creating State monopolies. The provisions of the aforesaid Articles, so far as they are relevant for our purpose, read together, therefore, make the position clear that the right conferred by Article 19 (1) (g) is not absolute. It is subject to restrictions imposed by the other provisions of the Constitution. Those provisions are contained in Articles 19 (6), 47, 302, 303, 304 and 305.

**2. Repeal of enactments.** - The enactments, mentioned in Schedule (1) are repealed to the extent specified in the fourth column thereof.

**3. Definitions.** - In this Act and the rules made under it unless there is something repugnant in the subject or context ;-

**(1) Beer.** - "Beer" includes ale, porter, stout and all other fermented liquors made from malt.

**(2) Bottle.** - "to bottle" means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle whether any process of manufacture be employed or not, and bottling including re-bottling.

**(3) Collector.** - "Collector" includes any revenue officer in independent charge of district and any official appointed by the State Government to discharge throughout any specified local area, the functions of a Collector under this Act.

**(4) Commissioner.** - "Commissioner" means the chief officer incharge of the revenue administration of a division.

**(5) Denatured.** - "denatured" means effectually and permanently rendered unfit for human consumption.

**(6) Exciseable article.** - "Exciseable article" means : (a) any alcoholic liquor for human consumption; or (b) any intoxicating drug]

**[(6-a).** "excise bottle" means a bottle of such type or description as may be or may have been at any time permitted for the bottling of liquor or beer by rules made under this Act].

**[(6-b)** "excise duty" and "countervailing duty" means any such excise duty or countervailing duty as the case may be as in mentioned in entry 51 of list II in the Seventh Schedule to the Constitution.

**[(7)** "Excise Commissioner" means the Excise Commissioner appointed as such by the State Government under section 9 and includes any other officer appointed by the

State Government to discharge the functions of the Excise Commissioner under this Act.]

**Sub section (7) for Haryana**

**(7) Excise commissioner.** - "Excise Commissioner" means the officer appointed by the [State] Government under Section 9.

**(8) Excise Officer.** - "excise officer" means any officer or person appointed or invested with powers under this Act.

**(9) Excise revenue.** - "Excise revenue" means revenue derived or derivable from any payment, duty, fee, tax confiscation or fine imposed or ordered under the provisions of this Act, or of any other law for time being in force relating to liquor or intoxicating drugs, but does not include a fine imposed by a court of law.

**(10) Export.** - "Export" means to take out of Punjab otherwise than across a customs frontier as defined by the Central Government.

**(11) Financial Commissioner.** - "Financial Commissioner" shall when there are more Financial Commissioners than one be construed as meaning one or more of the Financial Commissioners]

**(12) Import.** - "Import" (except) in the phrase "import into India means to bring into Punjab otherwise than across a custom frontier as defined by the Central Government].

**(12-a) Intoxicant.** - "intoxicant" means any liquor or intoxicating drug.

***For Haryana***

**(12-a) Intoxicant**" means any liquor, lahan or intoxicating drug;

**(13) Intoxicating drugs.** - "intoxicating drugs" mean.

- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Canabis Sativa L.*) including all forms known as bhang, siddhi 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 mixture with or without natural materials of any of the above forms of intoxicating drug or any drink prepared there from; and
- (iv) any other intoxicating or narcotic substance which the State Government may by notification declare to be an intoxicating drug such substance not being opium coca leaf, or a manufactured drug as defined in Section 2 of the Dangerous Drugs Act, 1930.

**2[(13\_A) Lahan.** - "Lahan" means any solution made from any kind of gur or molasses or both:

- (i) to which a fermentation agent has been added to promote fermentation; or
- (ii) which has undergone the process of fermentation and from which spirit can be obtained by distillation; and]

***For Haryana***

**(13-a) "lahan"** means any solution made from any kind of gur or molasses or both to which a fermenting agent has been added to promote fermentation, or which has undergone the process of fermentation and from which spirit can be obtained by distillation;

**(14) Liquor.** - "Liquor" means intoxicating liquor and includes [Lahan and] all liquid consisting of or containing alcohol; also any substances which the State Government may by notification declare to be liquor for the purposes of this Act.

***Sub section (14) for Haryana***

**(14) Liquor.** - "Liquor" means intoxicating liquor and includes all liquid consisting of or containing alcohol; also any substances which the [State] Government may by notification declare to be liquor for the purposes of this Act.

**(15)** [-]omitted by the Punjab Act No. 25 of 1964).

**(16) Manufacture.** - "manufacture" includes every process, whether natural or artificial by

which any intoxicant is produced or prepared and also redistillation, and every process for the rectification, reduction flavouring, blending or colouring of liquor.

***Sub section 16-A for Punjab Only***

[(16-A) "Offender" means any person, who in contravention of any provision of this Act, the rules framed thereunder, any notification issued or any order made or any license, permit or pass granted under this Act, imports or exports or transports or possession any liquor.]

(17) **Place.** - "place" includes a building, shop, tent, enclosure, booth, vehicle, vessel, boat and raft.

***Sub section 17 A & 17B for Haryana Only***

2[ (17 A) **Purchase.** - expression "purchase" includes receipt in any manner including gift;]

(17B) "**prescribed**" means prescribed by rules made under this Act;3 (18) **Sale.** - expression referring to "sale" include any transfer otherwise than by way of gift.

***Sub section 18for Haryana***

4[(18) **Sale.** - expression "sale" includes transfer in any manner including gift;]

(19) **Spirit.** - "spirit" means any liquor containing alcohol obtained by distillation whether denatured or not.

(20) **Tari.** - "tari" means fermented or unfermented juice drawn from any kind of palm tree.

(21) **Transport.** - "transport" means to move from one place to another within Punjab.

### **Sub section 21 for Haryana**

[(21) "transport" means to move from one place to another within the State of Haryana and includes transit through the State of Haryana.]

### **NOTES**

**1. Definition Clause.** - Section 3 of the Act contain definitions of a few terms used therein indicating their specific meaning which may slightly or substantively differ from its usual declaratory meaning. It is also clear that since the Act empowers Legislature as well as specified authorities to include or exclude any substance in its specified form or any other term, which may have not been included or excluded in the Act or to be covered under the Act, from the definition of any term. Though the definition clauses, by bringing some specific terms under the restrictions of the Act, restrict their free utilisation, circulation, production and/or transportation, but the same were held to be intra vires the Constitution not offending any fundamental rights as the fundamental rights granted under the Constitution are also subject to any law made by the Legislature. The Constitution is a fountain of Fundamental Right of the Citizens as well as of such laws which may impose certain restrictions on such rights provided in Part III of the Constitution. Reference can be made to Art. 13 of the Constitution in this context which reads as under :-

"Article 13 : Laws inconsistent with or in derogation of the fundamental rights :(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridge the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this Article, unless the context otherwise requires :-

(a) "Law" includes any ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "Laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this Article shall apply to any amendment of this Constitution made under Art. 368)."

Similarly the head of the State can also enforce its ordinance exercising his powers under Art. 213 which reads as under:-

"Article 213 :- Power of Governor to promulgate ordinances during recess of Legislature:-

(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require :-

Article 13 above, contain three parts: namely;

(i) sub clause (1) which provides a declaration against any law existent on the day the Constitution came into force; to the extent of its inconsistency with the provisions of part III of the Constitution; and (ii) Sub Clause (2) restrains the State from making any such law which may take away any right granted by Part III of the Constitution; but at the same time Art. 31 A to 31-C of the Constitution provide saving provisions of a few such laws. Art. 31-C is directly relevant for the purpose of this section which reads as under :-

"Art. 31-C :- Saving of laws giving effect to certain directive principles :Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV, shall be deemed

to be void on the ground that it is inconsistent with, or taking away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the president, has received his assent."

Since the purpose and objects of the Act are to improve public health and moral by a greater control of liquor trade and for the benefit of the State to earn revenue, the definition clauses covering a few such articles or substance which are dangerous to the health, are rightly waved under Art 31-C of the Constitution under its sound and well founded scheme. Therefore, the provisions of Section 3 of this Act does not hit Art. 13 or any other Provisions of Part III of the Constitution.

**2. Beer** :- The beer has been defined in Section 3(1) of the Act, its meanings are not clear from the definition. Ale, porter, stout and all other fermented liquors made from Malt are included in the word in accordance with the definition given in the Act. The definition is an inclusive one. The meanings of the word in different dictionaries are reproduced as under :-

**The Reader's Digest Great Encyclopaedic Dictionary.** - "Beer-n. Alcoholic liquor made from fermented malt flavored with hopsale (in trade usage) any of the liquor fermented brewed from Malt as ale, stout, porter lager ale as distinct from others.-

**Collin National Dictionary.** - Beer-n:- An alcoholic beverage made by fermentation from malted barley, hops, sugar and water with the aid of yeast."

**Chambers Twentieth Century Dictionary.** - "Beer-n:- An alcoholic beverage made by fermentation from malted barley flavored with hops' the generic name of malt liquor, including ale and porter. Now Glucose and other materials largely used in place of malt and hop substitutes are occasionally used in place of hops. The country beers are also made from rice, barley, mahua. Beer in its widest sense is a liquor made by infusion and fermentation from any vegetable substance. Now the beers are manufactured from an infusion of prepared 'malt' boiled alongwith hops or its substitutes and then fermented."

Liquor includes. It is not unusual to define in any statute genus as well as some of its species.

The mere fact that beer has been separately defined in Section 3( 1) of the Punjab Excise

Act, 1914, does not itself show that beer and liquor are two different articles wholly independent of each other.

The main fact that the beer has been especially defined in the Act does not itself show that beer and liquor are two different articles wholly independent of each other.

**3. "Bhang" not a narcotic substance - Possession however does violate Excise Act.** - It would be noticed from the section 2(iii) of the NDPS Act that 'Bhang' has not been covered expressly under the meaning of the Cannabis (hemp). Section 2(xiv) of the Act also defines: "Narcotic Drug" means coca leaf, cannabis (hemp), opium poppy straw and includes all manufactured drugs. These provisions only limit the definition of 'narcotic drug' to cannabis (hemp) but do not expressly include 'Bhang'. The net consequence would be that Bhang can not be construed a narcotic or even psychotropic drug in terms of the above stated provisions. The same conclusion was drawn in *Samid v. State of Uttar Pradesh, 1995(3) RCR (Cr.) 445*. In that case the police has sought the prosecution as 25 kg. of Bhang was recovered from the accused who was also found in possession of two bottles of Kachi Sarab (Alcohol). On the basis of above recovery, the trial Court convicted the accused. The appeal preferred by the accused was accepted and taking into account the above provisions it was held that the charges framed against the petitioner under Sections 8 and 20 of the Act were misconceived as possession of Bhang would not amount to offence and consequently his conviction and sentence was set aside and he was acquitted. At the same time, the Court took notice of the fact that recovery of Bhang so made was covered under Section 60 of the Excise Act and as he had already suffered sentence of more than three months, the sentence was modified to the period already undergone by him while upholding the conviction under Section 60 of the Excise Act.

In *Manjee v. State of Rajasthan 1996(2) RCR (Cr.) 258*, the charge was only with regard to Sections 8 read with Section 20 of the Act relating to the cultivation of cannabis plants of Ganja which was held to be punishable under the Act though it was not included within the definition of cannabis (hemp). At the same time, it was also observed that import, export, transport, manufacture, collection, sale or possession of Bhang was punishable under Section 55 of the Rajasthan Excise Act, 1950 but not under the Act. As the question of possession and sale of Bhang was not involved, the same was left to be decided in an appropriate case. The judgment in question also contains useful discussion with regard to the cannabis (hemp) and cannabis plants in relation to Charas and Ganja so defined in Section 2(iii) of the Act. It would be appropriate to notice the discussion contained in paras 4 to 14 of the Act which read as under :-

- "4. It is held that Cannabis plant and Cannabis (Hemp) are two different contrabands under N.D.P.S. Act. Cannabis (Hemp) is defined under Section 2(iii) of the said Act which includes (includes ?) Charas and Ganja and also any mixture with or without any natural material of any of the above forms of Cannabis or any drink prepared therefrom.
5. Charas is defined under Section 2(iii)(a) of the N.D.P.S. Act which means separated resin in whatever form whether crude or purified obtained from the Cannabis plant and also includes concentrated preparation and resin known as Hashish oil or liquid hashish.
6. Under Section 2(iii)(b) of the N.D.P.S. Act Ganja is also defined according to which

Ganja is flowering or fruiting tops of the Cannabis plant (excluding seeds and leaves when not accompanied by the tops) by whatever name they may be known or designated.

7. Cannabis plant is defined under Section 2(iv) of the N.D.P.S. Act which means any plant of genus Cannabis.
8. It is easily deducible from the aforesaid definitions that Charas popularly known as Hashish is separated resin obtained from Cannabis plant (Hemp) either from its natural discharge of resin through its pores or by its incisions by human hands. Thus Charas is not a Cannabis plant but it is resin obtained from it whereas Ganja is the flowering or fruiting tops of the Cannabis plant excluding the seeds and leaves when not accompanied by tops.
9. For deeper understanding of the controversy involved in the present case it is pertinent to mention that Bhang Cannabis plant are of two kinds known as male and female. A female Cannabis plant is called PISTILLATE plants whereas male plants are identified by SHORT AXILLARY DROPPING PANICLES. Female flowering tops quoted with resin are Ganja whereas fruiting leaves are called Bhang (see V ANOSHADHI NIRDESHIKA (A YURVEDIY A PHARMACOPIA) written by Dr. Ram by Dr. Sushil Singh published by Hindi Samiti, Suchna Vibhag, Uttar Pradesh, Lucknow.
10. According to Modi's Medical Jurisprudence and Toxicology 21 st Edition, 1988, Section II Toxicology chapter XXXIV page 248, 'Bhang', 'Siddhi', 'Patti' are Cannabis Sativa consists of dried leaves and fruiting shoots whereas Ganja has rusty green colour and a characteristic odour and consists of flowering or fruiting tops of the female plant quoted with resin. According to Modi's toxicology, Charas is concentrated resin excluding from the leaves and stems of the plant.
11. Here it is to be noticed that imports, exports, transports, manufactures, collections, sale or possession of Bhang is punishable under Section 54 of the Rajasthan Excise Act, 1950 (hereinafter referred as 'Act No.2 of 1950') wherein intoxicating drug has been defined under Section 3(14) of the said Act. It is also to be noticed that cultivation of any hemp plant (Cannabis Sativa) is also punishable under Section 54(b) read with Section 54(g) of Act No.2 of 1950 with imprisonment for a term which may extend to three years and with fine which may extend to Rs. 2,000/-. Section 20 of the N.D.P.S. Act also provides punishment in relation to Cannabis plant and Cannabis for its cultivation and for its import, export, transport, manufacture, collection, sale or possession etc.
12. From the above provisions contained under the Act No.2 of 1950 and N.D.P.S. Act give an impression that the definition of intoxicating drugs and its punishments are overlapping where one cannot be obeyed without disobeying the other.
13. It is apparent from aforesaid two enactments that under Act No.2 of 1950 Charas, Ganja and Bhang are included within the definition of cannabis (Hemp) whereas under N.D.P.S. Act Bhang is excluded. Bhang does not fall within the definition of cannabis (Hemp) as defined under Section 2(iii) of N.D.P.S. Act. It is also to be noticed that under Act No.2 of 1950 cultivation of only cannabis (Hemp) plant i.e. Charas, Ganja and Bhang is an offence under Section 54(b) and punishable under Section 54(g) of the said Act whereas under N.D.P.S. Act cultivation of any cannabis plant which means any plant of the genus

cannabis as defined under Section 2(iv) of N.D.P.S. Act is punishable under Section 20(a) read with Section 20(b)(i) of the said Act. In my humble opinion although Bhang is excluded from the definition of cannabis (Hemp) under the N .D.P .S. Act yet it does fall within the definition of cannabis plant and as such its cultivation is punishable under Section 20(a) read with Section 20(b)(i) of the said Act. It was held that cannabis (Hemp) is one of the species of cannabis plant, therefore, it cannot be held that since 'Bhang' is excluded from the definition of cannabis (hemp) under the N.D.P.S. Act one of the species of cannabis plant, therefore, its cultivation is not an offence and it is not punishable under Section 20(b )(i) of the said Act.

14. In my considered opinion cultivation of 'Bhang' is punishable under N.D.P.S. Act although it is not included within the definition of cannabis (Hemp) and not under Act No. 2 of 1950 within the meaning of Article 254 of the Constitution of India. As regards cultivation of Bhang is concerned, the N.D.P.S. Act would prevail over Act No.2 of 1950 and latter enactment passed by the Legislature of State shall be deemed to be repugnant and void to the extent of its inconsistency to the former enactment passed by Parliament."

So far State of Punjab is concerned, Section 3(13) of the Punjab Excise Act, 1914, defines "intoxicating drugs" as under ;-

"13. "intoxicating drugs" means ;-

- (i) the leaves; small stalks and flowering or fruiting tops of the Indian hemp plant (Cannabis Sativa-L) including all forms known as bhang, sidhi or ganja;
- (ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;
- (iii) any mixture, with or without natural materials, of any of the above forms of intoxicating drug or any drink prepared therefrom; and
- (iv) any other intoxicating or narcotic substance which the State Government may by notification, declare to be an intoxicating drug, such substance not being opium coca leaf, or a manufactured drug, as defined in Section 2 of the Dangerous Drugs Act, 1930".

Where 3 gunny bags containing 60 kgs. of Bhang were recovered from the accused. The learned Special Judge, Ludhiana while rejecting the bail application of the petitioner has observed as under ;-

"It is true that as per the definition of "cannabis" as given in Section (iii) of the N.D. and P .S. Act, leaves of the Bhang plant are not covered therein and ordinarily simple possession of leaves is not an offence. Yet as already observed there is nothing to suggest that the material recovered from the accused does not include the tops of the Bhang plant."

At the time when bail application of the petitioner was decided, report of the Chemical Examiner was not taken into consideration. As per report of the Assistant Chemical Examiner, Government of Punjab, Patiala, after analysing the samples of Bhang sent to it, he had formed an opinion that the contents of both the samples were Bhang. Therefore, there is no manner of doubt that contents of the recovered three bags were factually Bhang and nothing else. As the leaves of Bhang as such are not within the definition of cannabis (hemp)

contained in Section 2(iii) of the NDPS Act, the provision of Section 20 of the Act would not apply to the recovery made. However, this recovery would be in violation of Section 3(13) of the Punjab Excise Act, 1914 punishable under Section 61 of the Excise Act.

**4. Ayurvedic Medicine - when "intoxicant".** - Briefly stated, the facts are that on 15.11.1991, 177 bottles of 'SOMAMRIT', an Ayurvedic medicine manufactured by Dabur India (Ltd.), were recovered. Representative samples of 'SOMAMRIT' were sent to the Analyst, who reported that the v/v content of ethyl alcohol was in excess of the permissible limit, which is violative of the notification dated 7.12.1991 issued under the Punjab Excise Act. It was contended by the Company that 'SOMAMRIT' is an Ayurvedic medicine and not an intoxicant as its alcohol content is only 11 % v.v which is permissible under the license granted to its manufacturer, namely, Dabur India (Ltd.). As per report of the Analyst, the percentage of the strength of Ethyl Alcohol in the sampled bottles of 'SOMAMRIT' varied from 11.992 to 12.49% V/V. According to the prosecution, the volume to volume strength of the Ethyl Alcohol was in excess of the permissible limit, which contravenes the notification dated 7.12.1991 issued under the Excise Act. Whether a particular drug or any other article is an 'intoxicant' within the meaning of Section 3(12-A) or an 'intoxicant drug' as defined in Section 3(13) of the Excise Act is a question of fact depending upon facts and circumstances.

**5. Ale.** - Ale means, liquor made from malt by fermentation. A beverage made from an infusion of malt by fermentation flavored with hops, "Pale Ale, Mild Ale and Funning Ale" Pale ale is made from the best malt and hops and is heavily hopped. Mild ale is usually alcoholically stronger than pale ale and is less heavily hopped. It is a stronger extract. Funning ale is the terms applied to ale or beer used for consumption after having been only says a week or 10 days in store.

**6. Porter** - A dark -brown malt liquor. It came to be known as porter because it was a favorite drink of London porters. A dark brown bitter beer Dark brown bitter beer, like stout but weaker, brewed from charred or browned malt. It is prepared with pale amber and roasted malts to get its special taste and colour.

**7. Stout** - Stout means Strong dark ale, beer or porter (New witnesses Dictionary of the English Language. A stronger and better quality of porter. An Extra strong porter and/or a strong dark coloured beer.

**8. Fermented** - Fermentation is process induced by yeast or other fermentation agents on solutions. It is the process by which alcohol is manufactured from starchy materials like potatoes, barley, rice or maize etc. Fermentation is the process of slow decomposition of organic substance brought about by bacteria or micro-organism i.e. low forms of animal or plant life. Souring of milk, putrefaction of meat and production of wine and vinegar from sugar solutions are the process of fermentation. Fermentation is Chemical process brought by certain non-living, complex nitrogenous substances called enzymes present in yeast cells and other micro-organism.

Mollasses is diluted with water to change the sugar concentration to about 10%. The solution is acidified with dilute sulfuric acid to check the growth of undesirable bacteria which

may reduce the yield of alcohol. Before the solution is acidified. Aluminum sulphate or phosphate is also added to provide nitrogen for the yeast. The solution is then put into tanks maintained at 30- 35 C. Yeast is then added as a fermenting agent. In this way the process of fermentation starts and it is accompanied by carbon dioxide-gas. The action is completed in 4-5 days. This period can vary depending upon the heat and solution agents.

The fermented liquor is known as wash and contains up to 18% of alcohol.

**9. Malt and Malting** - Malt, the germinated barley is known as Malt. This contains an enzyme which is required for the hydrolysis of starch. Moist barley is spread in a dark room in layers about 12-13 cm thick maintained at 15 C temperature. Barley begins to germinate after about 3 days and the germination is preserved raising the temperature to 60 C.

(Steamed at 140-150 C pressure is given to the crushed starchy material. The starch cells are crushed and made into solution. The resulting solution is known as mash whereas the process is called as mashing. By adding the malt then to the mash it is treated with temperature at 40-60 C. The enzyme content present in malt converts the starch into maltose. This change is called as saccharification. Thereafter yeast is added in this solution. The enzyme maltase made by yeast converts the maltose in the solution to Glucose. Glucose is then prepared by the enzyme Zymase (present in the yeast) to produce ethyl alcohol and carbon dioxide).

**10. Hop.**: Ripened cones of female hop-plant used for giving bitter flavour to malt liquor and as tonic.

The beer contains 4% to 15% alcohol and is an ancient alcoholic drink. This type of drink was used first in Mesopotamia. Same type of fermented drinks were also used in Ancient India. The largest production of beer is made in Great Britain, U.S.A. Germany, Australia and France.

For the purposes of licensing, beer has been specifically notified under Section 3(14) of the Punjab Excise Act, 1914 as foreign liquor and when foreign liquor a licensee cannot be restrained from dealing with the sale of beer.

**11. To Bottle.** - It is transfer of liquor from a cask or other vessel to a bottle, jar, flask, or similar receptacle whether any process or manufacture be employed or not and bottling also includes rebottling.

3. Collector includes :-

4. Any revenue officer in independent charge of a District; and

5. Any official appointed by the State Government to discharge functions of a Collector for any specified area.

**12. Commissioner**:- Means the Officer in chief, in charge of the revenue administration of the division concerned :-

The State Government by notification under Section 9 of the Act, appoint an Excise Commissioner and subject to such conditions and restrictions as it may deem fit, may invest him with any of the powers conferred even on the Finance Commissioner by this Act.

**13. Denatured.** - Means effectually and permanently rendered unfit for human consumption.

tion. Denatured spirit is a liquor as it contains alcohol and therefore, is an intoxicant. Therefore, the possession of spirit without a license issued under rules framed under the Act, is an offence.

**14. Exemption from sales tax :-** Exemption from Sales Tax is not available to denatured spirit which cannot be taxed under Punjab Excise Act (ILR 1967 (1) Punjab 525.)

**16. Excisable Article.** - The term used in this Act includes liquor for consumption and intoxicating drug except medicinal preparation or toilet preparation. The definition of excisable liquor in the Excise Act prevents chemists and vendors of drugs selling or otherwise dealing with intoxicating liquors. Tinctures of chinchona or cardamom or ginger and spirits of nitric are not excisable liquor. The smuggling of drugs prepared in foreign territory does not render the accused liable to punishment under the Excise Act though it may be punishable under the Customs law.

**Excisable Articles means -**

1. Any alcoholic liquor for human consumption :- The word 'Alcohol' or 'alcoholic liquor' has not been defined in the Act. Only the word liquor has been defined in Section 3(14). It means, any liquor containing alcohol which may be fit for human consumption. Therefore, beer, brandy, country made spirits, wines and whisky etc. are alcoholic liquors under this Act and are governed as Excisable Articles.

2. Any intoxicating drug

(i) Diluted Denatured Spirit: - If the spirit is diluted and denatured it is no more a spirit and becomes an alcoholic liquor. Therefore, 'diluted denatured spirit' was held to be excisable article under Section 2(6) of C.P. and

(ii) Intoxicating Drug has also been defined in Section 3(13) of the Act. In addition to the specified articles, under Section, 3(13)(iv) the State Government has powers to declare any other articles to be governed under this Act as 'Intoxicating Drug'.

(iii) Yeast balls are not excisable articles but as they can be used for the purpose of manufacturing an excisable article their possession is prohibited.

**15. Excise Bottle:** - Means a bottle of such type or description as may be or may have been at any time permitted for the bottling of liquor or beer by Rules made under this Act.

Bottling of Excisable alcoholic liquor is most important to check and control the trade mark and adulteration. Therefore the government has framed "The Punjab Excise Bottles Rules, 1963" under the Act in exercise of powers u/s 58. The Excise and Taxation Commissioners are the competent authority to approve the type and size of the excise bottles to be used by the authorised distilleries or any other authorised agents in this behalf. The manufacturer of such excise bottles are also governed and controlled under the said Rules. The manufacture and supply and storage of such bottles has to be strictly with the permission of the Excise and Taxation Commissioner or any other officer empowered in this behalf. Manufacture, supply and utilisation of such bottles has to be made by the agencies concerned keeping full record to be submitted to the authorities. Such bottles can't be utilised for any other purpose as per 1963 Rules.

The Punjab Excise Bottles Rules 1963 though impose restriction for the freedom of trade

and commerce throughout the territory of India, provided under Article 302 of the Constitution of India but still the same were held to be valid to regulate the provisions of the Act. Accordingly the same were held not ultra vires the Constitution in

**16. Excise Duty.** - Clause (6-B) of Section 3 of the Act defines "excise duty" and "countervailing duty" with reference to Entry 51 of the List II in the Seventh Schedule to the Constitution. It would, therefore, be useful to see if any fee would be treated to be part of the excise duty or countervailing duty within the meaning given to "excise duty" and "countervailing duty" in Entry 51 of List II in the said Schedule. Excise duty may be imposed on the alcoholic liquors manufactured or produced in the State. Countervailing duties may be imposed on similar goods manufactured or produced elsewhere in India.

The words "Excise duty" generally indicate a duty imposed on home manufactured articles. It seems however that this term has not been precisely or authoritatively defined anywhere. In Entry No. 51 of List II of the 7th Schedule of the Constitution Excise duty on alcoholic liquor, opium, Indian hemp and narcotic drugs is included as within States' jurisdiction. The term Excise duty is generally used in contradistinction to the term Customs duty. Duties of custom are imposed on goods going abroad or imported from abroad. The duties of excise are levied on home made goods or goods made in the taxing country. Its primary and fundamental meaning is that it is a tax on articles produced or manufactured in the taxing country and intended for home consumption. An excise duty is a duty on production and though according to the economists it is an indirect tax capable of being passed on to the consumer as part of the price yet the mere passing of the duty is not its essential characteristics. Even if borne by the producer or manufacturer it does not cease to be a duty or excise.

The alcoholic liquors declared fit for human consumption can be levied excise duty like a direct tax under entry No. 51 of list II in the Seventh Schedule of the Constitution. For a convenient ready reference the contents of entry No. 51 are reproduced as under :-

"51. Duties excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced else where in India :-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs, and narcotics but not including medicinal and toilet preparations containing alcoholic or any substance included in paragraph (2) of the entry, but not including medical and toilet preparations containing alcohol or any substance included in sub- paragraph (i) of this entry."

In order to bring any duty within entry 51 of list II of the Seventh Schedule of the Constitution it has to be shown that if it fulfils the essential characteristics of an excise duty namely (i) uniformity of the incidence; (ii) that the duty has a close relation to the production or manufacture of goods (iii) if a levy is made for the privilege of selling excisable article and article has already borne the duty and the duty has to be paid, there must be clear terms in the charging section to indicate that what is being levied for the purpose of privilege of sale is in fact a duty of excise.

**17. Excise Commissioner** :- Excise Commissioner means the officer appointed by the

State Govt. under Section 9. The Govt. is competent to appoint an excise commissioner by notification in official gazette under Section 9 of the Act. The Govt. is further competent to appoint as many additional excise commissioners as it may deem fit and necessary. The Govt. can also invest such excise commissioner with all or any powers of financial commissioner for the purpose of this Act. However, by virtue of Section 9 or Sections 11 or 13 of this Act, the Govt. cannot delegate its powers to the excise commissioner which can only be delegated to the financial commissioner. The original powers conferred on the financial commissioner by virtue of this Act can be delegated to the excise commissioner

**18. Excise Officer:** - 'Excise Officer' means any officer or person appointed or invested with powers of excise officer under Section 10 or 11 of this Act.

The Govt. by way of notification in the official gazette may appoint as many persons as excise officers as it may deem fit till various classes and also may declare powers to be exercisable by such class of officers under this Act. Such officers may be conferred with specific powers by virtue of their office or by name. However the powers conferred by name cannot be deemed to be conferred upon successors in office.

A Sub Inspector of Police or any other police officer is invested with the power of an excise officer for the purpose of Section 57 of the Act of 1896.

Where an Excise Officer appended, his signature to the license under express written authority of authorised Collector it was held that the license was not invalid.

A Sub Inspector of Police or any other police officer on whom the powers of excise officer are conferred comes within the definition of the excise officer. .

**19. Police Officer is an Excise Officer** ; - Every police officer is an excise officer. Report made by a police officer who is also vested with the power of excise officer under Section 71 of the Punjab Act can be considered as falling within the purview of section 75 of the Act. A Magistrate can take cognizance of an offence under section 61 of the Act on the report of the police officer. This view was expressed by a Division Bench of the Punjab High Court. The view expressed in 8 Punjab Record 1901 was relied upon in that case. It was held that the Magistrate can take cognizance even on the report of a sub-inspector of police who is an excise officer.

**20. License fee is excise revenue** ; - License fee is covered by the definition of the "Excise Revenue". That being so the balance of arrears of license fee is clearly recoverable under section 60 of the Act. This mode of recovery is not made subject to the expiry of the excise year nor made subject to the cancellation of the license.

**21. Import and Export** ; - Import (except in the phrase "import into India") means to bring into Punjab or Haryana otherwise than across a customs frontier as defined by the Central Government.

The definition of the word 'Import' under this Section, though not elaborate but is clear which has to be distinguished from its dictionary meaning. It has also to be kept separate from the meaning of word Export. The word 'Import' shall mean strictly under this Section to bring the

excisable goods under this Act into the custom frontiers or Punjab (and Haryana) State as declared by the Central Govt. or by any other competent authority in this behalf. The meaning of export is therefore much wider referring to any State other than Punjab.

**Import** :- Bringing of excise goods within the custom frontiers of Punjab as declared by the Central Govt. is called import of such goods under the Act. The term import under this Act does not include importing from foreign countries as the excise goods imported from foreign countries are separately and specifically governed and controlled by customs Act by the Central Govt. However as and when such goods will enter into the custom frontiers of these States the Act will apply.

The offence of importing opium is an offence constituted by bringing into the territory in question. It does not matter where it was before, provided it was outside the province. The offence is in bringing it in. If the goods once came across the border or the territory in question if they come for and on account of the accused with his consent, let alone by his procurement, the offence of importing is complete. It is not necessary to show that the accused did anything outside the territory.

The term import with its usual grammatical changes ordinarily means bringing into India from a place outside India. According to Supreme Court import is bringing something within the municipal limit from beyond its boundaries irrespective of the fact whether the goods, were manufactured within municipal limits and how long remained outside the said limits.

To construe the words "Import" or "Export" as meaning 'bring in or "take out of or away from to" cover the good in transit, by words imported into or exported from would make rail borne goods passing through a Railway Station within the limits of a municipality liable to tax would lead to confusion, inconvenience and burden on trade; Import is not merely something bring into but comprises something more. Similarly export has reference to take out goods which had become part and parcel of property in local area and will not apply to good in transit.

**Export.** - The term export with its usual grammatical variations ordinarily means to take out of territory to which the Act extends by land, sea or air to any place outside India. Thus export means taking out of India to any place of outside India. The word exp goods which had become part and parcel of the property of a local, apply to goods in transit which are brought into the area only for the purpose of being transported out of it. Possession of opium with the intention of eventually exporting unlawfully does not by itself amount to exporting opium under Section 9 of the opium Act.

**22. Trade and business.** - In the writ petitions before Supreme Court the contention raised was that the A.P. (Regulation of Wholesale Trade, Distribution and Retail Trade in Indian liquor and Foreign Liquor, Wine and Beer) Act No. 15 of 1993 (hereinafter referred to as the "Act") deals with taking over only of "trade" and not "business" in liquor and, therefore, the petitioners cannot be prevented from carrying on the "business" of wholesale dealing in Indian Made Foreign Liquor (IMFL) during the period of the validity of their FL-15 licences issued to them. It is not disputed that the petitioners are wholesale traders in Indian Made Foreign Liquor (IMFL) and have been carrying on the said trade under FL-15 License issued

to them. The license permits them to sell IMFL in the premises indicated in the license.

As the preamble of the Act shows, it has been enacted to take over the wholesale trade and distribution in Indian Liquor/Foreign Liquor, Wine and Beer from the private sector in order to have an effective control over the wholesale supply and distribution of the liquor. The State Government had taken a policy decision that in public interest, the exclusive privilege of supplying in wholesale the Indian Liquor/Foreign Liquor, Wine and Beer in the whole of the State of Andhra Pradesh shall be vested in the A.P. Beverage Corporation Limited and for terminating all existing licenses for wholesale trade and distribution of the Indian Liquor/Foreign Liquor, Wine and Beer. The title of the Act also has owns that it is for regulation of wholesale trade and distribution and retail trade in Indian Liquor/Foreign Liquor, Wine and Beer. Section 3 of the Act further makes it clear that any license issued to sell Indian Liquor/Foreign Liquor, Wine and Beer in wholesale and remaining in force on the appointed day, shall stand terminated with effect from thatday. As stated above, the license is issued to the petitioners viz., FL-15 is also to sell the liquor in the premises and to do no more. When, therefore, the Act terminated the said license of the petitioners with effect from the appointed day, the whole of the trade or business of the petitioners for sale of the liquor came to an end. It is, therefore, difficult to understand the logic of the petitioners' contention that what was extinguished was only the trade of sale and not the business of sale. However, we will examine even the said contention for what it is worth.

There is no doubt that the word "business" is more comprehensive than the word "trade" since it will include manufacture which the word "trade" may not ordinarily include. The primary meaning of the word "trade" is the exchange of goods for goods or goods for money. However, the word "trade" has also secondary meaning viz., business carried on with a view to profit. In fact, the words "trade" and "industry" are also used interchangeably many time. It all depends upon the context in which the words occur. In Words and Phrases Legally Defined, Third Edition (Volume 4: R-Z) by John B. Saunders, the word "trade" is explained as:-

'Trade' in its primary meaning is the exchange of goods for goods or goods for money and' in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts, or learned profession and from agriculture. However, the word is of very general application, must always be considered in the context in which it is used. As used in various revenue Acts, "trade" is not limited to buying and selling, but may include manufacture. In the expression 'restraint' of trade' the word is used in its loosest sense to cover every kind of trade, business, profession or occupation.

Lord Heward, C.J. has observed :

"No doubt in a great many contexts the word "trade" indicates a process of buying and selling, but that is by no means an exhaustive definition of its meaning. It may also mean a calling of industry or class of skilled labour."

While interpreting the provisions of the Industrial Courts Act, 1919 Lord Wright, in<sup>3</sup> has observed thus:

"Section 11 of the Act of 1919 (Industrial Courts Act 1919) shows that 'trade' is used as including "industry because it refers to a trade dispute in the industry of agriculture .... Trade and industry are thus treated as interchangeable terms. Indeed, "trade" is not only in the etymological or dictionary sense, but in legal usage, a term of the widest scope. It is connected originally with the word "tread" and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may also mean a skilled craft."

Lord Donovan has observed :

"A trade is an organised seeking after profits as a rule with the aid of physical assets."

Thus it is apparent that the word "trade" may include all the connotations of the word "business". As held in Article 19 (1) (g) of our Constitution, the words 'trade' and "business" are used synonymously. Hence, we reject the contention and hold that after the taking-over of the trade, viz., the activity of buying and selling liquor; no activity was left with the petitioners to carry on under the license held by them.

**23. Intoxicants.** - Includes alcoholic liquors and intoxicating drugs specified under Sub Section (14) & (13) of Section 3 of the this Act. Under sub section (13)(iv) and sub section (14) the Govt. can by way of notification on the official gazette include or exclude any article to mean and to be governed as an intoxicant under this Act.

The Court by drawing inference by the fact of the case may also hold any article to be an intoxicant if such intoxicant has been prepared by diluting the original nature of a substance or by mixing various substances. In denatured spirit has been held to be an intoxicant and the Govt. is therefore, competent to frame Rules to control such intoxicant and issue licenses for this purpose.

**24. Intoxicants Drug.** - Definition of 'Intoxicating Drugs' contained in Section 3(13) of the Act is not exhaustive. One to see to the definition of 'Dangerous Drugs' provided U/S 2 of the Dangerous Drugs Act, 1930 as per sub section 13(iv) of Section 3 of this Act. The definition U/S 2 of the Dangerous Drugs Act 1930 is exhaustive for the purpose of that Act but not for the purpose of this Act. For the purpose of this Act one shall have to go by the declarations made and notified by the State Govt. U/S 3(13)(iv) of this Act.

The government by way of amendment or by extending the definition of the Intoxicating Drugs may include or exclude any substance to be controlled or restricted under this Act for general or specific purpose and/or for specific time. Therefore, the Government has powers to amend or extend the definition/scope of the terms Intoxicating Drugs under this Act.

**25. Hemp :-** Hemp has been defined in Section 2(e) of the Dangerous Drugs Act which is similar to Section 3(13) (1) (ii) and (iii) of the Act.

**26. Lahan.** - Before the Amending Act 1973 the term Lahan used to be defined on common understanding as to be merely a solution of gm added with some fermenting agent, undergoing the process of fermentation and was fit for distillation.

In the definition of liquor under Section 3(14) 'Lehan' has been include as a liquor. On the other hand in definition of 'country liquor' it has been included as to be the country liquor vide the Punjab Excise Liquor Definitions, 1954 published on 10.7.1954.

Possession of Lahan has been made an offence by the State of Punjab by Act No. 36 of 1973 while including the same to the definition of liquor.

The Excise Officers may not confuse the meaning of Lahan with many other substances prepared specially by the rural people for their domestic use. For example they usually prepared energetic substances for their animals and sometimes for themselves also with the help of solution of gur alongwith other vegetation added to it. Sometime some fermenting agent was also added to it, but every such solution cannot be treated as Lahan as has been defined under this Act. The Excise Officers have to take care of such customary and basic necessities of these who cannot afford to approach the air conditioned clinics and veterinaries, but can save lives of their people and their animals with the help of such solutions or substances.

If the mixture had only been water and gur, the resulting substance could not be said to be Lahan; but once the fermenting agent was added to it does not matter how recently the mixture had been made before it was recovered and the substance was held to be lahan within the meaning of the definition contained in Para A-2 Chapter 1 of Vol. II of the Punjab Excise Manual.

The possession of Lahan has been made an offence so far as the State of Punjab is concerned by Act 36 of 1973. Lahan has been included in the definition of intoxicant. Lahan is a substance which contains gm and to which an agent which may lead to f added.

Conviction for lahan can be ordered if all the ingredients of the Lahan are present in the vessel and they are recovered from the accused or in other words the mixture is ready for fermentation which would inevitably follow then. It is totally immaterial that the mixture is of the recent origin

The mixture of water and gm may not be Lahan. But if an agent responsible for fermentation is added it may become so. ILR 1957 Punjab 238.

**27. Liquor.** - The word liquor has been defined in Section 3(14) of the Act. All intoxicating liquor consisting of, or containing alcohol or the liquors which the State Government may declare by Notification to be liquor for the purpose of this Act are covered under this definition. As per the Punjab Excise Liquor Definitions, 1954, and the notification No. SO-3/10/P.A.1/S- 3/62, dated 12 October, 1962 of the Revenue Department "Lahan" Methyl Alcohol, Spirituous preparation mentioned in the notification and all medicinal preparations containing more than 20% proof strength of alcohol except the spirituous Medicinal preparations given in the notification are liquor. Lahan was added to the articles mentioned as the definition of liquor vide Amendment Act 36 of 1973 and the possession of the same was made an offence. If not specifically excluded even the medical and toilet preparations are covered under the definition of liquor.

Delhi Intoxicating Spirituous, Preparations, Import, Export, Transport, Possession and Sales Rules, 1952, as amended upto December, 1961 and the notification No. F.10(27)/61-Fin.(e)(1) and the notification No. F. 10 (27)/5-fin.(e)(ii) are not ultra vires of the provision of the Punjab Excise Act and any of the Article of the Constitution of India.

There is nothing to prevent the declaration of particular meaning to a word in an interpretation clause also containing in it positive enactment. A part of the definition may be declaratory or specific and stated meaning and the remaining part may be a positive enactment conferring power. The last part of Section 3(14) of the Punjab Excise Act is a positive enactment conferring power on the Chief Commissioner to declare any substance to be liquor for the purpose of the Act

The definition of Liquor contained in the Punjab Excise Act 1914 does not contravene Art. 13 of the Constitution of India.

Validity of Notification declaring spirituous preparation with 20% proof alcoholic Content to be liquor: Govt. competent to add any article or substance to the definition of liquor under Section 3(14)-Notification, listing preparations which are not capable of being consumed as ordinary alcoholic beverages being impractical, was neither vague nor ultra vires of Section 3(14) (1962 SC 579 Referred.)

The beer has been specifically notified under Section 3(14) of the foreign liquor and is so far as licenses in Form L-4 and L-5 specifically permit the sale of foreign liquors, the licensee cannot be restrained from dealing with beer under these licenses.

The definition of "liquor" contained in the Act is wide enough by itself to include "Beer" therein. The two articles are not wholly independent of each other though beer has been separately defined in the Act. It is not unusual to define in a statute a genus as well as some its species.

Rules framed imposing reasonable restriction over medical preparations, necessitated by the real facts and circumstances to check the misuse of such privilege, were found not contravening Article 19(1)(f)(g) of the Constitution of India.

Under Section 3(14) the Govt. has power to declare any substance to be liquor for the purposes of this Act. A power has been conferred on the authorities to declare any substance to be liquor for the purpose of Excise Act.

Denatured spirit was specifically held to be a liquor in *Pritpal Singh v. Chief Commissioner*,.

Possession of Drug "Maha Shakti Sudha" was not exempt from the operation of notification No. 10(27)/61 dated 7.12.61 made in the exercise of powers under Section 3(14) of the Punjab Excise Act, by virtue of Rule 24 of the Delhi Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules. As the medicine did not fall under Rule 24 its possession for sale would be violative of Excise Rules.

It was found that the use of medicinal preparation was diverted to misuse on a large scale for the purposes of intoxication and not for medical purposes. Authorities were compelled to frame the Rules and issue notification to check any further such misuse.

**28. Denatured spirit is an intoxicant.** - Every liquor is an 'intoxicant' within the definition of the expression as given in clause 12(a) Section 3 and "liquor" according to the definition given in clause (14) of Section 3, includes all liquor consisting of or containing alcohol. Denatured spirit being a liquid containing alcohol, is a liquor and therefore, an intoxicant, the

possession of which (without a license issued in accordance with the Rules framed under the Act) is an offence punishable under clause (a)

**29. Industrial Alcohol.** - The expression 'intoxicating liquor' in Entry 8 of List II of seventh Schedule of the Constitution is not confined to potable liquor alone but would include all kinds of liquor which contain alcohol. Hence the expression covered alcohol Manufactured for the purpose of industries such as industrial alcohol. The Court also held that the words "foreign liquor" in Section 24-A of the State Act included the denatured spirit and the said words could not be given a restricted meaning for the word 'consumption' cannot be confined to consumption of beverages alone. When the liquor is put to any use such as manufacture of any article, liquor is all the same consumed. Further, Section 4(2) of the Act provides that the State may declare what shall be deemed to be country liquor or foreign liquor and the State has under the rules issued the notification defining "foreign liquor" as meaning all rectified, perfumed, medicated and denatured spirit wherever made. The Court further held that "specially denatured spirit" for industrial purposes is not different from denatured spirit. The denatured spirit mentioned in the rules in question was treated as including 'specially denatured spirit' for industrial purposes. The denatured spirit has ethyl alcohol as one of its constituents. The specially denatured spirit for industrial purposes is different from denatured Spirit only because of the difference in the quality and quantity of the denaturants. Specially denatured spirit and ordinary denatured spirits are classified according to the use and the denaturants used. Hence the definition of "alcohol" in the rules in question included both ordinary as well as specially denatured spirit.

**30. Manufacture.** - Though the term 'Manufacture:' has been used frequently but has nowhere been defined in this Act. Preparation of every artificial or natural process by which any intoxicant can be produced, its redistillation and every process for the rectification, reduction, flavoring, blending or colouring of liquor is called manufacture for the purposes of this Act. However, mere dilution of the denatured spirit with water cannot be termed as manufacture.

The word manufacture in ordinary acceptation means making of articles or materials commercially different from the basic components by physical labour or mechanical process. According to the definition in Halsbury's Laws of England manufacture means manner of adopting natural materials and making of an article or materials and making of an article or material by physical labour or applied power. It includes any process incidental or ancillary to the completion of manufacture of any dutiable goods. Manufacture is a process and mere dilution of denatured spirit with water cannot be such a process under the Act. By dilution spirit does not become intoxicant liquors.

Chapter IV deals and controls the manufacturing of intoxicants for the purposes of this Act Manufacture of the intoxicants has been prohibited except with permission and license granted for distillerising the same by the authority under the Act and therefore constitutes an offence.

**31. Sale.** - The Expression 'Sale' includes every transaction in intoxicants with or without license for this purpose. See Section 26 and 61 of the Act.

Supply of liquor by a club, mess, institute, society, lodge or other similar organisation deemed to be a sale according to the definition. It has however been held in that there is no sale when food and drink are supplied to guests residing in the hotel. What a customer pays for includes more than the price of the food as such. It includes all that enters into the conception of service and with it no small factor of direct or personal service. It does not contemplate the transfer of the general property in the food supplied as a factor in the service rendered. 11 supply of food and drinks to the customer, therefore, does not partake the character of the sale of goods.

A simple transaction in natural way by way of gift has specifically been excluded from the term 'SALE'.

Gift is not included in the sale as Gift is a transaction where anything may be transferred by one person to another without any price or consideration for the article. Guidance for this purpose can be drawn from Section 2(g) of the Central Sales Tax Act, 1956.

Grammatical expression of 'Sale' means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration and include a transfer of goods on hire purchase or other system of payments by installments but does not include a mortgage or hypothication of or charge or pledge on goods

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer but contract of the property in goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell (Sale of Good Act 1940 Sec. 4(37)).

The word 'sell' should be construed according to its popular meaning and that meaning is that a] sale is made when the agreement is effected and not when delivery is subsequently given

**32. Tari.** - Term 'Tari' as used in this Act has been defined under sub section 20 of Section 3 to be a fermented or unfermented juice drawn from any kind of palm tree. The juice drawn in its original nature is not supposed to contain alcohol but the pot in which it is usually dray having left with the effect of fermented, Tari, itself adds to the fermenting and alcoholic agent and the process of fermentation tl1erefore starts from the very beginning. Since 'Tari' is easily conversable in an intoxicant its collection and possession have been restricted reasonable.

'Tari' is not so popular in Punjab and Haryana as the palm trees are not available in a large quantity in these State. However from some other trees also 'Tari' used to be drawn by the people and earlier it was used in manufacturing Gur. Later on some people started converting tht same alcoholic intoxicant. Therefore, to control and check such misuse the Government o. Punjab framed Rules in this behalf call the Punjab Tari (Manufacture of Gur) Rules, 1955 published in July, 1955. According to these Rules it was made necessary to get license under the Rules for drawing Tari from any tree. Even a license can draw Tari within the restrictions imposed by these Rules and the use of such Tari has also been restricted up to only for manufacturing Gur.

**4. 'Country Liquor' and 'Foreign liquor'.** - The State Government may by notification declare what for the purposes of this Act or any portion thereof shall be deemed to be "country liquor" and "foreign liquor".

## **NOTES**

**1. Definitions** - Terms 'country liquor' and 'foreign liquor' has not been defined in the Act anywhere. As no specific definition of these terms was available in the Act it was creating confusion in determining as to what can be said to be a 'country liquor' and 'foreign liquor'. The Govt. deemed it fit and necessary to define specifically these terms and accordingly published "The Punjab Excise Liquor Definition, 1954" vide Punjab Govt. Notification No. 3148-E&T-(CH)53/407 dated 10.7.1954. This definition was further amended by the government time to time.

**2. Country Liquor** - Country liquor means all liquor other than rectified spirit, denatured spirit and perfumed spirit not included in the definition of foreign liquor and also includes substance commonly known as Lahan.

**3. Foreign Liquor** - Foreign liquor means

- (a) all liquor imported by sea into India other than rectified spirit denatured spirit and perfumed spirit on which custom duty is leviable under the Indian Tariff Act or Sea Customs Act, 1978.
- (b) All Liquor manufactured in India (other than rectified spirit, denatured spirit perfumed spirit) on which duty at a rate higher than levied on country liquor is leviable and.
- (c) All beer including porter and stout manufactured in India or abroad.

The following shall, for the purposes of Sections 18, 26, 27, 61 and 64 of the Punjab Excise Act, (1 of 1914) be deemed to be "country liquor" and "foreign liquor" respectively :-

(1) Country liquor means all liquor other than rectified spirit denatured spirit and perfumed spirit not included in the definition of foreign liquor and includes the "Punjab Medium liquor" after the strength of (45 degree) under proof normally manufactured from neutral Spirit and demineralised water with added spices and essences and also Lahan.

(2) "Foreign liquor" means :-

- (a) all liquor imported by sea into India (other than rectified spirit denatured spirit; and perfumed spirit), on which Customs duty is leviable under the Indian Tariff Act (VIII of 1934) or the Sea Customs Act of 1878.
- (b) all liquor manufactured in India (other than rectified spirit, denatured) spirit, and perfumed spirit, on which duty at a rate higher than that levied on Country liquor is leviable.
- (c) all beer (including ale, porter and stout) manufactured in India or abroad and
- (d) all sacramental wine prepared from pure dried grapes by a process of fermentation only without the addition of alcohol or any other ingredient.

**4. Liquor** - The term liquor has been defined under Section 3(14) of the Punjab Excise Act 1914 as under :-

"Liquor" means intoxicating liquor and includes all liquid consisting of or containing alcohol; also any substances which the State Govt. may by notification declare to be liquor for the purposes of this Act.

The word 'liquor' covers not only those alcoholic liquids which are generally used for beverage purposes and produce intoxication, but also all liquids containing alcohol.

**5. Lahan** - In the definition of 'country liquor' as published in the 1954 definition, term 'Lahan' has been included to mean as country liquor. In the definition of liquor also under section 3(14) again the term 'Lahan' has been included to mean as liquor.

**8. Notification may declare any preparation as alcohol** - A notification declaring all spirituous preparations with content of more than 20 per cent proof alcohol to be liquor for the purposes of Act was issued on 7th of December, 1961 under Section 3(14) of the Punjab Excise Act. As nothing was mentioned to the date on which it was come into force it was presumed to have come into force immediately. A second notification was issued on 13 of December 1961 with effect from 13th December 1961. The second notification was published in gazette dated 9th of December, 1961. But gazette came to be dated 9th of December, 1961 instead of 13th of December, 1961 because there was a printing error. It was held that this printing mistake would not render the notification bad.

**5. Power of State Government to declare limit of sale by retail and by wholesale.** - The State Government may by notification declare with respect either to the whole of Punjab or to any local area comprised therein, and as regards purchasers generally or any specified class of purchasers and generally or for any specified occasions the maximum or minimum quantity or both of any intoxicant which for the purposes of this Act may be sold by retail and by whole sale.

## **NOTES**

**1. Scope.** - By virtue of this Section the Govt. can notify maximum or minimum limits of quantity as for the purpose spelt out in this section. Therefore, two modes available to the Govt. for this purpose i.e.

- (i) by issuing notification directly under this section adding any further clause or proviso or amending to it.
- (ii) by framing Rules under this section and/or by amendment thereof or by adding some further Rules or Clauses or by deleting something there from.

Since the provisions of this Act, though imposing some restrictions on free use, sale purchase of such products or manufacture thereof, but the same have been held not hitting Article 13 or any right provided in Part III of the Constitution. Similarly the Rules framed under Section 5 by the Govt. within the scope of this Act will not offend any other law unless those are found ultra vires the Act itself. The Rules framed under this section therefore, were held valid.

**6. Power to limit application of notifications, permits, etc, made under this Act.** -

Where under this Act any notification is made any power conferred, any appointment made or any license, pass or permit granted, it shall be lawful to direct :-

- (a) that it shall apply to the whole of Punjab or to any specified local area or areas;
- (b) that it shall apply to all or any specified intoxicant or intoxicants or class thereof;
- (c) that it shall apply to all or any class or classes of persons or officers; (d) that it shall be in force only for some special period or occasion.

### **NOTES**

Scope. - In this Act and also under Rules framed thereunder the Govt. has powers to issue licenses/permits to regulate distribution of excisable intoxicants. At the same time the Govt. is competent to limit the scope of such permits restricting its use upto some territorial limits and also qua its quantity for some specified purpose/occasion. The Government may frame, amend and issue Rules and notifications in this behalf which will be valid and have equally force of law unless otherwise declared to be illegal, void or against the provisions of this Act.

- (a) Under Clause (a) of this Section the Govt. can issue permits even for the purpose of any extent of area of territory within its State. It may be even for whole of the State or may be minimised to any extent at the time of grant of such permits.
- (b) According to Clause (b) of this section a permit can be issued for one or for more than one intoxicant. The dealer under such permit will distribute, supply, carry or manufacture only such specified substance/s.
- (c) The meaning of Clause (c) of this section has to be construed to be for a very limited purpose. The authority issuing permits cannot discriminate on classification of persons of the society as a whole. This clause has been incorporated to facilitate some limited persons a group. It cannot be interpreted to apply to the persons on the basis of caste, creed or race and religion. Under this clause the word class denotes to a group as to say a party, a club, an association a society etc., etc. which may include every class or creed or religion of the society.
- (d) As per clause (d) the permit may be issued for some specified period or occasion to facilitate a group of persons as a class or party for some specific purpose. After such period or occasion such permit, will automatically stand expired/cancelled and will not apply to facilitate its utilization any further.

**7. Saving of enactments.** - Save as provided by the Scheduled I nothing contained in this Act shall effect the provisions of the [See Customs Act, 1887] (VII of 1878) the Cantonments Act, 1910] or the Indian Tariff Act, 1894 or any rule or order made there under.

## **CHAPTER II**

### ***Establishment and Control***

#### **8. Superintendence and control of excise administration and excise officers. –**

- (a) Subject to the control of the State Government and unless the State Government shall by notification otherwise direct, the general superintendence and administration of all matters relating to excise shall vest in the Financial Commissioner.
- (b) Subject to the general superintendence and control of the financial Commissioner and unless the State Government shall by notification otherwise direct, the Commissioner shall control all other excises officers in his division.
- (c) Subject as aforesaid and to the control of the Commissioner and unless the State Government shall by notification otherwise direct the Collector shall control all other excise officers in his district.

#### **NOTES**

**1. Scope of Power of the State Government** - The general superintendence and administration of all matters relating to excise are subject to the control of the State Government. The question involved was not merely granting or determining of a license but a question of policy regarding the location of the site of the distillery. The Government was anxious to move the distillery away from the town but had held the notice in abeyance while matters regarding prohibition policy were being considered.

The decision to hold notice in abeyance and its revival was clearly a matter of policy which was for the Government and not the Financial Commissioner to decide and this will clearly fall within the scope of superintendence mentioned in Section 8( a).

It is only that power of the Financial Commissioner which is subject to the control of the State Government which the Financial Commissioner possesses under the Act. The Financial Commissioner has no power to revise a sale conducted by the Collector, though the confirmation or approval has to be done by him. Section 8 of the Punjab Excise Act does not confer any jurisdiction on the State Government, after the license has been validly sold, to cancel the same.

**2. Cancellation of license.** - A license which has been validly sold cannot be cancelled under Section 8. Section 8 does not confer any jurisdiction on the State Government to cancel a license which has been validly sold. It is only that power of the Financial Commissioner which is subject to the control of the State Government which the Financial Commissioner possesses under the Act. The Financial Commissioner has no power of revision qua the confirmation of the sale of licenses under the Act excepting in the case of a sale by an officer subordinate to the Collector where that sale is required to be confirmed by the Collector, or, in other words: where the sale is under Cl. (18) of R 36. Where the sale is by the Collector,

the confirmation or approval has to be by the Financial Commissioner, but there is no provision for revision in such a case.

**3. Power of Financial Commissioner** - The Financial Commissioner can exercise only that power which is subject to the control of the State Government. The Financial Commissioner has no power of revision qua the confirmation of the sale of licenses under Punjab Excise Act, 1914 except in the case of a sale by an officer subordinate to the Collector where that sale is required to be confirmed by the Collector. Where the sale is by the Collector, then in such a case no power of revision is conferred on the Financial Commissioner.

**4. Highest bid accepted by Collector and Excise Commissioner** - State Government has no power to withhold the license. - At an auction sale of liquor licenses under the Punjab Excise Act, 1914 the highest bid was accepted by the Collector and was approved by the Excise and Taxation Commissioner exercising the powers of the Financial Commissioner. The person offering the highest bid deposited one sixths of the license fee. Subsequently the Government without passing an order canceling the license or without disclosing the reason and without giving any notice to the first auction purchaser, re-auctioned the liquor licenses and the same were sold to new bidders. The first auction purchaser filed a writ petition in the High Court challenging the action of the State to re-auction. It was held by the Punjab and Haryana High Court that having regard to the provision of the Act and the rules thereunder, the respondent had acquired the legal status of grantee of a license even though no formal instrument of license was prepared and granted to him and he could invoke his rights and was subject to the obligations under the Act was within the protection of the statute. It was further observed that after the proposal that had been accepted by the Excise and Taxation Commissioner exercising powers of the Financial Commissioner and after the auction purchaser had deposited the license fee, he was entitled to receive the license as a matter of routine, and the State Government did not possess any power to withhold the issue of the license.

**5. Re-auction of license.** - Section 8 of the Punjab Excise Act, 1914 does not confer power on the State Government to cancel a license. The word control as used in Section 8 is a word of limitation. It cannot be interpreted to confer power on the State Government to cancel a license and to further re-auction it.

**9. Excise Commissioner.** - The State Government may by notification appoint an Excise Commissioner and subject to such conditions and restrictions as it may deem fit may invest him with all or any of the powers of the Financial Commissioner by this Act.

## **NOTES**

**1. Scope.** - The States are divided in divisions for the purposes of this Section and every division accordingly has to be headed by Commissioner. When the State Government delegates to the Excise Commissioner the powers of a Financial Commissioner, the action taken or the orders passed by him in such capacity will not be subjected to revisory or appellate jurisdiction of the Finance Commissioner by virtue of his own powers as such. He will only be competent to sit in appeal or revision over such actions/orders if he has been

delegated with the powers of the State Government. However, the State Government can delegate those powers only which are permissible in law.

**2. Investment of powers on Excise Commissioner.** - It was held in Mohd. Aslam v. Crown that the investment of powers under Section 9 of the Act on an Excise Commissioner by name cannot be deemed to confer the same powers on his successor. Government can confer only those powers upon the Excise Commissioner specified by the Act itself and not powers which provincial Government is permitted to delegate to Financial Commissioners.

**3. Excise and Taxation Commissioner can cancel a license.** - License granted by the financial Commissioner. Subsequent notification issued by the Government. All power of the Financial Commissioner delegated to Excise and Taxation Commissioner. Held that a notice for cancellation of the license by the Excise and Taxation Commissioner was valid.

**4. Delegation of power under.** - Provincial Government can only confer upon Excise Commissioner powers given to Financial Commissioner by Act itself and not powers which Provincial Government is permitted to delegate to Financial Commissioners.

**10. (a) Other classes of excise officers.** - There shall be such other classes of excise officers as the State Government may by notification declare and the State Government may appoint as many person as it deems fit to be officers of these classes.

**(b) Their powers.** - The State Government shall by notification declare what powers under this Act shall be exercised by excise officers of each class.

**(c) Mode of conferring powers.** - In conferring powers under this Act the State Government may empower persons by name or in virtue of their office or classes of official generally by their official title.

**11. Power to invest persons with special powers under this Act.** - The State Government may by notification invest any person, not being an excise officer, with power to perform all or any of the functions of an excise officer, under this Act, and such person shall in the exercise of these functions be deemed to be an excise officer.

## **NOTES**

**Scope and Applicability.** - Every Excise Officer appointed under the Act (i.e. not below the rank of Excise Inspector), and every police officer upto the rank of Head Constable or above are invested with the powers of Excise Officer to investigate and submit a report if he found any violation to the provisions of this Act at any place within their jurisdiction if specified and to submit such report to the Magistrate concerned for further necessary action.

In addition to the above, the Government by way of notification under this Section, may invest any other officer with the same powers. These provisions facilitate the authorities to meet with the exigencies of the temporary needs where and when the Government feels it not possible or practicable to appoint additional staff under the Act permanently or temporarily but the need arises to apply and comply with provisions of the Act.

**12. Local limits of jurisdiction.** - The jurisdiction of the Financial Commissioner and of the Excise Commissioner shall extend to Punjab / Haryana the jurisdiction of Commissioners shall extend to their divisions and the jurisdiction of Collectors and other excise officers shall unless, the State Government shall otherwise direct, extend to the districts in which they are for the time being employed.

### **NOTES**

For the Administration of the Excise Department the State Government may appoint an Excise Commissioner or Financial Commissioner to exercise their powers under the Act throughout the State. The State Government may further, as it may deem fit, constitute divisions comprising one or more than one Districts throughout the State and may appoint a Commissioner to be the Head of the administration of the Excise Department in the Division, so constituted and to discharge the functions of a Commissioner exercising his powers under the Act and also otherwise conferred other or special powers upon him by the State Government, if any. The State Government, however, may further appoint one Commissioner for more than one Divisions, if it may think it necessary and convenient.

By virtue of Section 12 the administration of the Excise Department in each district will be under the Superintendence of a Collector. Accordingly the Collector will exercise his powers under the Act within the territory of his District. All other officers of the Groups A, Band C mentioned above in the commentary under Section 10 can also exercise their powers to discharge their duties within the districts in which they have been appointed or to the extent as directed or specified by the State Government from time to time in this behalf.

### **13. Delegation :-**

- (a) The State Government may by notification delegate to the Financial Commissioner or Commissioners all or any of its powers under this Act, except the powers conferred by Sections 14, 21, 22, 31, 56 and 58 of this Act.
- (b) The State Government may by notification permit the delegation by the Financial Commissioner, Commissioner or Collector to any person or class of persons specified in such notification of any power conferred by this Act or exercised in respect of excise revenue under any Act for the time being in force.

### **NOTES**

Delegation of powers to the Financial Commissioner or to the Excise Commissioner:-

**1. Delegation of powers and powers to delegate.** - Question of delegation of powers depends upon the provisions of the Statute to this effect. Unless there is no provision providing delegation of power a specified authority for the purpose in the Act cannot delegate his power to the other or subordinate authority. Therefore, the authority delegating I have powers under the Act to so delegate his powers to the authority to whom it want to delegate.

**2. Which powers can be delegated.** - The powers delegating authority can delegate only the powers as provided under the Act or by some special ordinance or legislation to this effect and beyond that.

**3. All or any powers.** - Words "all or any powers" in sub section (a) of Section 13 are controlled by this very sub section with exceptions added to it. By virtue of these exceptions the State Government cannot delegate its powers to those enshrined under Section 14,21,22,31,56 and 58. Powers of issuing notification under the Act in exercise of powers of State Government power of conferring powers upon the Financial Commissioner or the Excise Commissioner by the State Government; fixing rates of duty to be imposed upon the excisable articles declaring any articles to be an intoxicant excisable under this Act, and Rule making power under the Act came within the exception and therefore the words "all or any powers" in this section have to be read conjunctively along with these exceptions.

**4. Vesting with powers to delegate.** - Section 13(b) as well as Section 10 (b) and (c) enable the State Government to confer such powers upon the officials or Excise Officers or persons as it may deem fit and in accordance with the ambit of this Act. Accordingly under Section 13(b) the State Government may vest the specified authorities with the powers to delegate specified powers to their subordinates as further specified in such notification/orders

If an officer empowered to do so permits a vend to be opened - opening of such vend cannot be said to be not in accordance with law.

Matter of location of installation of a distillery away from the town was held to be a policy decision to be taken by the State Government and not by the Financial Commissioner.

**14. Appeal.** - An appeal shall lie from an original or appellate order of any excise officer in such cases or classes of cases and to such authority as the State Government shall by notification declare.

## **NOTES**

**1. Scope of appeal.** - (a) According to above para 13 of the 1956 Orders of the Punjab Government against any orders passed by any Excise Officer below the rank of Collector an appeal can be filed before the Collector. However, if in any case the appeal does not lie or no appealable order has been passed by the Excise Officer and still any party to the proceeding feels aggrieved such aggrieved party can invoke provisions of discretion of the Excise Commissioner under Section 15 of the Act.

(b) When the Collector on an appeal to him against any order passed by an Excise Officer, confirms the order appealed no further appeal will be entertained by the Financial Commissioner. However, under Section 15 Commissioner and Financial Commissioner have powers to exercise their discretion. Therefore, against such orders a revision petition can be filed and entertained before the Commissioner or Financial Commissioner under Section 15.

(c) Under Clause (b) Sub Clause (ii) of Para 13 of 1956 Orders second appeal is also competent against only such orders passed in appeal by the Collector by which he may have modified or reversed the orders passed by any Excise Officer below his rank. However, there is no bar under the Act from filing a revision petition under Section 15 against any order passed by the Collector which is not appealable under Section 14. The Financial Commissioner and the Commissioner have got full discretion to adjudicate the legality of any such order under Section 15.

While hearing the appeal under this Act the Appellate Authority can go into the complete record of the case and appraise the evidence also. While adjudicating the scope of an appeal the Supreme Court held that an appeal is a rehearing of the whole of the subject-matter and the first decree merges in the appellate order. The appeal has been held to be the continuation of hearing of the matters.

An appeal under normal circumstances and second appeal within the bounds of the statute creating it constitutes a rehearing of the cause and the appellate court can exercise all the powers which vest in the trial court.

The appellate authority under the Act can decide the subject-matter on merits going into whole of the record of the case and can also remand the case if the authority considers it necessary for further adjudication by the authority below .

The appellate authority remanded the case. The remand order was challenged in the High Court and in the Supreme Court. The remand order was quashed. The authority to which the case was remanded passed fresh order which was not challenged. Since the remand order itself stood quashed there was no necessity to challenge the fresh order passed on the basis of remand order.

The appellate authority can take into consideration the change in law during the pendency of appeal as an appeal is a continuation of proceedings of the subject matter.

The first appeal should be decided after going through the evidence. It should not be dismissed in limine.

The appellate court cannot create liability against a person who has not been a party before it. In the absence of counsel the appeal should be dismissed in default and not on merit.

Appellate authority is required to go into the grounds of appeal and record reasons in support of its orders. In an appeal against cancellation of license, the allegations of malafide were of mini was made by name. The appellate Authority was required to go into the allegations and deal with all the contentions to duplicate the appeal.

**2. Right of Appeal.** - Right of appeal is a creation of statute and can be taken away by a

subsequent amendment in the statute itself.

Right to appeal is not an inherent right of a citizen. Therefore, it cannot be claimed to be a fundamental right enshrined under the Constitution.

Since right to appeal is a creation of statute one cannot raise a grievance validly claiming right of appeal enshrined under the provisions of a statute.

The right of appeal is derived from the provisions of a statute and, therefore, can be exercised and determined within the scope of the statute itself. Right of an appeal is a statutory right and the Legislature, in its wisdom, may in the circumstances of a given case, provide for an appeal against an order of a 'quasi-judicial nature and in another given case, the said remedy of appeal may not be available. Right of appeal is a vested right and is governed by law prevailing the date of institution to in appeal inasmuch as an appeal is treated as a rehearing of the suit.

**3. Appealable/Non-appealable orders.** - Collector, under this Act, can hear appeals against any order passed by his subordinates. However, when the Collector confirms any order appealed before him, the order is not appealable any further. When the Collector reverses an order passed by a subordinate authority the aggrieved party can file further appeal against such order before the Financial Commissioner or the Excise Commissioner, as the case may be. The orders passed on such second appeal are not appealable. However, from invoking the discretionary powers of the higher authority of the State Government Section 15 of this Act.

**5. Appeal and Review - Difference between.** - Held that appeal a substantive right of a party to lit, not merely a matter of procedure. Right of appeal cannot be taken away except by express enactment or necessary intendment, intention to interfere with or impair or imperil such a vested right of appeal cannot be presumed unless manifested by express words or necessary implication. Review primarily is a matter of procedure or forum. Party asking for review exercises a remedial right as distinguished from enforcing a substantive right, in nature of independent proceedings though connected with order sought to be amended. Review is not a continuation of suit or proceedings therein as in the case of appeal. It is governed by law prevailing on its date and not by law prevailing on date of proceedings to which order sought to be amended passed.

**[15. Revision and review.** - (1) The Excise Commissioner may suo moto, at any time or on an application made to him, call for the record of any proceedings which are pending before, or have been disposed of excise officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such order in relation thereto as he may deem fit :

Provided that the application shall be made within a period of one hundred and eighty days of the date of taking of the proceedings or of passing of the order, as the case may be.

(2) The State Government may by notification also confer Upon any excise officer the powers of the Excise Commissioner under sub-section (1) to be exercised subject to

such conditions, and in respect of such areas specified in the notification.

- (3) The Excise Commissioner or the Excise Officer on whom powers of the Excise Commissioner have been conferred under sub-section (2) may review his own order.
- (4) The Financial Commissioner may, suo moto, at any time or on an application made to him, call for the record of any case decided under the proceeding sub-sections and if in his opinion the final order contains an erroneous decision on any question of law, he may pass such order on the case as he may deem fit.
- (5) No order shall be made under this section which adversely effect the rights of any person upon whom an obligation is imposed by or under this Act, without giving such persons a reasonable opportunity of being heard].

### ***Section 15 for Haryana***

**15. Revision and review.** - (1) The Excise Commissioner may, suo moto, at any time or on an application made to him, call for the record of any proceedings which are pending before, or have been disposed of, by any excise officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such order in relation thereto as he may deem fit :

Provided that the application shall be made within a period of one hundred and eighty days of the date of taking of the proceedings or of passing of the order, as the case may be.

(2) The State Government may by notification also confer upon any excise officer the powers of the Excise Commissioner under sub-section (1) to be exercised subject to such conditions, and in respect of such areas, as may be specified in the notification.

(3) The Excise Commissioner or the Excise Officer on whom powers of the Excise Commissioner have been conferred under sub-section (2) may review his own order.

(4) The Financial Commissioner may, suo moto, at any time or on an application made to him, call for the record of any case decided under the proceeding sub-sections and if in his opinion the final order contains an erroneous decision on any question of law, he may pass such order on the case as he may deem fit.

(5) Any person aggrieved by an order passed by the Financial Commissioner under this Act except an order passed under sub-section (4) in case of discovery of any new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when such order was made or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason may apply for review of such order to the Financial Commissioner within one hundred and eighty days from the date of that order.

- (6) The Financial Commissioner may on application made to him under sub-section (5) and in other case suo moto at any time review his own order.

(7) An appeal against the order passed by the Financial Commissioner under this Act shall lie to the State Government within a period of one hundred and eighty days of the date of passing of such order, in the manner as may be prescribed by rules made under this Act.

(8) The State Government may at any time call for the record of any proceedings which are pending before, or have been disposed of by any officer for the purpose of satisfying itself as to the legality or propriety of such proceedings or of any order made therein and may pass such order in relation thereto as it may deem fit.

(9) No order shall be made under this section which adversely effect the rights of any person upon unless such person has been given a reasonable opportunity of being heard.

### **NOTES**

**1. Scope.** - This section deals with the powers of revision and review of the Financial commissioner, Commissioner and Collector regarding the case pending before or disposed of by any Excise Officer subordinate to them.

The Haryana Government gives right of appeal to State Government by the aggrieved person.

An appeal against the order of the Deputy Excise and Taxation Commissioner who functions as Collector under the Punjab Excise Act, lies to the Excise and Taxation Commissioner who while hearing such appeals functions as Financial Commissioner. The order passed in appeal by the Excise and Taxation Commissioner is not open to revision by the Financial Commissioner.

Though the scope of Section 15 is open to pass any order but it must be guided with the object and purpose of the provisions made for and also within the scope of the Act and Rules made thereunder. The words occurring in this Section "Legality" or "Propriety" guide has authorities for the scope of exercise of powers under this Section. Therefore, the authority are not expected to disturb the finding of facts and to give their own findings while exercising powers under this Section. However, the lower authorities can be directed to proceed in accordance with law if there is some technical or procedural flaw affecting the merits of the case rendering the finding wrong or illegal. The authorities can cure an omission or commission of mistake in exercise of powers under such discriminatory provisions. 'Litigant should no be penalised for an omission of the Court.'

**2. Purpose of Section 15.** - The Act provides a remedy of appeal and a second appeal when an appellate authority reverses the order appealed to it. Against an order confirming the order under appeal and an order passed in second appeal the Act provides no remedy. However, it cannot *per se* be presumed that such orders must always be absolutely correct on facts as well as on law. In such a situation Section 15 comes into play and any person aggrieved of such orders or any other order or action or inaction during the proceedings or thereafter, can invoke the discretion of the authorities specified for this purpose and/or that of the State Government subject to the other conditions laid down.

The Excise Commissioner and the Financial Commissioner or any other Excise Officer conferred with such powers for this purpose under sub section (2) of Section 15 may revise any

order passed by their subordinate authority and also even their own orders as per subsection (3). These provisions have been incorporated to meet with the technical procedural difficulties and to provide substantial justice.

**3. Validity of Section 15.** - Validity of any such legislation, giving unlimited and unguided powers to Government officials which may give discretion to them to abridge over the rights of the citizens, can always be challenged under Articles 226 of the Constitution. However, the powers under Section 15 of this Act are neither unlimited nor unguided. The scope of the powers to be exercised under the provisions of this Section is for the purpose of adjudging (i) legality and (ii) propriety of proceedings. Therefore, the provisions are made carry out the very purpose of the Act in accordance with the law and scope of the Act itself and nothing more or unreasonable.

It is true that statutes which confer discretionary powers on executive officers without prescribing rule for guidance can be successfully attacked on the ground that they confer arbitrary and uncontrolled power which render them invalid; but there are certain cases in which this general rule does not apply. In the first place the validity of a statute cannot be called into question where, for example, it vests arbitrary power in a public servant when it is difficult or impracticable to lay down a definite or comprehensive rule.

Secondly, statutes conferring discretion on public servants to grant or to deny applications for licenses have been upheld where the discretion was to be exercised with respect to the personal fitness of the applicant.

Thirdly, the courts are reluctant to invalidate a statute when the arbitrary or uncontrolled power relates merely involving the exercise of discretion as to details in enforcing valid statutes.

Fourthly, arbitrary discretion as to the granting of licenses may be delegated to public officials without prescribing definite rules of action where such discretion relates to a business the carrying on of which is harmful to the public and has been given in order to protect the welfare of the public, such as business in the purchase and sale of intoxicating liquors.

It may be that a discretion has been vested in the Excise Commissioner under the Punjab Excise Act to grant or withhold licenses at his own will and pleasure, but that discretion must be used impartially and without unjust discrimination. An application for the issue of a license should not be rejected arbitrarily or capriciously but in the exercise of a sound discretion after a careful consideration of all the relevant facts and circumstances.

Where in pursuance of Government's decision to prohibit licensed drinking of liquor in 'civilian clubs' the Excise Commissioner had banned the sale of liquor to the members of the Lumsden Club but he had not issued similar directions in respect of the other clubs, although these institutions fell within the ambit of the expression "Civilian Club" as much as the Lumsden Club and although their rules were similar in many ways to the rules framed by the Lumsden Club:

Held, that there was no warrant for unjust discrimination between these two sets of associa-

tions, and the order refusing to grant a license to the Lumsden Club contravened Article 14 and must therefore be deemed to be void and of no effect.

## **CHAPTER III**

### *Import, Export and Transport*

**16. Import, export and transport of intoxicants.** - No intoxicant shall be imported, exported or transported except :-

- (a) after payment of any duty to which it may be liable under this Act or execution of a bond, for such payment, and
- (b) in compliance with such conditions as the State Government may impose.

#### **NOTES**

**1. Scope.** - Section 16 provides that no intoxicant shall be imported, exported or transported except after payment of the necessary duty or execution of a bond for such payments and in compliance with such conditions as the State Government may impose.

**2. Import** - Term import has been defined under Section 3(12) of this Act as :-

'Import'( except in the phrase "import into India") means to bring into Punjab Haryana otherwise than across a customs frontier as defined by the Central Govt.

Mere possession does not carry the presumption of the fact of import unless any Act of import, export or transport is established.

The offence of importing would be complete when the prohibited article is brought into the territory in question. Once the prohibited article comes across the border of the territory the offence of importing would be complete. The offence of importing opium is an offence constituted by bringing it into the territory in question. It does not matter where it was before provided it was outside the province. In this connection the reference may be made to the observations made by Hon'ble Judges, where they have observed as under:-

The offence is in the bringing it in and the word bring may be specially noticed as part of the definition. If the goods once come across the border they come for and on account of the accused with his consent let alone by his procurement the offence of accused did any thing outside. The accused went outside the State of Assam into Cooch Berar and posted the parcel in effect to Bokahat for himself which was exactly the same as if he posted it to his own address and in his own name; but the offence of importing into Assam would be equally complete had the goods been despatched pursuant to the accused's order by somebody in New York and it would be equally complete if when the goods crossed the border the accused had been taking a voyage on the high seas for the benefit of his health. The coming of the goods for the accused, on his account and with his consent is bringing them into Assam and is an offence of importing the goods.

"I say nothing to discourage the view that a person who exports from outside the United Provinces to a warehouse inside the United Provinces of which he is really the proprietor or temporary possession, even under a false name, is in fact committing an

offence under the Act of importing into the United Provinces, although he is also the person who exported from outside. It is perfectly possible for me to send an article of my self from the High Court at Allahabad to my Chambers in London, and if I did so with a dutiable article without declaration, I should be guilty of importing into England” The person who imported must be a person who was intending or had the right to take delivery or desire to take delivery inside the areas. I am quite satisfied on the evidence in the present case that the substance of the matter is that those goods were sent by the accused from Cooch Berar to himself in Assam on his own account and the fact that they were to be taken delivery of by Khagendra under an arrangement with him had no importance at all. The position under the Opium Act is exactly the same as if he had kept a warehouse in Assam and he had sent the seeds to that spot.

Registered parcel containing Cocaine addressed to the daughter of the accused at the address of a house in which the accused was not residing. When the parcel was received the Excise Officer arrested the accused for the offence of importing cocaine. Plea taken by the accused was that she had ordered for the import of some toys for her daughter and that she took the delivery of the parcel thinking that it contained toys for her daughter. Presumption would be that the accused ordered for the import of cocaine. Unless and until the accused provided that similar parcel containing toys was also expressed it could not be accepted that accused was absolved of her liability.

The offence of importing is constituted by bringing a contraband into territory in question.

It does not matter from where it was brought provided it was outside the State. It is not necessary to show that the accused did anything outside the territory. When a person under a pretended name consigned from Kotah, a native state into Cawnpore in British India bags of maize containing a considerable quantity of opium which was detected at Cawnpore and searched in his presence. It was held that he was rightly convicted of importing contraband.

**3. Export** - Term 'Export' has been defined under Section 3(1) of this Act as :-

"Export" means to take out of Punjab/Haryana otherwise than across a custom frontier as defined by the Central Government.

For commentary see under Section 3(10) of this Act.

An unlawful Possession of opium with the intention of exporting it. It does not amount to offence of exporting.

Export from outside to a warehouse by its proprietor or temporary possessor though under fake name - is an offence of importing under this Act. The person may otherwise be an exporter from outside does not make any difference.

**4. Transport** - Term 'Transport' has been defined under Section 3(12) of this Act as :-

"Transport" means to move from one place to another within Punjab.

Under this section as well as the Act term transport however would mean and relate to the intoxicants covered by the Act or any Rule, Notification or order issued to this effect by the State Government.

Transport means transport from starting point to the ultimate destination. It is a question of fact and the court has to determine as to what is the destination. A man comes to hold that the place was the destination although it appeared that the journey was resumed subsequently. Merely passing through a place in course of journey does not amount to transporting.

It is a matter of common occurrence that intoxicants are in possession of various persons in the course of transit, from one place to another e.g. Cartman, ship owner, coolies and so forth such persons cannot be said to be in possession within Section 24 of the Act. Their possession is on behalf of another.

If the person possession opium does not carry it himself but entrust it to some other person for carriage in a car and that person carries the opium knowingly, then the driver would be the person who directs him to do so would be abettor of the offence of transport. The occupants of such a car besides the driver can be said to have transported the opium only if it is shown that the opium in the car was in their possession so as to make them lie fence of possession. For them it can be said that they themselves transported the opium in the car.

**5. Business and Trade.** - In the writ petition before Supreme Court the contention raised is that the A.P. [Regulation of Wholesale Trade, Distribution and Retail Trade in Indian Liquor and Foreign Liquor, Wine and Beer) Act No. 15 of 1993 thereafter referred to as the "Act" deals with taking over only of "trade" and not "business" in liquor and, therefore, the petitioners cannot be prevented from carrying on the "business" of wholesale dealing in Indian Made Foreign Liquor (IMFL) during the period of the validity of their FL-15 licenses issued to them. It is not disputed that the petitioners are wholesale traders in Indian Made Foreign Liquor (IMFL) and have been carrying on the said trade under FL-15 license issued to them. The license permits them to sell IMFL in the premises indicated in the license.

As the preamble of the Act shows, it has been enacted to take over the wholesale trade and distribution in Indian Liquor/Foreign Liquor, Wine and Beer from the private sector in order to have an effective control over the wholesale supply and distribution of the liquor. The State Government had taken a policy decision that in public interest, the exclusive privilege of supplying in wholesale the Indian Liquor/Foreign Liquor, Wine and Beer in the whole of the State of Andhra Pradesh shall be vested in the A.P. Beverage Corporation Limited and for terminating all existing licenses for wholesale trade and distribution of the Indian Liquor/Foreign liquor, Wine and Beer. The title of the Act also has owns that it is for regulation of wholesale trade and distribution and retail trade in Indian Liquor/Foreign Liquor, Wine and beer. Section 3 of the Act further makes it clear that any license issued to sell Indian Liquor/Foreign Liquor, Wine and Beer in wholesale and remaining in force on the appointed day, shall stand terminated with effect from that day. As stated above, the license issued to the petitioners, viz., FL-15 is also to sell the liquor in the premises and to do no more. When, therefore, the Act terminated the said license of the petitioners with effect from the appointed day, the whole of the trade or business of the petitioners for sale of the liquor came to an end. It is, therefore, difficult to understand the logic of the petitioners' contention that what was extinguished was only the trade of sale and not the business of sale. However, we will examine even the said contention for what it is worth.

There is no doubt that the word "business" is more comprehensive than the word "trade" since it will include manufacture which the word "trade" may not ordinarily include. The primary meaning of the word "trade" is the exchange of goods for goods or goods for money. However, the word "trade" has also secondary meaning viz., business carried on with a view to profit. In fact, the words "trade" and "industry" are also used interchangeably many times. It all depends upon the context in which the words occur. In *Words and Phrases Legally Defined*, Third Edition (Volume 4: R-Z) by John B. Saunders, the word "trade" is explained as:-

'Trade' in its primary meaning is the exchange of goods for goods or goods for money and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts, or learned professions and from agriculture. However, the word is of very general application, and must always be considered in the context in which it is used. As used in various revenue Acts "trade" is not limited to buying and selling, but may include manufacture. In the expression 'restraint of trade' the word is used in its loosest sense to cover every kind of trade, business, profession or occupation.

In *Skinner v. Jack Breach Ltd.* [(1927) 2 KB 220 at 225-227, DC], Lord Heward, c.J. has observed:

"No doubt in a great many contexts the word "trade" indicates a process of buying and selling, but that is by no means an exhaustive definition of its meaning. It may also mean a calling of industry or class of skilled labour."

While interpreting the provisions of the Industrial Courts Act, 1919 Lord Wright, in *National Association of Local Government Officers v. Bolton Corporation*, [(1943) AC 166 at 184, 185], has observed thus:

"Section 11 of the Act of 1919 (Industrial Courts Act 1919) shows that 'trade' is used as including "industry because it refers to a trade dispute in the industry of agriculture .... Trade and industry are thus treated as interchangeable terms. Indeed, "trade" is not only in the etymological or dictionary sense, but in legal usage, a term of the widest scope. It is connected originally with the word "tread" and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may also mean a skilled craft."

In *Aviation Shipping Co. Ltd. v. Murray (Inspector of Taxes)*, [(1961) 2 All ER 805 at 811 C.A.], Lord Donovan has observed:

"A trade is an organised seeking after profits as a rule with the aid of physical assets."

Thus it is apparent that the word "trade" may include all the connotations of the word "business". As held in K.K.Narula's case in Article 19 (1) (g) of our Constitution, the words 'trade' and "business" are used synonymously. Hence, we reject the contention and hold that after the taking-over of the trade, viz., the activity of buying and selling liquor; no activity was left with the petitioners to carry on under the license held by them.

**6. Mere transport of contraband article would be no offence.** - A person can be held guilty if it is shown that the person transporting knew that he was transporting contraband articles. The accused were caught transporting large quantity of illicit liquor in eight motor tubes

by a motor car. The accused put forward a plea of innocence and did not account for their possession. All the accused were held guilty. Opium was recovered on search from a car during transport, all the occupants of the car must be presumed to commit an offence in respect of that opium unless they can show that they had a right to transport it in the manner in which they were doing .

**7. Consignment through railway.** - Prohibited articles were consigned and were booked with the railway. It was held that the accused conspired with the railway company to carry those goods without a permit and was not guilty. It was held that he was not guilty even of abetment.

**8. Transporting under exhausted permit.** - A person acting under the instructions of the liquor license was carrying rectified spirit under a permit which was found to be exhausted. It was held that the transporter could not be held guilty because he was not aware of the fact that the permit had expired.

A licensed cultivator of opium took some opium from Hoshiarpur to Jullundur district and was sold there. Held that this constituted transport.

**17. Power of State Government to prohibit import, export and transport of intoxicants.** - The State Government may by notification –

- (a) prohibit the import or export of any intoxicant into or from Punjab, or any part thereof; or
- (b) prohibit the transport of any intoxicant.

## NOTES

**1. Scope.** - Section 17 confers upon the State Government the power to prohibit the import or export of any intoxicant into or from Punjab or any part thereof and to prohibit the transport of any intoxicant.

**2. Right of free trade conferred by Article 19(1)(g) is not absolute.** Article 300A provides that no person shall be deprived of his property save by authority of law. It is undisputed that if a citizen is carrying on the business according to the provisions of law, his business cannot be taken away save by authority of law, if such a law is enacted to further the purpose whether of Article 19 (6) or Article 47.

Article 301 reads as:

"301. *Freedom of trade, commerce and intercourse.* - Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free."

The right given by this Article to freely carry on trade, commerce and intercourse throughout the territory of India is undisputedly subject to the same restrictions as the right under Article 19 (1) (g).

Apart from the restrictions placed on the right under Article 301, by the provision of Articles 19 (6), 47, 302 and 303, the provisions of Article 304 also place such restrictions on the said right. So do the provisions of Article 305, so far as they protect existing laws and laws creating State monopolies. The provisions of the aforesaid Articles, so far as they are relevant for our purpose, read together, therefore, make the position clear that Article 19 (1) (g) is not absolute. It is subject to restrictions imposed by the other provisions of the Constitution. Those provisions are contained in Articles 19 (6), 47, 302, 303, 304 and 305.

**3. Prohibition by State Government - does not violate Constitution' Article 19(6):-** Hon'ble the Supreme Court while answering the question whether the State can place restrictions and limitation under Article 19(6) of the Constitution of India, by the subordinate legislation found that, 'it can be imposed by the subordinate legislation so long it does not violate any provisions of the Constitution of India, as business in liquor is extra commercium and can be regulated and restricted even by the executive orders, provided issued by the Governor of the State'. It was found that when the Act terminated the said license of the petitioner with effect from the appointed day the whole of trade or business of the petitioners for sale of liquor came to an end.

In McDowell & Co.'s case (supra) the Hon'ble Supreme Court while dealing with the Ordinance as well as the Andhra Prohibition Act, 1955, though not congruent with the instant Ordinance for any common consideration yet being *pari materia* in material facts and aspects, if we may say so, in all essential aspects and in consonance with the ordinance and having common object viz. introduction of prohibition of consumption of liquor and matter connected and incidental thereto, to fulfill the object of Article 47, after reviewing the case law and conspectus of various decisions predominantly laid down that States are Supreme in making laws within the sphere allotted to them by the Constitution. After referring to list-II entries 8, 6, 24, 51 and 33 it was held that the power to make law with regard to production, manufacture, sale and consumption as well as possession of intoxicating liquor

vest in the State. Declaration under the Industrial Development Regulation Act, 1951 does not transplant or transfer entries of the State list to the Central one. Therefore, Parliament cannot take over the control of industries engaged in manufacture and production of intoxicating liquor. It was observed that ambit and scope of constitutional entry cannot be determined with reference to a Parliamentary enactment. It reaffirms the principle that to trade or business in intoxicants is neither a legal right nor a fundamental right. The observations made in verbatim run thus :-

"There is no fundamental right to do trade or business in intoxicants. The State under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, sale and possession. No person has absolute right to deal in liquor and all forms of dealing in liquor have from their inherent nature been treated as a class by themselves by all civilised communities".

The Hon'ble Supreme Court relying in *Khoday Distilleries'* case (supra) referred to above concluded :-

"that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquor is considered to be *res extra commercium* (outside commerce). For the same reason, the Bench held, the State can create a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Further it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under clause (6) of Article 19 or even otherwise."

It was finally observed by Hon'ble the Supreme Court :-

"Imposing prohibition is to achieve the directive principle adumbrated in Article 47.

Such a course merits to be treated as a reasonable restriction within the meaning of Clause (6) of Article 19."

While examining the provision of prohibition its pith and substance in the realm of arbitrariness or violation of Article 14 of the Constitution of India, the Hon'ble Supreme Court observed that "a law made by the Parliament or the Legislature can be struck down by Courts on two grounds alone viz. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other Constitutional provision. There is no third ground".

The Hon'ble Supreme Court refused to go into the concept of procedural unreasonableness by observing :-

"We do not wish to enter into the discussion of the concepts of procedural unreasonableness and substantive unreasonableness - concepts inspired by the decisions of the United States Supreme Court. The concept of substantive due process has proved to be an unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the Courts as arbiters of the wisdom of the

Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable ..... An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz. (i) unreasonableness which can more appropriately be called irrationality, (ii) illegality, and (iii) procedural impropriety."

Hon'ble the Supreme Court observed with respect to the test for finding out the provision to be violative of Article 14 to the effect :-

"When a statute is impugned under Article 14 what the Court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis".

Hon'ble the Supreme Court, in spite of the fact of keeping the question of violation of Article 14 of the Constitution of India, with regard to delegated legislation categorically observed :-

"Learned counsel for the petitioners then sought to demonstrate the discriminatory aspect of the impugned amending Act in prohibiting the production and manufacture of intoxicating liquors in Andhra Pradesh and importing the requirements of State (to meet the need of exempted categories) from outside the State. We are unable to see any reasonableness in it much less any discrimination ..... The exempted categories put together constitute a fraction of the total consuming population of Andhra Pradesh. If production and manufacture of intoxicating liquors is permitted in the name of meeting the needs of this minuscule population, it would give rise to several other problems in turn."

The Hon'ble Supreme Court approved the prohibition of production and manufacturing of intoxicating liquors ..

**4. Prohibition - Power of the State Government in view of Industrial Development and Regulation Act.** - Hon'ble the Supreme Court categorically and explicitly held after referring to the Industrial Development Regulation Act, 1951 and Resolution 1956 of Industrial Policy, that "claim of exclusive jurisdiction of Parliament against the State's claim of monopoly with regard to production, manufacture and sale cannot be sustained". If we may hasten

to add, it was observed while rejecting the contentions that 'till prohibition is introduced, a citizen has a fundamental right to carry business or trade in potable liquor, has no merit. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. It has been explicitly and elucidely observed that 'what articles and goods should be allowed to be produced, possessed, sold and consumed is to be left to the judgment of the Legislative and the executive wisdom ..... Merely because production and consumption of some harmful tobacco is not banned, that of alcohol which is proved to be harmful, should not be banned.

Similarly Resolution of 1956 of Industrial Policy does not and cannot have the effect of limiting the powers of the State to prohibit or restrict the production of potable alcohol, the resolution itself nowhere speaks against such prohibition or limitation. Licenses to the breweries etc. are valid only so long their production, possession, transport, sale and consumption are not prohibited, in the State concerned.

**5. Prohibition can be introduced through notification.** - The contention that the prohibition cannot be introduced through issuance of a notification by the Secretary or in exercise of powers of delegated legislation it is a contention to be noted only and rejected, particularly when the notification has been issued by and in the name of the Governor. It has been only authenticated by the Secretary. It is not in exercise of delegated power of the legislation rather it is an authority of legislation itself.

The contention that since the distilleries or breweries are established under an indent issued by the Central Government in exercise of powers conferred by the Industrial Regulation Act, 1951, the State cannot undo the same, we cannot distinguish this contention of the petitioners either on facts or of law from the cases cited above, wherein it has been categorically held that import and export, legislating or managing the manufacture, sale or consumption etc. are within the wisdom of the State Legislation and does not entrench upon the field of Central Legislation. Consequently, it is within its jurisdiction to act.

**6. Prohibition not violative of Article 14 of the Constitution.** - The contention of introduction of prohibition being violative of Article 14 of the Constitution of India, has been rejected by Hon'ble the Supreme Court. The resultant effect of some of the employees being rendered jobless cannot be permitted to denude the State from legislating or introducing prohibition, in the larger interest of the society. The citations referred to above of Hon'ble the Supreme Court concluded on all these issues against the petitioners. We would contend ourselves by stating that all the contentions raised and referred to in the earlier part of the judgment are virtually congruent with the contentions raised before Hon'ble the Supreme Court and rejected ...

Hon'ble Supreme Court has observed in various judgments that the prohibition policy is not justiciable though the question whether manner of its imposition is subject to challenge was kept open. The introduction of prohibition in the phased manner or even total prohibition has been upheld and all the contentions raised herein before us are *pari materia* with the contentions raised before Hon'ble the Supreme Court, though the language of both the Acts is slightly different but there is no material difference and underlying principles and philosophy under both the Acts are the same. The Hon'ble Supreme Court was called on to consider the very view points which have been submitted before us in the factual context, which is in no way unlike the present one.

It would be wrong for us to pronounce upon what precisely the Hon'ble Supreme Court has already done. We would not and should not go behind the rules or the law laid down by Hon'ble Supreme Court in the context and facts of the case, which is squarely congruent with the facts and circumstances of the case in hand.

We are unable to comprehend the contention put forth by learned counsel for the petitioners that the impugned notices issued are in violation of Article 47 of the Constitution of India as they do not serve any public purpose. Prohibition by itself has been accepted as a public purpose, irrespective of the fact that any activity has been adversely affected. There is no violation of Articles 301 and 304 of the Constitution. Application of mind by the legislature is assumed. Each act of legislation is presumed to be valid and *intra vires* the Constitution unless shown to be otherwise.

At the cost of repetition, as observed in the earlier part of the judgment in view of the decision of Hon'ble the Supreme Court in *K. Nagaraj and others v. State of Andhra Pradesh and another*, 1985 (1) S.c.c. 523, the ordinance making is a legislative function and the same cannot be invalidated on the ground of non-application of mind. Reference may be made to *L.N. Mishra Institute of E.D. and Social Change v. State of Bihar*, AIR 1988 S.C. 1136. It has been specifically held in the above referred judgment that Governor's satisfaction under Arti-

Article 213(1) of the Constitution of India, cannot be challenged in a Court of law on the ground that it was prompted by malice or ulterior purpose.

To be fair to the learned counsel for the petitioners, we may notice the law laid down in *Bromley London Borough Council v. Greater London Council and another*, 1982(1) All England Law Reports 129 and *C. C.S. U. v. Minister for the Civil Service*, 1984(3) All England Law Reports 935, wherein the question raised and answered is whether a public authority exceeded its statutory powers or it has violated the statutory procedure as well as it has only dealt with whether a valid contract is a contract or not, which are not the questions relevant in the case in hand though we have held in the earlier part of the judgment that the license cannot be termed as a property tangible or non-tangible particularly when it is the privilege of the State, which in turn the State has allowed the petitioners to exercise. However, the petitioners will be at liberty to bring to the notice of the State the harshness of the effect of the law as well as desirability of permitting the manufacture of liquor and beer and it is within the sole jurisdiction of the State to grant any reprieve to the petitioners, in the facts and circumstances of each case ..

#### **7. Legislative competence of State Government to make law regarding intoxicants. -**

We may now refer to the relevant Entries of List II of the Seventh Schedule to the Constitution which give power to the State Governments to make the laws in question. Entry 8 reads as follows:

"8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

Entry 51 reads as follows:

"51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-

- (a) Alcoholic liquors for human consumption;
- (b) Opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this Entry."

Thus a State has legislative competence to make laws in respect of the above subjects.<sup>2</sup>

**18. Passes necessary for import, export and transport. -** Except as otherwise provided by any rule made under this Act, no intoxicant exceeding such quantity as the State Government may prescribe by notification shall be imported, exported or transported except under a pass issued under the provisions of the next following section:

Provided that in the case of duty paid foreign liquor such passes shall be dispensed with unless the State Government shall by notification otherwise direct :

Provided further, that on such conditions as may be determined by the Financial Commissioner, a pass granted under the excise Law in force in another State may be deemed to be a pass granted under this Act.

## **NOTES**

For the purpose of dealing in supply or distribution of the intoxicants in bulk or on large scale to the general public or to the dealers, a regular license is required whereas for the personal use a person can be granted a pass for import, export and transport of the intoxicants covered under this Act in a specified quantity.

Under the proviso at No.1 the passes as necessary under Section 18 have been dispensed with subject to any further condition notified by the State Government for the import, export and transport of a duty-paid foreign liquor. Therefore, under the proviso at No.1 under Section 18 the Government can also make it necessary to import, export or transport such intoxicants under passes necessitated by Section 18.

Under proviso No.2 under this Section the passes issued under Section 18 by one State can validly be used in other States also if no condition for the use of such passes within the particular State has been imposed by the authority issuing the same.

**19. Grant of passes for import, export and transport.** - Passes for the import, export and transport of intoxicants may be granted by the Collector.

Provided that passes for the import and export of such intoxicant as the Financial Commissioner may from time to time determine shall be granted only by the Financial Commissioner.

## **NOTES**

A collective reading of Section 19 with this Act and proviso thereunder gives an understanding that the Collector can also issue passes under Section 18 but subject to the grant of such powers by the Financial Commissioner. As per the proviso of Section 19 and provisions of Section 18, the Financial Commissioner only can grant such passes unless he empowers the Collector for this purpose.

### ***CHAPTER III***

#### *Manufacture, Possession and Sale*

#### *[Manufacture, Possession, Sale, purchase and Consumption*

#### *A. MANUFACTURE*

**20. Manufacture of intoxicants prohibited except under the provisions of this Act:-**

- (1) (a) No intoxicant shall be manufactured or collected; (b) no hemp plant shall be cultivated;
- (c) no tari-producing tree shall be tapped; (d) no tari shall be

drawn from any tree, and

- (e) no person shall use, keep or have in his possession, any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari.

Except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector.

(2) No distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of a license granted in that behalf by the Financial Commissioner under Section 21.

### ***Section 20 for Haryana***

#### **20. Manufacture of intoxicants prohibited except under the provisions of this Act :-**

- (1) (a) No intoxicant shall be manufactured or collected; (b) no hemp plant shall be cultivated;
- (c) no tari-producing tree shall be tapped; (d) no tari shall be drawn from any tree, and
- (e) no person shall use, keep or have in his possession, any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari.

Except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector.

(2) No distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of a license granted in that behalf by the Financial Commissioner under Section 21.

(3) The State Government, if satisfied that it is necessary and expedient so to do, may, by notification, prohibit manufacture of any intoxicant or restrict such manufacture by such conditions as it may notify.

### **NOTES**

**1. Scope.** - By S. 20 (1) no intoxicant can be manufactured or collected, no hemp plant can be cultivated, no tari producing tree can be tapped, no tari can be drawn from any tree and no person can possess any material or apparatus for manufacturing an intoxicant other than tari except under the authority and subject to the terms and conditions of a license granted by the Collector. By sub-sec. (2) of S. 20 no distillery or brewery can be constructed or worked except under the authority and subject to the terms and conditions of a license granted by the Financial Commissioner.

" **Manufacture without license an offence** - The Act prohibits the production or manufacturing of intoxicants specified under Section 20 or under any other law declared to be an intoxicant to be covered under this section. Therefore, any violation to the specified

conditions amounts to an offence punishable under Section 61.

Manufacture as prohibited under Section 20(1)(a) has been made punishable as per Section 61(a);

Manufacture is a process and mere mixing of denatured spirit with water cannot be such a process under the Act.

While awarding sentence distinction must be made between the manufacturer and seller of an excisable article who not only derives benefit but also demoralises other persons who possess it for his own use.

Arrack's manufacture includes offence of possessing apparatus for manufacture and also offence of possessing arrack.

Term 'Construction of distillery or brewery' has been covered under Section 20(2) and if it is constructed without complying with the provisions of Section 21 of this Act and any other Rules framed for that purpose it has been specified to be an offence punishable under Section 61 (b) of this Act. Therefore, even the construction for the purpose of distillery or brewery has to be made with due permission under Section 20 of this Act and also under the Distillery Rules, 1932 and the Punjab Brewery Rules, 1956.

**3. Industrial alcohol.** - The expression "intoxicating liquor" in Entry 8 of List II of Seventh Schedule of the Constitution is not confined to potable liquor alone but would include all kinds of liquor which contain alcohol. Hence the expression covered alcohol manufactured for the purpose of industries such as industrial alcohol. The Court also held that the words "foreign liquor" in Section 24-A of the State Act included the denatured spirit and the said words could not be given a restricted meaning for the word 'consumption' cannot be conformed to consumption of beverages alone. When the liquor is put to any use such as manufacture of any article, liquor is all the same consumed. Further, Section 4(2) of the Act provides that the State may declare what shall be deemed to be country liquor or foreign liquor and the State had under the rules issued the notification defining "foreign liquor" as meaning all rectified, perfumed, medicated and denatured spirit wherever made. The Court further held that 'specially denatured spirit' for industrial purposes is not different from denatured spirit. The denatured spirit mentioned in the rules in question was treated as including "specially denatured spirit" for industrial purposes. The denatured spirit has ethyl alcohol as one of its constituents. The specially denatured spirit for industrial purposes is different from denatured spirit only because of the difference in the quality and quantity of the denaturants. Specially denatured spirit and ordinary denatured spirits are classified according to the use and the denaturants used. Hence the definition of ~ 'alcohol' in the rules in question included both ordinary as well as specially denatured spirit.

**4. Manufacture** - Manufacture of all intoxicants for the purpose of this Act or any other rules issued under it or any other law or otherwise declared to be an intoxicant at any time or for any specified time under Section 3(13), has been prohibited except in accordance with the provisions of this Act.

Term 'Manufacture' has been defined under sub-section (16) of Section 3 of this Act as under :-

"Manufacture" includes every process, whether natural or artificial, by which any intoxicant is produced or prepared and also redistillation every process for the rectification, reduction, flavouring, blending or colouring of liquor".

**5. Grant of license by the Collector** - The construction of the Section 20 is negative whereas prospective thereof is that any intoxicant or other specified items, can only be made, done or manufactured under the license and the Collector has got powers to grant such license.

**21. Establishment or licensing of distilleries and breweries.** - The Financial Commissioner, subject to such restriction or condition as the State Government may impose may, -

- (a) establish a distillery in which spirit may be manufactured under a license granted under Section 20.
- (b) discontinue any distillery so established.
- (c) license the construction and working of a distillery or brewery.
- (d) make rule regarding -
  - (1) the granting of licenses for distilleries, stills or breweries.
  - (2) the security to be deposited by the licensee of a distillery or brewery;
  - (3) the period for which the license shall be granted;
  - (4) the inspection and examination of such distillery or brewery and the warehouses connected therewith and of the spirit or fermented liquor made and stored therein;
  - (5) the management and working of the distillery or brewery ;
  - (6) the form of accounts to be maintained and the returns to be submitted by the licensee;
  - (7) the upkeep of buildings and plant;
  - (8) the size and description of stills and other plants;
  
  - (9) the manufacture, storing and passing out of spirit and contents of passes;
  - (10) the prices to be charged by the licensee ;
  
  - (11) any other matters connected with the working of distilleries or breweries.

## **NOTES**

**1. Scope** - Under this section the Financial Commissioner has been empowered to establish and issue licenses for the establishment of any distillery or brewery and to further license them to manufacture any liquor or any other intoxicant. The Financial Commissioner has also been given powers to cancel any such license and discontinue the establishment or working of any distillery or brewery so licensed by him.

To regulate the manufacture and control its quality and quantity to be manufactured the Financial Commissioner has got powers under clause (d) of this section to frame and issue Rules in this regard.

**2. Cancellation of authorisation** - Any license granted by the Financial Commissioner under this section for the establishment of a distillery or a brewery will be subject to the compliance of all the provisions of this Act and the rules framed thereunder or under any other law for that purpose. Since the Financial Commissioner and the State Government has an authority to frame any rules and regulations to regular the provisions thereof, the Financial Commissioner in addition to any other action, may if he so desire, discontinue such authorisation for the contravention of any such law or other policy matter of the Government. A license wrongly granted, which cannot otherwise be granted according to this Act and Rules thereunder, can always be cancelled and arbitrariness can be attributed in such circumstances.

**36. Grant of License.** - The Collector can grant licenses for country liquor vends subject to the Rules framed by the Financial Commissioner by virtue of the provisions of this Act itself. Therefore, the Financial Commissioner can only make Rules to regulate the provisions of grant of such licenses but cannot divert the statutory authority from the Collector.

Where the authority was vested in the ETa. for the grant of license but while exercising such authority he did not act independently but grants Licenses on the directions of higher authority such allotments are not in accordance with law.

Tenders filed with further offer to take up supply of liquor in any district. Act does not contemplate any such undertaking. Act or the Rules do not enable the E.T.O. to act otherwise than in accordance with the provisions of the Act and Rules

**4. Termination of license - Notice Provisions of T.P. Act applicable.** - The question is whether there is such a legal concept as keeping in abeyance a notice terminating a license of this kind on a fixed date, neither counsel was able to cite any authority whatever on this point, and the reason for this is not far as I know, has ever behaved in this peculiar manner by issuing a notice. Keeping it in abeyance reviving it again relegating it to abeyance one after the period when the license was determined by the original notice, had expired. The nearest legal parallel would appear to be found in the provisions of the Transfer of Property Act relating to determination of immovable property is determined and clause (h) reads.

"On the expiration of a notice to determine the lease, or to quit or of intention to quit the property leased, duly given by one party to the other."

This is qualified by the provisions of Section 118 which reads :

"A notice given under Section III, clause (h) is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting."

From these provisions it is clear that if a notice determining a lease is given by the landlord, it would be treated as waived or withdrawn if the landlord had acted in the way in which the Government has acted in this case regarding the notice determining the distillery's license." .

Although a lease of immoveable property is not quite the same as a license issued by the Financial Commissioner under the provisions of the Excise Act to operate a distillery, it

seems to me that the principal embodied in Section 111(h) and Section 118 of the Transfer of Property Act is one which can suitably be applied to a notice determining a license under the terms of the clauses of the license, and in the absence of any direct authority I am of the opinion that once the period fixed by the original notice had expired while the notice was held in so-called abeyance by the Government, it become necessary, when the Government finally decided to determine the license, to issue first notice, fixing a minimum period of one year. Therefore the notice issued on the 19th of August 1963 purporting to revive the notice of 1959 which had been kept in abeyance and fixing the 31 st of March 1964 for the determination of the license, i.e. a little over 5 years 7 months. Was an invalid notice and the license cannot be determined until a valid notice has been issued and the period fixed therein has expired."

**5. To sell liquor is not a legal right but a grace** - Nobody has a legal right to sell liquor and the Government is competent to impose reasonable restrictions. This is necessary in order to control the use of traffic in liquor and this control includes both regulatory and prohibitory measures. This doctrine has been recognised by the framers of the Constitution and finds mention in th; Directive Principles of State Policy as contained in Article 47 of the Constitution of India.

**6. A license to sell liquor is a personal and temporary privilege.** - This privilege is to be enjoyed as long as the terms and conditions of the permit or the license are complied with. It necessarily follow that the issue of a license is a matter of grace granted by the Government and a citizen has no absolute or legal right to have this permit. Thus a person cannot carry on the trade without first obtaining the required authority of the licensing authority.

**7. Supply in Club amounts to sale.** - The supply of intoxicating liquor by a club to its members is a mere incident of the general purposes of the club and constitute a sale within meaning of the Section 26 of the Punjab Excise Act. If some of the shareholders of an incorporated social club are not members of the club or if some of the members are not shareholders, though most of them may be, the distribution of liquor by the club constitutes a sale.

**22. Establishment or licensing of warehouses.** - The Financial Commissioner, subject to such restrictions or conditions as the State Government may Impose, may:-

- (a) establish or license a warehouse wherein any intoxicant may be deposited and kept without payment of duty -
- (b) discontinue any warehouse so established.

## **NOTES**

**1. Scope.** - Under Section 22 of the Act the Financial Commissioner has been enabled to establish warehouse. Such establishment may be by the Government itself or it may be on such permission by a licensee licensed by the Financial Commissioner for this purpose.

**2. Purpose** - Since the possession of intoxicants has been prohibited under Section 20(1)(e) and 24 except with the due permission under the Act, the licensed manufacturers have to

store the manufactured articles in the sanctioned and licensed warehouse.

A licensed manufacturer has also to pay excise duty on the excisable goods if he put them in circulation out of the manufacturing premises established and licensed under Section 21. To store and segregate such manufacturing and before it is levied for excise duty, such manufacture has to be stored in a licensed premises.

**23. Removal of intoxicants from the distillery etc.** - No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage, established or licensed under this Act, unless the duty if any (payable under Chapter V) has been paid or a bond has been executed for the payment thereof.

## **NOTES**

**1. Scope and Applicability.** - Transport of excisable goods after removing the same from the licensed premises without payment or without executing a bond for such payment has been prohibited under Section 16. Under Section 32 the Financial Commissioner has been conferred with the powers to make such rules as to at which stage, place or time, the excise duty has to be charged and in what manner.

There may be a difference in the rate of levy when the excise duty is charged on excisable goods which are lifted from the distillery directly or in case the same are first stored in a licensed warehouse and the same are assessed for the purpose after some time these were lifted from the distillery.

In this behalf provision has been made under Section 32(2)(a) and the Government may issue instructions with regard to the rate, prevailing at which time has to be charged on the excisable goods stored in such warehouses. It may be either the rate prevailing at the time such goods were lifted from the manufacturing establishment or it may be at the rate prevailing at the time the same were lifted from the warehouse later on.

- (i) Rules made under Sections 32 and 34 by the Financial Commissioner cannot over ride the provisions of Rules made by the State Government under Section 58.
- (ii) Rules framed under a statute in excess of the provisions thereof must be regarded ultra vires the statute and cannot be given effect to.
- (iii) An auction purchaser cannot be stopped from challenging validity of rules on the ground that he made the bid knowing that the rules were wrongly applied.

**2. Goods lifted from godown** - Liable to excise duty. - It was held that even if the goods were lifted from the distillery and some goods, therefore, remained unaccounted the excise duty has to be paid on such unaccounted goods and the demand of excise duty on such goods was held to be legally valid.

## **B. POSSESSION**

**24. Possession of intoxicants.** - (1) No person shall have in his possession any quantity of any intoxicants in excess of such quantity as the State Government has, under Section 5, declared to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of -

(a) a license for the manufacture, sale or supply of such article; or

(b) in the case of intoxicating drugs, a license for the cultivation or collections of the plants from which such drugs were produced; or

(c) a permit granted by the Collector in that behalf;

**(2) Exceptions.** - Sub-section (1) shall not apply to -

(a) any intoxicant in the possession of any Excise Officer, common carrier or warehouse man as such or ;

(b) Omitted by East Punjab Act 12 of 1949.

(3) A licensed vendor shall not have in his possession at any place, other than that authorised by his license, any quantity of any intoxicant in excess of such quantity as the State Government has under Section 5 declared to be the limit of sale by retail except under a permit granted by the Collector in that behalf.

**(4) Prohibition and restriction of possession of intoxicant in certain cases.** - Notwithstanding anything contained in the forgoing sub-sections the State Government may by notification prohibit the possession of any intoxicant or restrict such possession by such conditions as it may prescribe.

## **NOTES**

**1. Scope.** - Section 24 provides that no person shall have in his possession any intoxicant in excess of such quantity as the State Government declares to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of a license or permit.

Sub-sec (4) of S. 24 empowers the State Government to prohibit the possession of any intoxicant or restrict its possession by imposing such conditions as it may prescribe. Section 26 prohibits the sale of liquor except under the authority and subject to the terms and conditions and subject to the terms and conditions of a license granted in that behalf.

**2. Applicability.** - The State Government can declare the quantity of an intoxicant which

can be possessed by any person purchased in retail or for the dealers to be possessed for the purpose of sale in retail or in wholesale. Under Section 24 possession of quantity in excess the quantity declared by the State Govt. under this section or under Section 5 of this Act has been made an offence punishable under Section 61(i)(a).

It is open to the State Legislature to make Rules as to how the intoxicating liquor shall be possessed, transported, sold and purchased. Bottle can be prescribed as a container in which intoxicating liquors shall be possessed, purchased or sold. The State Legislature has got a jurisdiction to enact any law for the use of excise bottles for possession, transport, purchase and sale of intoxicating liquor. Power has been conferred on the State Government to make rules under Section 18(j) of the Act. It cannot be said that the power has been ultra vires the Constitution of India.

**3. Excise Act and Policy of prohibition.** - There is no reason in theory or principle why an Excise Act should not have a double object, the benefit of the revenue and the improvement of public health or morals by a greater control of liquor trade. Section 19(4) was intended for the purpose of promoting the cause of temperance; whether by means of the policy which used to be known as local option or by means of total prohibition.

**4. Punishment** - Contravention of provisions of Section 24 is punished under Section 61(i)(a) of this Act. Therefore, commentary under Section 61 is relevant for the purpose of punishment for the offences under this section.

**5. Possession** - The term 'possession' as relevant under this section can be classified further. Such clarification may be possible or necessitated by the situation, time, duty, profession etc. etc. Possession of intoxicants without due permission under the provisions of this Act is not per se punishable as an offence. Different situations relevant under this section may be classified as under :-

Possession by one community legal and possession by another community of the same articles illegal. This amounts to discrimination against community. Such provisions are hit by the provisions containing equality clause of the Constitution of India.

Possession does not mean only physical or actual possession but includes constructive possession also.

In order to decide whether a quantity of illicit liquor is in possession of the accused person. the courts have to consider not merely whether the article lying in the house of the accused person or at a place accessible to other, but a number of other circumstances the proof of which will persuade the court to come to the conclusion that the offending material was not in fact under the control and absolute domination of the person concerned. Recovery of illicit liquor from the field of another on information given by the accused would not amount to

possession within the meaning of the Section 61(1). Under the circumstances, it is probable that the accused gave information relating to liquor belonging to some one else and therefore, the accused could not be said to be in possession of such discovered liquor

**6. Possession is itself an offence - Onus to prove innocence is on accused.** - The question of intention bears no relevance to an offence under Section 57-A and equally of culpability or negligence. It is seen that mixing or permitting to mix noxious substance or any other substance with liquor or intoxicated drug or omission to take reasonable precaution or being in possession without knowledge of its adulteration for the purpose of unjust enrichment would be without any regard for loss of precious human lives or grievous hurt. The legislature has noted the inadequacy and deficiency in the existing law to meet the menace of adulteration of liquor etc. and provided for new offences and directed with mandatory language protection of the health and precious lives of innocent consumers. While interpreting the law, the court must be cognizant to the purpose of the law and respect the legislative animation and effectuate the law for social welfare. The legislature enacted deterrent social provisions to combat the degraded human conduct. These special provisions are to some extent harsh and are a departure from normal criminal jurisprudence. But it is not uncommon in criminal statutes. It is a special mode to tackle new situations created by human proclivity to amass wealth at the alter of human lives. So it is not right to read down the law.

**7. Temporary possession** - What is temporary custody or charge depends upon the facts and circumstances of each case. When a legal possession should be converted into illegal possession. Possession of intoxicant in transit by a person not on his own behalf but for the purpose of transit to its destination. Possession for 10 days during transit was held not unreasonable. It was held that the possession did not become illegal merely because of the long period.

**8. Prohibition at social clubs.** - A notification introducing prohibition in social clubs does not constitute a direct interference with the liberty of the subject or the fundamental rights granted by Article. The sub-section (4) confers full powers on the State Government to prohibit the possession of any intoxicant or to prescribe the conditions on which the possession may be tolerated and as the State Government has embarked on a policy of prohibition, there can be no objection in principle to a direction that no person should be at liberty to keep any intoxicating liquor in the premises of unlicensed social club. It is obviously within competence of the State to prohibit the keeping or possession of intoxicating liquor in any locker or other place in any social club whether the liquor is required for personal use or for purposes of sale or any other purpose ..

**9. Possession of Lahan.** - If all the ingredients of lahan are present and are found mixed in the vessel recovered from the accused or in other words the mixture is ready for the fermentation then the offence is committed. It is immaterial whether that ingredient had been mixed sufficiently long for the process of fermentation.

**10. Possession during transit on behalf of others.** - It is matter of common occurrence that intoxicants are in possession of various persons in the course of transit from one place to

another e.g. cartmen, ship-owners, coolies and so forth. Such persons cannot of course be said to be persons with possession within Section 24 of the Act. It is, therefore, reasonable to hold that the person in possession contemplated by that provision is one who is in possession of the intoxicant on his own behalf, and not one who is in temporary custody or charge of the same on behalf of another in the course, and for purposes of transit. What is such temporary custody or charge depends upon the facts and circumstances of each case, so that what is temporary custody or charge on behalf of another person initially may be converted into illegal possession at a subsequent stage. This may, for instance, take place where a person initially in charge of the intoxicant on behalf of another person in the course, and for the purpose of transit detains the consignment longer than necessary for transmission or for a purpose unconnected with the transmission.

Possession of intoxicant in transit by a person not on his behalf but for purpose of transit to its destination for 10 days was held not unreasonable, considering the tardy nature of communication and long distance to be covered. The possession did not, therefore, become illegal merely because of the long period.

**24A. Possession of unused and printed labels, corks, etc. by certain persons to be punishable.** - No person shall have in his possession any unused and printed label, cork, capsule or seal, duly approved by any authority under this Act or under any rule or order made thereunder for use by a person licensed to establish or work a distillery or brewery or to bottle liquor, or any other label, cork, capsule or seal which is an imitation of such unused and printed label, cork, capsule or seal, as the case may be :

Provided that nothing herein shall apply to -

- (a) a person licensed to establish or work a distillery or brewery or to bottle liquor; or
- (b) a person who, in execution of an order received from a person specified in clause (a) manufactures or prints any such label, cork, capsule or seal.

**25. Prohibition of possession of intoxicant unlawfully manufactured, imported etc. -** No person shall have in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected or knowing the prescribed duty not to have been paid thereon.

## **NOTES**

**1. An offence** - Provisions of Section 25 are of importance to regulate the provisions of this Act. Where on the one hand the possession, bottling, export, transport and sale-purchase of the liquor even legally prepared had been controlled and prohibited without in accordance with the provisions of this Act, it becomes necessary on the other hand to prohibit, possession, manufacture and export or import of an illicit liquor or intoxicants. Therefore, possession of any unlawfully manufactured intoxicant has been prohibited under Section 25 of this Act and any contravention thereto amounts to punishable under Section 61 of this Act.

The offence regarding the possession of the illicit liquor relates back to the provisions of

Section 25 of the Act. There must be two ingredients, namely, the possession and that for one of the reasons mentioned in Section 25 the liquor is illicit attracting conviction under Section 61 of this Act.

**2. Knowledge of possession** - A person is supposed to know, where there is a direct appeal to his sense.

A person is said to have notice of a fact when he actually knows the fact or when but for wilful abstention from enquiry or search which he ought to have made or gross negligence, he would have committed (Section 3 of Transfer of Property Act, 1882).

Knowledge means the state of mind entertained by a person with regard to existing facts which he has himself observed or the existence of which has been communicated to him by person whose veracity he has no reasons to doubt.

Possession without knowledge is not actionable.

Actual knowledge may also be inferred from the facts and circumstances, that a person had reasonable means of knowledge.

Karta of joint Hindu family cannot be held to be guilty of possession without knowledge, when the search was made in his absence after obtaining keys from his brother.

## C - SALE

**26. Sale of intoxicants.** - No liquor shall be bottled for sale and no intoxicant shall be sold except under the authority and subject to the terms and conditions of a license granted in that behalf provided that -

- (1) a person licensed under Section 20 to cultivate the hemp plant may sell without a license those portions of the plant from which any intoxicating drug can be manufactured to any person licensed under this Act to deal in the same or to any officer whom the Financial Commissioner may appoint in this behalf;
- (2) a person having the right to the tari drawn from any tree may sell the same without a license to a person licensed to manufacture or sell tari under this Act ;
- (3) on such conditions as the Financial Commissioner may determine a license for sale under the Excise Law for the time being in force in other parts of the whole of the India Except Part B States may be deemed to be a license granted in that behalf under this Act;

- (4) nothing in this section applies to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.

**Section 26 for Haryana**

**26. Prohibition of purchase, sale and consumption of intoxicants.** - No liquor shall be bottled for sale and no intoxicant shall be sold except under the authority and subject to the terms and conditions of a license granted in that behalf provided that -

- (1) a person licensed under Section 20 to cultivate the hemp plant may sell without a license those portions of the plant from which any intoxicating drug can be manufactured to any person licensed under this Act to deal in the same or to any officer whom the Financial Commissioner may appoint in this behalf;
- (2) a person having the right to the tari drawn from any tree may sell the same without a license to a person licensed to manufacture or sell tan under this Act;
- (3) on such conditions as the Financial Commissioner may determine a license for sale under the Excise Law for the time being in force in other parts of the whole of the India Except Part B States may be deemed to be a license granted in that behalf under this Act;
- (4) nothing in this section applies to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.
- (5) The State Government, if satisfied, that it is necessary or expedient so to do, may, by notification, prohibit, -
- (a) the sale of any intoxicant or restrict such sale by such conditions as it may notify;  
and
- (b) the purchase and consumption of any intoxicant or restrict such purchase and consumption by such conditions as it may notify.]

**NOTES**

- 1. Sale.** - Word sale for the purpose of this Act has been defined in sub section (18) of Section 3 of the Act as under :-  
Expression referring to "Sale" include any transfer otherwise by way of gift. Term

sale, as has been defined in Section 54 of the T.P. Act is as under:-

"Sale is a transfer of ownership in exchange for price paid or promised or part paid or part promised."

The word sale has also been defined in Section 4 of the Indian Sale of Goods Act as under;-

Under sub-section (14) of Section 3 of the Act beer has been specifically notified as foreign liquor and when a holder of license in forms L-4 and L-5 is permitted to sell foreign liquor, he cannot be restrained from selling beer under those licenses. A license to vend liquor is a merely personal and a temporary permit as privilege to be enjoyed so long as its terms are complied with. It follows therefore that the issue of a license is a matter of grace granted by the Government and is not a matter of right. Hence no person can demand such a license as of right and cannot carry on the trade under the law of the land without first obtaining the required approval of the licensing authority.

The supply of an intoxicating liquor by a club to its members is a 'sale' within the meaning of Section 26 of the Act. When liquor is supplied to a consumer in consideration of a price it is obvious that the transaction is a sale within the inhibition of the liquor laws.

**2. Business and Trade - Business includes Manufacture.** - There is no doubt that the word "business" is more comprehensive than the word "trade" since it will include manufacture which the word "trade" may not ordinarily include. The primary meaning of the word "trade" is the exchange of goods for goods or goods for money. However, the word "trade" has also secondary meaning viz., business carried on with a view to profit. In fact, the words "trade" and "industry" are also used interchangeably many times. It all depends upon the context in which the words occur. Thus it is apparent that the word "trade" may include all the connotations of the word "business". As held in *K.K. Narula v. State of Jammu and Kashmir*, in Article 19(1)(g) of our Constitution, the words "trade" and "business" are used synonymously. Hence, we reject the contention and hold that after the taking-over of the trade, viz., the activity of buying and selling liquor, no activity was left with the petitioners to carry on under the license held by them.

### **3. Sale and agreement to sell. -**

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract or sale between one part-owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of all property in the goods is to take place at a further time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when the time elapses or the conditions are ful-

filled subject to which the property in the goods is to be transferred."

**4. Supply of liquor in club whether amounts to sale.** - The supply of intoxicating liquor by the club to its members is a mere incident of the general purpose! of the club and constitute a sale within meaning of the Section 26 of the Punjab Excise Act.

The question as to whether supply of liquor to members of a club is a sale or not was considered in *Lumsden Club v. State*. The question was dealt by the Court as under ; -

The first point for decision in the present case is whether the supply of intoxicating liquor by a club to its members, as a mere incident of the general purposes of club, constitutes a sale within the meaning of Section 26 of the Punjab Excise Act.

The number of authorities appear to propound the proposition that when a *bona fide* members' club supply intoxicating liquor to his members the transaction cannot be regarded as sale, whether for consumption on or off the premises for the title to the liquor vests in the members in common and not in the club, and the supply of liquor to a member who orders and pays for it is not a sale at all but a transaction by which all the other members of the club transfer their special property in the liquor to the consumer in consideration of the price paid .

The reasoning. adopted by these authorities has been characterised as "unsound, strained and sophistical" and the organisation of social clubs for dispensing liquor to its members has been declared to be a clumsy device to evade the liquor laws.

The weight of authority in America appears to favour the proposition that the distribution and consumption of liquor in a club by its members is a sale within the inhibition of liquor laws. Whatever may be the position in regard to ordinary club, the case of incorporated clubs is completely different, for whereas the liquor supplied by the ordinary club belongs to the members in common, the liquor supplied by an incorporated clubs belongs to the corporation which is a separate legal entity from the individual members of whom it is composed.

If some of the shareholders of an incorporated social club are not members of the club or if some of the members are not shareholders, though most of them may be, the distribution of liquor by the club constitute a sale.

"It is not necessary, in my opinion, to examine any authorities on this point, for there can be no manner of doubt that when a club in the Punjab dispenses an intoxicating liquor to one of its members, the transaction which takes place between the parties is one of sale."

This is clear from the fact that the expression " sale" as defined in Section 2( 18) includes any transfer otherwise than by way of gift. If all the members of a club transfer their special property in liquor to the consumer in consideration of a price, it is obvious that the transaction is a sale within the inhibition of the liquor laws.

**5. May sell to any person licensed under the Act.** - A person permitted to cultivate hamp plants can without a license sell to a person who has been granted a license under Section 20 to manufacture intoxicants, the parts of such plants from which intoxicants are drawn. Therefore, a cultivator under due permission do not require any license to sell such plants to a licensed manufacturer. However, there is no provision to sell in any manner otherwise to any other person not having license under Section 20.

**6. Total Prohibition is not unreasonable.** - Constitution Bench of five learned Judges held in a case where, what fell for consideration was the validity of the Bombay Prohibition Act, 1949. In that case, this Court held that in view of the provisions of Article 47 of the Constitution, the total prohibition on potable liquor would be reasonable. It does not appear that any contentions were raised there on the basis of Article 19 (1) (g) and hence there is no discussion with reference to the said provision.

**7. Restriction on the sale of liquor is not violative of fundamental rights.** - While dealing with this question, the High Court held that the restrictions are reasonable and it was observed :-

"Nor is there any substance in the protest that the two orders, the validity of which is now being challenged, constitute a direct interference with the liberty of the subject or violate the Constitution.

The harmful effects of intoxicating liquors and their tendency to deprive public morals have been known and recognised ever since the dawn of civilisation. The State has always assumed to itself the powers to regulate or prohibit the manufacture, possession and sale of intoxicating liquors, to prohibit sales to persons of tender years and to prescribe the hours of the day and of the week during which places of sale may be open.

Courts in America have held that the right to sell liquor is not a natural or fundamental right of a citizen, but a privilege which the State may grant or deny, and consequently that a person has no inherent right to engage in selling liquor he must do so on such terms as the appropriate authority may consider necessary or reasonable. The position in India is not widely different.

It may be that in the absence of a restraining enactment a citizen of the country has a right to carry on business in the purchase and sale of intoxicating liquor, but it is within the power of the legislature, in view of the provisions of Article 19(6), to impose such reasonable restrictions of the exercise of this right as it may consider fit or proper. India is wedded to the policy of prohibition and the State Legislature has directed that the State Government shall take steps to implement the said policy.

"I can see nothing wrong or improper either legally or morally in the State endeavoring to carry out the mandate of the legislature and as a first step, introducing prohibition in social clubs. In the peculiar circumstances of his case the power of regulation is wide enough to embrace the power of prohibition."

**8. Restriction on fundamental Rights including Prohibition.** \_ Before the Constitution Bench of five learned Judges, the question whether restriction on fundamental rights includes their prohibition, fell for consideration squarely. On different dates prior to April 3, 1958, the petitioners in that case had entered into contracts of purchase of copper with importers at Bombay and Calcutta, but before they could take delivery from the importers, the Government of India in exercise of its powers under Section 3 of the Essential Commodities Act, 1955, issued on April 2, 1958 Non-ferrous Metal Control Order, 1958. Clause (3) of the Order provided that no person shall sell or purchase any non-ferrous metal at a price which exceeded the amount represented by an addition of 3.5 per cent to its landed cost, while clause (4) prohibited any person from acquiring any non-ferrous metal except under and in accordance with the permit issued in that behalf by the Controller in accordance with such principles as the Central Government may from time to time specify. No such principles were, however, published in the gazette nor laid before the Houses of Parliament. The Court held that the word 'restriction' in Article 19(5) and (6) of the Constitution includes cases of prohibition also. Where the restriction reaches the stage of total restraint of rights, special care has to be taken by the courts to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the Order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public. The Court, in this connection referred to 3 The prohibition, according to the Court, has to be treated as only a kind of restriction. The Court then observed as follows:

"After Article 19(1) has conferred on the citizen the several rights set out in its seven sub-clauses, action is at once taken by the Constitution in clauses 2 to 6 to keep the way of social control free from unreasonable impediment. The *raison d'être* of a State being the welfare of the members of the State by suitable legislation and appropriate administration, the whole purpose of the creation of the State would be frustrated if the conferment of these seven rights would result in cessation of legislation in the extensive fields where these seven rights operate. But without the saving provisions that would be the exact result of the Article 13 of the Constitution. It was to guard against this position that the Constitution provided in its clauses 2 to 6 that even in the fields of these rights new laws might be made and old laws would operate where this was necessary for general welfare. Laws imposing reasonable restriction on the exercise of the rights are saved by clause 2 in respect of rights under sub-clause (a) where the restrictions are 'in the interests of the security of the State;' and of other matters mentioned therein; by clause 3 in respect of the rights conferred by sub-clause (b) where the restrictions are "in the interest of the public order; by clauses 4, 5 and 6 in respect of the rights conferred by sub-clauses (c), (d), (e),-(f) and (g) the restrictions are "in the interest of the general

public" - in clause 5 which is in respect of rights conferred by sub-clauses (d), (e) and (f) also where the restrictions are "for the protection of the interests of any scheduled tribe". But for these saving provisions such laws would have been void because of Article 13, which is in these words:- "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void;

(2) The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void .... "

As it was to remedy the harm that would otherwise be caused by the provisions of Article 13, that these saving provisions were made, it is proper to remember the words of Article 13 in interpreting the words 'reasonable restrictions' on the exercise of the right as used in clause (2). It is reasonable to think that the makers of the Constitution considered the word 'restriction' to be sufficiently wide to save laws 'inconsistent' with Article 19(1), or "taking away the rights" conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt therefore that they intended the word 'restriction' to include cases of 'prohibition' also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot therefore be accepted .... "

**9. State's Power to regulate includes power to carry on such trade to the exclusion of others.** - The contention that if a citizen has no fundamental right to carry on trade or business in potable liquor, the State is also enjoined from carrying on such trade, particularly in view of the provisions of Article 47, though apparently attractive, is fallacious. The State's power to regulate and to restrict the business in potable liquor impliedly includes the power to carry on such trade to the exclusion of others. Prohibition is not the only way to restrict and regulate the consumption of intoxicating liquor. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. The State can do so also by creating in itself the monopoly of the production and supply of the liquor. When the State does so, it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19(6) of the Constitution.

The contention further that till prohibition is introduced, a citizen has a fundamental right to carry on trade or business in potable liquor has also no merit. All that the citizen can claim in such a situation is an equal right to carry on trade or business in potable liquor as against the other citizens. He cannot claim equal right to carry on the business against the State when the State reserves to itself the exclusive right to carry on such trade or business. When the State neither prohibits nor monopolises the said business, the citizens cannot be discriminated against while granting licenses to carry on such business. But the said equal

right cannot be elevated to the status of a fundamental right.

It is no answer against complete or partial prohibition of the production, possession, sale and consumption etc. of potable liquor to contend that the prohibition where it was introduced earlier and where it is in operation at present, has failed. The failure of measures permitted by law does not detract from the power of the State to introduce such measures and implement them as best as they can.

**10. Issue of license to sell is a matter of grace.** - A license to sell liquor is a personal and temporary privilege enjoyable as long as the terms and conditions of such permit or the license are complied with. It necessarily follows that the issue of a license is a matter of grace granted by the Government and a citizen has no absolute or legal right to have it. Thus a person cannot carry on the trade without first obtaining the required authority of the licensing authority.

**11. Sale by Partner.** - Where by virtue of a partnership a partner is authorised to sell liquor which he cannot do without the permission of the Collector, such an agreement of partnership was illegal, void and unenforceable in law. The object of the agreement was to defeat the provisions of the Excise Act, which were that only the licenses should be permitted to sell liquor, such an agreement of partnership was therefore clearly illegal and void.

**12. Power of Chief Commissioner to grant licenses.** - Chief Commissioner of Delhi is competent authority to grant licenses in Delhi.

**13. Conditions of bid if subject to sanction.** - Once the conditions of auction sale of a liquor shop expressly provides that the acceptance of the bid shall be subject to the confirmation of the Chief Commissioner then there will be no complete contract till the sanction is obtained. For different view see

**14. Cancellation of license.** - Where the authorities come to the conclusion that a person is making a sale in contravention of the provisions of the Act and the rules then the authorities can cancel the license. The court of revision should not interfere with the discretion so exercised.

**15. Chief Commissioner cannot alter the rules framed by State Government.** - The Chief Commissioner cannot alter the condition of auction of liquor shops laid down by the rules framed by the State Government under Section 58 of the Punjab Excise Act. The rules framed by the Chief Commissioner under Sections 32 and 34 of the Punjab Excise Act cannot vary those made by the Provincial Government under Section 58 of the Act.

**16. Rule requiring that medicinal preparation be sold under a license is valid.** - Rules provided that a licensee can sell intoxicating spirituous preparations to a person holding the prescription of a registered medical practitioner in accordance with such prescription, and licensee has been defined to mean a person licensed to possess. Manufacture or for

dispensing or for selling intoxicating spirituous preparations. It is apparent that a person wanting to sell these preparations can obtain a license under the Act and the rules for dispensing and once he does that, he can both prepare or make a medicine containing 20 per cent proof alcohol and also bottle it in a phial once he obtains a license all these difficulties cease to be in his way for dispensing medicines with intoxicating spirits having 20 per cent proof alcohol in the same. The requirement of a license cannot possibly render the rules under consideration repugnant to Section 30.

**17. Discretion of presiding officer to demand whole bid money is valid.** - The Presiding Officer of the auction of liquor vend has to be a very high officer in the hierarchy of the Excise Authorities. The auction was conducted by Collector-cum-Deputy Excise and Taxation Commissioner of the Union Territory of Chandigarh. It was observed by the Court that with his experience in the filed of auction of liquor vend and with the information and data available to him regarding the fixed quota of a particular vend, the amount which it was given during the previous year, the nature of the locality whose needs the vend has to cater, and the type of population which is expected to become customers at the vend he should be the best person to form an idea as to how the bidding for a particular vend has become excessively high.

**18. Discretion in accepting or rejecting of a bid cannot be challenged.** - It has been authoritatively held by the Supreme Court that Articles 14 and 19(1)(g) cannot be made applicable to a case where one person is chosen rather than another to fulfill a particular contract, discretion for which must be left with the Government. It was held that a contract which is held from a private party. It has been held that one of the important purposes of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue.

**19. Discretion must be exercised judiciously.** - There is no doubt that a discretion has been vested in the Excise Commissioner under Punjab Excise Act, 1914 to grant or withhold license at his own will and pleasure but that discretion must be used judiciously. An application for the license should not be rejected arbitrarily or capriciously. The decision should be exercised after a careful consideration of all the facts and circumstances. Thus where in pursuance of a decision taken by the government to prohibit licensed drinking of liquor in civilian clubs the Excise Commissioner allowed the sale of liquor to the members of the one club but did not issue similar direction in respect of other club although these institutions fell within the ambit of the expression Civilian Clubs and had similar rules, it was held that there was no warrant for unjust discrimination between these two sets of institutions. Thus an order refusing grant of a license to only one club was held to be *ultra vires* of Article 14 of the Constitution of India.

**20. Highest bidder acquires no vested right.** - Where the writ relates to a stage of process of negotiations before any concluded contract for the sale of liquor vend could be arrived at, it was held that there was no vested right in the petitioners to complain at any stage prior to the acceptance of the bid of the successful bidder. It was held that a condition relating to the manner in which a liquor vend can be sold by the Government is not violative of Article 14 of the Constitution, and that in matters relating to contracts with Government, the latter is not bound to accept the tender of the person who offers the highest amount.

**27. Grant of lease of manufacture etc.** - (1) The State Government may lease to any man not below the age of twenty-five years, on such conditions and for such period as it may deem fit, the right -

(i) of manufacturing or of supplying by wholesale, or of both, or (ii) of selling by wholesale or by retail, or

(iii) of manufacturing or of supplying by wholesale, or of both and of selling by retail; any [Excisable article]<sup>6</sup> within any specified local area.

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

### **Section 27 for Haryana**

**27. Grant of lease of manufacture etc.** - (1) The State Government may lease to any man not below the age of twenty- five years, on such conditions and for such period as it may deem fit, the right –

(i) of manufacturing or of supplying by wholesale, or of both, or (ii) of selling by wholesale or by retail, or

(iii) of manufacturing or of supplying by wholesale, or of both and of selling by retail ; any country liquor or intoxicating drug within any specified local area.

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

## **NOTES**

**Scope.** - Section 27 of the Act empowers the State Government to "lease" on such conditions and for such period as it may deem fit or retail, any country liquor or intoxicating drug within any specified local area. On such lease being granted the Collector, under sub-see (2), has to grant to the lessee a license in the form of his lease.

**Object.** - Under Section 27 a lease can be granted only by the State Govt. concerning any country liquor or intoxicating ~g for the purpose and subject to the conditions. as mentioned III Section 27 But the Collector IS authorised to grant a license to the said lease III terms of the lease. Where there is no condition in the lease prohibiting subletting the Collector is authorised also on the application of the lessee to grant a license to any sub-lessee approved by him.

Section prohibits a licensed vendor or any person in his employ or acting on his behalf from selling or delivering any liquor or intoxicating drug who apparently looks under the age of 25 years, either for consumption by such person or by another person or for consumption on or outside the premises of the vendor.

These words obviously mean that whatever be his actual age if such person from his appearance looks to be of less than 25 years of age, the sale or delivery of any liquor or

intoxicating drug to such person is prohibited, and the person who is guilty of violation of the provisions of this section is punishable under section 62(a) of the Act.

**28. Manufacture and sale of liquor in military Cantonments.** - Within the limits of any military cantonment and within such distance from those limits as the Central Government in any case may prescribe, no license for the manufacture or sale of liquor and no lease of the retail vend of liquor, such as is described in Section 27, shall be granted unless with the consent of the Commanding Officer.

**29. Prohibition of sale to persons under the age twenty-five years.** - No licensed vendor and no person in the employ of such vendor or acting on his behalf shall sell or deliver any liquor or intoxicating drug to any person apparently under the age of twenty- five years whether for consumption by such person or by another person and whether for consumption on or off by the premises of such vendor.

#### **NOTES**

Section 29 is a social piece of legislation with the object to save the young generation from becoming addicts to the intoxicants. The contravention of provisions of Section 29 has been made an offence punishable under Section 62 of this Act.

**30. Prohibition of employment of men under the age of twenty-five years and of women.** - No person who is licensed to sell any liquor or intoxicating drug for consumption on his premises shall during the hours in which such premises are kept open for business, employ or permit to be employed either with or without remuneration any man under the age of 25 years or any women in any part of such premises in which such liquor or intoxicating drug is consumed by the public.

#### **NOTES**

Section 30 is a social piece of legislation with the object to save the younger generation and the woman folk from becoming addict to the intoxicants and avert and avoid any conflict between sexes and chances of foreseen sexual offences. Contravention of the provisions of Section 30 have been made an offence punishable under section 62(b) of this Act. Therefore no element of discrimination possibly be attributed to these provisions.

**Scope.** - It would be reasonable to infer from reading of Sections 24 to 30 of the Act that one can possess liquor permissible under the Act and rules at a specified place provided in the license to possess. It prohibits the manufacture of liquor or its sale except in terms of the permission granted under the license. It is the State Government which can prohibit the possession or sale etc. by a notification. It could be sold only under the authority of the State and subject to the conditions or terms prescribed by the State. It is the privilege of the State to lease out or part with its rights to manufacture, sale and supply etc. within a specified area. However, the Act specifically debar the sale and delivery of liquor to the persons under the age of 25 years. The quintessence to issue the licenses and permits etc. is provided by Chapter VI. If we may add, Section 36 of the Act empowers the State Government or the License Issuing Authority to cancel or suspend the license.

## **CHAPTER V**

### *Duties and Fees*

**31. Duty on excisable articles.** - An excise duty or a countervailing duty as the case may be at such rate or rates as the State Government shall direct, may be imposed either generally or for any specified local area, on any excisable article.

- (a) imported, exported or transported in accordance with the provisions of Section 16 ;  
or
- (b) manufactured or cultivated under any license granted under Section 20; or
- (c) manufactured in any distillery established or any distillery or brewery licensed under Section 21

Provided as follow :-

- (i) duty shall not to be so imposed or any article which has been imported into India and was liable on importation to duty under the Indian Tariff Act, 1894, or the See Customs Act, 1878 ;
- (ii) *Explanation.* - Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strength and quality of such article.

#### **NOTES**

**1. Excise duty.** - Excise duty is an amount collected by the State Government to regulate possession, transport, import and export of excisable items. Constitution Bench of five learned Judges, observed that the system of auctioning of the right to possess excisable goods like country liquor, ganja, and bhang was only a method of realising duty through grant of licenses to those who made the highest bid at the auctions and thus to raise revenue. In that case, what was under challenge was the system of auctions under the Cochin Tobacco Act, 1084 [M.E.] with the object of controlling the cultivation, production, manufacture, storage and sale of tobacco. By majority, the Court held that the income realised from such auction was in the nature of excise duty.

**2. Countervailing duty.** - The countervailing duties are meant to equalize the burden on the alcoholic liquors imported from outside the State and the burden placed by excise duties on alcoholic liquors produced in the State. Countervailing duties can, therefore, be imposed on imported liquors only if goods similar to those which are imported are actually manufactured or produced in the taxing State. If this condition is satisfied, countervailing duty may be imposed on the imported goods whether they are consumed within the taxing State or not. If no alcoholic liquors similar to those imported into the State are manufactured or produced in the State, the right to impose countervailing duties of excise on the imported goods to counterbalance the burden on the State-produced goods will not arise.

**3. Excise duty on manufacture or sale.** - A person not connected with manufacture of al-

cohol, operating sale vends under license - excise duty be recovered from them for the liquor manufactured by others.

**4. Still Head Duty whether excise duty - No.** - Still-Head fees charged at the time of auction cannot be termed as excise duty - License fees are recoverable in addition to the excise duty.

**5. Regulate - Govt. not authorised to levy fee.** - Section 31 of the Act empowers the State Government to levy excise duty or a countervailing duty on the excisable articles. Even the articles imported, exported or transported may be subjected to the imposition of such duty. Section 58(2)( d) empowers the State Government to make rules so as to regulate the import, export, transport or possession of any excisable article. There is thus no power with the State Government to impose import fee besides the levy of excise duty or countervailing duty. What clause (d) of Section 58(2) empowers is that the State Government may regulate the import of beer. It does not, however, authorise the State Government to levy any fee as such. Section 16 permits the import of any intoxicant after payment of such duty which may be required to be paid under the Act. Thus, Section 16 also does not empower the State Government to levy any duty unless it could be so levied under any provision of the Act. The notification issued by the State Government, whereby import fee was levied was issued in exercise of the powers under Sections 31, 32 and 58 of the Act. Since none of the three sections empowers the State Government to levy any fee other than excise duty and countervailing duty, the notification was found to have been issued without authority of law.

**32. Manner in which duty may be levied.** - Subject to such rules regulating the time, place and manner as the Financial Commissioner may prescribe, such duty shall be levied rateably, on the quantity of excisable article imported, exported, transported, collected or manufactured in or issued from a distillery brewery or warehouse:

Provided that duty may be levied :-

- (a) on intoxicating drugs by an acreage rate levied on the cultivation of the hemp plant or by a rate charged on the quantity collected.
- (b) on spirit or beer manufactured in any distillery established or any distillery or brewery licensed, under this Act in accordance with such scale or 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;
- (c) on tan, by a tax on each tree from which the tari is drawn :

Provided further that where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under Section 22(a) it shall be made -

- (a) if the State Government by notification so directs, at the rate of duty which was in force at the date of import of that article, or

(b) in the absence of such direction by the State Government, at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

## **NOTES**

**1. System of auction is valid.** - Constitution Bench of five learned Judges, observed that the system of auctioning of the right to possess excisable goods like country liquor, ganja, and bhang was only a method of realising duty through grant of licenses to those who made the highest bid at the auctions and thus to raise revenue. In that case, what was under challenge was the system of auctions under the Co chin Tobacco Act, 1084 [M.E.] with the object of controlling the cultivation, production, manufacture, storage and sale of tobacco. By majority, the Court held that the income realised from such auction was in the nature of excise duty.

**2. Condition of auction contrary to rules.** - Rules cannot be inconsistent with the Act. The rules made by the Executive authorities under section 32 and 34 of the Punjab Excise Act cannot vary those rules which are made by the State Government under section 58 of the Act. The rule making power for the purposes of carrying out the auction of Excise shops is contained in Section 58 of the Punjab Excise Act and this power is to be exercised by the State Government. However, Section 32, 34 and 59 confer power on Financial Commissioner in Punjab and Chief Commissioner in Delhi to make certain rules in matter of holding auction. The two powers are exercised by two different authorities.

**33. Payment for grant of leases.** - Instead of or in addition to any duty leviable under this chapter the State Government may accept payment of a sum in consideration of the lease of any right under Section 27.

**33-A. Saving for duties being levied at commencement of the Constitution.** - (1) Until provision to the contrary is made by Parliament, the State Government may continue to levy any duty which it was lawfully levying immediately before the commencement of the Constitution under this chapter as then in force.

(2) The duties to which this section applies are :-

(a) any duty on intoxicants which are not excisable articles within the meaning of this Act;  
and -

(b) any duty on an excisable article produced outside India and imported into Punjab / Haryana whether across a customs frontier as defined by the Central Government or not.

(3) Nothing in this section shall authorise the levy by the State Government of any duty

which as between goods manufactured or produced in the State and similar goods not so manufactured or produced, discriminates in favour of the former or which, in the case of goods manufactured or produced outside the State, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

### *Licenses, Permit and Passes*

**34. Fees for terms, conditions and form of, and duration of licenses, permits and passes.** - (1) Every license, permit or pass granted under this Act shall be granted -  
(a) on payment of such fees, if any,  
(b) subject to such restrictions and on such conditions, (c) in such form and containing such particulars,  
(d) for such period.

As the Financial Commissioner may direct.

**(2) Security.** - Any authority granting a license under this Act may require the licensee to give such security for the observance of the terms of his license, or to make such deposit in view of security, as such authority may think fit.

### **Section 34 for Haryana**

**34. Fees for terms, conditions and form of, and duration of licenses, permits and passes.** - (1) Every license, permit or pass granted under this Act shall be granted -  
(a) on payment of such fees, if any,  
(b) subject to such restrictions and on such conditions, (c) in such form and containing such particulars,  
(d) for such period.

As the Financial Commissioner may direct.

**(2) Security.** - Any authority granting a license under this Act may require the licensee to give such security for the observance of the terms of his license, or to make such deposit in view of security, as such authority may think fit.

(3) Whenever the authority which granted a license, permit or pass under this Act, considers that such license, permit or pass should be amended for any cause, it may, after notice to the holders of its intention to do so, amend such license, permit or pass.

## **NOTES**

**1. Applicability.** - This section lays down the conditions subject to which a license, permit or pass can be granted under the Act. In addition to the conditions of the grant of every license, permit or pass, the authority granting the same, may also in its discretion require the licensee to give such security for the compliance of the terms of his license, or in lieu of such security to make such deposit as the authority granting the license may think fit.

**2. State has the absolute privilege in the manufacture, sale etc. of liquor.** - No person has any absolute right to sell liquor and that the purpose of the Act and the rules is to control and restrict the consumption of intoxicating liquors such control and restriction being obviously necessary for the preservation of public health and morals, and to raise revenue." When it was urged that the sale of intoxicants by retail in small quantities should be without restriction because every person has a right which inhered in him, that is a natural right to carry on trade in intoxicating liquors and that the State has no right to create a monopoly in them. This contention was controverted on the reasoning given by J. he observed.

"There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury is true, falls upon him in his health which the habit undermines, in his morals, which it weakens, and in the self abasement which it creates. But as it leads to neglect of business and waste of property and general demoralisation, it affects those who are immediately connected with the dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the drum shop. Where intoxicating liquors, in small quantities, to be drunk at the time are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors in this way has, therefore, been, at all times, by the courts of every State considered as the proper subject of legislative regulation. Not only may a license fee be exacted from the keeper of the saloon before a glass of his liquor can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours or the day and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited is a question of public morality, and not of federal law. The police power of the State is fully competent to regulate the business to mitigate its evils or to suppress it entirely. There is not a privilege of citizen of the State or of a citizen of the United State. As it is a business attended with danger to the community, it may as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. The authority may vest in such officers as it is may deem proper the power of passing upon application for permission to carry it on, and to issue licenses for that purpose. It is a matter of legislative will only"

Concurring with the above the learned Chief Justice of India expressed his own views. These observations have our entire concurrence and they completely negative the contention raised on behalf of the petitioner. The provision of the Regulation support to regulate trade in liquor in all its different spheres and are valid."

**3. Liquor Policy - Constitutional validity - Not hit by Article 19(1)(g).** - There is no fundamental right to trade in intoxicants, like liquor, has been conclusively held by Supreme Court in ***State of A.P. and others v. McDowell and Co. and others, 1996(3) SCC 709***, where taking note of some of the earlier Constitution Bench decisions of this court, the argument that a citizen of this country has fundamental right to trade in intoxicant liquor was

once again emphatically repelled . That issue is, thus, no longer *res integra*. The following observations of the Bench in McDowell's case are educative:

*"The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution Bench decision in Khoday Distilleries, 1995(1) SCC 574. It is raised before us again. In Khoday Distilleries, this Court reviewed the entire case law on the subject and concluded that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is considered to be *res extra commercium* (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs which are injurious to health. For the same reasons, the Bench held, the State can treat a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Yet an argument is sought to be built upon certain words occurring in clauses (e) and (t) of the summary contained in para 60 of the decision. In these clauses, it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under clause (6) of Article 19 or even otherwise. Seizing upon these observations, Shri Ganguly argued that this decision implicitly recognises that business in liquor is a fundamental right under Article 19(1)(g). If it were not so, asked the learned Counsel, reference to Article 19(6) has no meaning. We do not think that any such argument can be built upon the said observations. In clause (e), the Bench held, a monopoly in the State or its agency can be created "under Article 19(6) or even otherwise". Similarly, in clause (t), while speaking of imposition of restrictions and limitations on this business, it held that they can be imposed "both under Article 19(6) or otherwise". The said words cannot be read as militating against the express propositions enunciated in clauses (b), (c), (d), (e) and (f) of the said summary. *The said decision as a matter of fact, emphatically reiterates the holding in Har Shanker, 1975(1) see 737, that a citizen has no fundamental right to trade in intoxicating liquors. In this view of the matter, any argument based upon Article 19(1)(g) is out of place .. "**

In ***Har Shankar v. Dy. Excise and Taxation Commissioner, 1975(1) SCC 737***, Chandrachud, J. (as the learned Chief Justice then was) in para 53 of the judgment opined:

*"In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in Balsara's case, Cooverjee's case, Kidwai's case, Nagendra Nath's case, Amar Chakraborty's case and the R.M.D.C. case and Nashirwar's case. There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In*

"American Jurisprudence", Volume 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless, it is a privilege and not a right, subject to government control (page 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime (pp. 539, 540, 541)." (Emphasis supplied)

In Har Shanker's case after considering decisions of five Constitution Benches, the law was summed up thus:

"These unanimous decision of five Constitution Benches uniformly emphasised after a careful consideration of the problem involved that *the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilised communities. The contention that the citizen had either a natural or a fundamental right to carry on trade or business in liquor thus stood rejected.*" (Emphasis supplied)

In view of this settled position of law, any argument impugning the policy decision of the State Government, as reflected in the impugned notification, based upon Article 19(1)(g) is totally out of place and merits outright rejection and we have no hesitation in doing so most emphatically.

**4. Policy with regard to regulating trade in liquor when hit by Article 14 of the Constitution.** - State Government can frame policy with regard to regulating trade in liquor and laying down various regulatory measures. Delhi Administration fixed "Minimum Sales Figure" policy was challenged based on Article 14 principally on the ground that the policy as reflected in the impugned notification was irrational and that raising of MSF requirements over the previous years' figures with a view to regulate the "quality of liquor" being sold in Delhi was arbitrary and has no nexus with the object sought to be achieved viz., to provide liquor of good quality to the consumers in the National Capital Territory of Delhi. It was also urged that the policy is discriminatory and as a result of the policy, small scale manufacturers with good quality of liquor, were likely to be deprived of their marketing brand within the potential market of Delhi, in case they do not achieve the prescribed MSF outside Delhi and that would result in leaving the field wide open only for big business houses who would retain their monopoly in Delhi market.

The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of *mala fide*, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and *mala fide* will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business

interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the execution. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

In ***Tamil Nadu Education Department Ministerial and General Subordinate Services Association and others v. State of Tamil Nadu and others, 1980(3) see 97***, noticing the jurisdictional limitations to analyse and fault a policy, this Court copied that:

"The Court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether *mala fides* vitiates or irrational and extraneous factor fouls."

It would also be prudent to recall the following observations of Lord Justice Lawton in ***Laker Airways, 1977(2) WLR 234 at 267***, while considering the parameters of judicial review in matters involving policy decisions of the executive:

"In the United Kingdom aviation policy is determined by ministers within the legal framework set out by Parliament. Judges have nothing to do with either policy making or the carrying out of policy. Their function is to decide whether a minister has acted within the powers given' him by statute or the common law. If he is declared by a court, after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as Parliament gives him the powers he wants. In a case such as this I regard myself as a referee, I can blow my judicial whistle whether the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play."

In the present case the executive policy regulating the sale of liquor in the territory of Delhi is sought to be challenged by the petitioner on the ground that it is 'unfair' and 'unreasonable' besides being 'arbitrary' and has no nexus with the object sought to be achieved. The Supreme Court disagreed and held that the State has every right to regulate the supply of liquor within its territorial jurisdiction to ensure that what is supplied is 'liquor of good quality' in the interest of health, morals and welfare of the people. One of the modes for determining that the quality of liquor is 'good' is to ascertain whether the particular brand of liquor has been tested and tried extensively elsewhere and has found its acceptability in other States. The manner in which the Government chooses to ascertain the factor of higher acceptability, must in the very nature of things, fall within the discretion of the Government so long as the discretion is not *exercised mala fide*, unreasonably or arbitrarily. The allegations of *mala fide* made in the writ petition are totally bereft of any factual matrix and we, therefore, do not detain ourselves at all to consider challenge on that ground. In fairness to learned Counsel for the petitioner we may record that challenge to notification on grounds of *mala fide* was not pressed during arguments. Laying down requirement of achieving minimum sale figures of a particular brand of liquor in other States, as a mode for determination of the "acceptability" of that brand of liquor, is neither irrelevant, nor irrational or unreasonable. It appears that prescription of MSF requirement is aimed at allowing sale of only such brands of liquor which have been tested, tried and found acceptable at large in other parts of the

country.

It is not Within the province of this court to lay down that the executive policy must always remain static, even if its revision is "just, fair and reasonable". What is relevant is to find out whether the executive action is *malafide*, unreasonable or irrational as a criterion. As already observed the Court, in exercise of its power of judicial review, cannot S\t in judgment over the policy of Administration except on the limited grounds already noted.

**5. Withdrawal of license whether violative of Article 14 and 19(1)(g).** - A constitution Bench of the Hon'ble Supreme Court consider the question whether Section 43 of the Bengal Excise Act, 1909 under which the license of liquor contractor was withdrawn, violates Articles 14 and 19(1)(g) of the Constitution. The observations of the Supreme Court are as under:

"Trade or business in country liquor has from its inherent nature been treated by the State and the society as a special category requiring legislative control which has been in force in the whole of India since several decades. In view of the injurious effect of excessive consumption of liquor on health this trade or business must be treated as a class by itself and it cannot be treated on the same basis as other trades while considering Article 14. The contention as regards the violation of Article 19 was rejected on the ground that in dealing with reasonable restriction no abstract standard or general pattern could be laid down and that in each case, regard had to be had to the nature of trade or business and the other circumstances. In the case of country liquor, according to the Court, due weightage had to be given to the increasing evils of excessive consumption of country liquor in the interests of health and social welfare.

"Principles applicable to trades which all persons carryon free from regulatory controls do not apply to trade or business in country liquor, this is so because of the impact of this trade on society due to the inherent nature."

A constitution Bench took a different note The appellant therein who was doing business in liquor in a hotel under an annual license issued under the Jammu and Kashmir Excise Act, 1958, challenged an order of the Excise and Taxation Commissioner asking him to shift the licensed premises to some other approved locality. Arguments raised in that case were on four points (i) that if Section 20 of the Act of 1958 was construed as conferring an absolute discretion on the Excise and Taxation Commissioner in the matter of granting licenses to do business in liquor, it was void on the ground that it infringed Article 19 of the Constitution. This point was not allowed to be raised in the Supreme Court on the ground that the constitutional validity of Section 20 was not challenged in the High Court. It would, however, appear that the learned Judges of the High Court had differed on the question whether the appellant had a fundamental right to do business in liquor and the Court to make the position clear in order to avoid confusion in the matter cited the decisions in Coovejee Case Kidwai's case and Negendra Nath's case and took the view that the citations did not support the contention that dealing in liquor was not a business or trade or that a right to do business in liquor was not a fundamental right Subha Rao, CJ expressed his views as under :-

"We, therefore, hold that dealing in liquor is business and a citizen has a right to do business in that commodity; but the State can make a law imposing reasonable restrictions on the said right, in public interest."

**6. Purpose of selling exclusive rights in liquor.** - As held by the Supreme Court in 6 one

of the important purposes of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue. Excise revenue forms an important part of every State's revenue. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State, Hence the Legislature has empowered the Government to see that there is no leakage in its revenue. It is/for the Government to decide whether the price offered in an auction sale is adequate or not.

**7. Power of the Govt. to reject bid.** - While accepting or rejecting a bid, the State is merely performing an executive function. The correctness of its conclusion is not open to judicial review. The plea of contravention of Article 19(1)(g) or Article 14 cannot arise in these cases. The Government's power to sell the exclusive privileges cannot be disputed and these privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate. There is no concluded contract till bid is accepted. Before there arises a concluded contract, it is open to the bidders to withdraw their bids.

**8. Right of a bidder.** - By merely giving bids, the bidders do not acquire any vested rights. The fact that Government was not seller does not change the legal position once its exclusive right to deal with the privilege to sell liquor license is accepted. If, the Government is the exclusive owner of the those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to get the best available price for its valuable rights. Highest bid is to be accepted by competent authority. No right accrues till the bid is accepted.

**18. Power to reject a bid.** - Raising revenue is one of the important purposes of such provisions. The fact that the price fetched by the sale of country liquor is an excise revenue does not change the nature of the right. The sale in question is but a mode of raising revenue. Assuming that the question of arbitrary or unguided power can arise in a case of this nature, it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State i.e. the Government which is expected to safeguard the finances of the State. Such a power cannot be challenged as an arbitrary power. If power is exercised for any collateral purposes, the exercise of the power will be struck down.

The conclusions of the Government there was a collusion among the bidders may be right or wrong. But that is not open to judicial review so long as it is not proved that it was a made up story. Where the opinion of the Government was that the price fetched was not adequate, the conclusion reached by the Government does not effect anyone's rights. The Supreme Court held that the High Court applied wrongly the ratio of the decisions of the Supreme Court in *Barium Chemicals Ltd. v. Company Law Board* and *Rohtas Industries Ltd. v. S. T Aggarwal and State of Orissa v. Hari Naryan*

**9. Competent authority to accept bid.** - The Chief Commissioner disapproved the bid. If the Chief Commissioner had granted sanction under the conditions the auction sale in favour of the respondent would have been a completed transaction and he would have been liable for any shortfall on the resale. As the essential pre-requisites of a completed sale were missing in this case no liability could be imposed on the respondent for payment of the

deficiency in the price or resale.

**10. Sale by inviting tenders or by negotiation.** - The Government is not precluded from either calling for tenders or to sell by negotiation. Neither the provisions of the Act nor the order issued by the Government support a conclusion to the contrary. If the Government declines to accept the highest bid, the auction becomes useless. Similar is the effect when the government was free to have recourse to other method. The power given to the government by the Act to sell the exclusive privilege in such other manner as it thinks fit is a very wide power. The power is unrestricted. It includes the power to sell the privileges in question by private negotiation. Constitution Bench of five learned Judges, observed that the system of auctioning of the right to possess excisable goods like country liquor, ganja, and bhang was only a method of realising duty through grant of licenses to those who made the highest bid at the auctions and thus to raise revenue. In that case, what was under challenge was the system of auctions under the Cochin Tobacco Act, 1084 [M.E.] with the object of controlling the cultivation, production, manufacture, storage and sale of tobacco. By majority, the Court held that the income realised from SUCD. auction was in the nature of excise duty.

**11. Sale by private negotiation** - Publicity need not be given. - It was urged that before adopting the method of selling the privileges by private negotiation, the Government is required to make an order was observed by the Supreme Court. We are unable to accept these contentions. In the cases of public auctions or in the case of calling for tenders, orders from the Government directing its subordinates to notify or hold the auction or call for tenders is understandable. Public auctions as well as calling for tenders are done by subordinate officials. Further, due publicity is necessary in adopting those methods. To require the Government to make an order that it is going to sell one or more of the privileges in question by negotiating with someone is to make a mockery of the law."

**12. Whole amount bid, meaning of.** - Keeping in view the scheme of the Act and the liquor Rules, and the object of raising and securing revenue, the conclusion appears to be inescapable that the doctrine 'omne container in seminus' fully applies to the interpretation of the proviso to Rule 35(1) of the Punjab Liquor Rules.

**13. Clause that tender can be rejected on any ground.** - A clause in tender for lease of distillery by which the Government reserves the right to select any tender or reject all tenders without assigning any reason therefore is not violative of Article 14 of the Constitution of India. Thus the Government is not bound to accept the tender of the person who offers the highest amount.

**35. (1) Grant of license for sale.** - Subject to the rules made by the Financial Commissioner under the power conferred by this Act, the Collector may grant licenses for the sale of any intoxicant within his District.

**(2) Ascertainment of public opinion.** - Before any license is granted in any year for the retail sale of liquor for consumption on any premises which have not been so licensed in the preceding year, the Collector shall take such measure in accordance with rules to be made by the State Government in this behalf, as may best enable him to ascertain local public

opinion in regard to the licensing of such premises.

(3) A license for sale in more than one district of the Punjab/Haryana shall be granted by the Financial Commissioner only .

## **NOTES**

**1. Scope.** - By S. 35 (2), before any license is granted for the retail sale of liquor for consumption on any premises the Collector has to ascertain local public opinion in regard to the licensing of such premises.

**2. Applicability.** - The Collector has been given powers to grant licenses for the sale of intoxicants of course subject to the rules made by the Financial Commissioner. Financial Commissioner has been conferred with the powers to make rules to regulate the procedure in granting licenses for the sale of intoxicants.

There are two types of licenses, one for the sale of intoxicant within one district and the other for the sale in more than one district. Collectors are authorised to grant licenses for the sale within their districts i.e. with one district only. A license for the sale in more than one district can be granted only by the Financial Commissioner.

**3. Power to grant license.** - Where the power for the grant of license vests in the Collector, the Collector has to exercise this power independently. Where the allotments are made by the competent authority with the intervention or on the directions of some other or higher officer, such allotments must be termed illegal, void and made not in accordance with the law.

In the above noted case, District Excise and Taxation Officer was the competent authority under the Act for the allotment of country liquor vends. He did not exercise the powers vested in him independently. The allotments were made on the interference and directions made by some other officer. The allotments were declared not in accordance with law.

The implied power conferred upon the Collector to grant or refuse a license is limited by the Rules. He would e.g. have power to refuse a license if the application were not in the form required by Rules. But if the requirements as to the Rules are complied with, there is a statutory duty imposed upon the Collector to grant a license, and this statutory duty is not affected by anything contained in the section as there is a right of appeal from the decision of the Collector to the Commissioner. The Collector should not ask the Commissioner for order, but should deal with the application himself without consulting the Commissioner. Having regard to the use of the word 'shall' in the Rules made under the Act, which are to have the same force as if enacted in the Act, no question of the exercise of any discretion by the Collector in the granting of a license arises, provided that the requirement of Rules are complied with, but a statutory duty is imposed by the Act read in conjunction with the Rules.

**4. Procedure for granting licenses.** - Procedure for the allotment of liquor vends and issuing licenses is laid down in the Rules. Rule making power for this purpose is vested with the State Government as well as with the Financial Commissioner. The Punjab Government issued the Punjab Intoxicant License and Sale Orders, 1932 laying down the procedure to be

followed and the matters to be ascertained before granting licenses for the retail vends. Rules 4.2, 4.3,4.4,4.6,4.8,4.9 to 4. 1 6(A), 4.17 and 4.18 are relevant for this purpose.

**36. Power to cancel or suspend licenses, etc.** - Subject to such restrictions as the State Government may prescribe, the authority granting any license, permit or pass under this Act may cancel or suspend it.

- (a) If it is transferred or sublet by the holder thereof without the permission of the said authority; or
- (b) if any duty or fee payable by the holder thereof be not duly paid; or
- (c) in the event of any breach by the holder of such license, permit or pass or by his servants, or by anyone acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass; or
- (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930, or under the Merchandise Marks Act, 1889, or of any offence punishable under Sections 482 to 489 (both inclusive) of the Indian Penal Code; or
- (e) if the holder thereof is punished for any offence referred to in clause (8) of Section 197 of the [See Customs Act, 1878 ; or]
- (f) where a license permit or pass has been granted on the application of the grantee of a lease under this Act, on the requisition in writing of such grantee ; or
- (g) at will, if the conditions of the licensee or permit provide for such cancellation or suspension.

## **NOTES**

**1. Scope.** - Section 36 confers power on the authority granting any license ~o cancel or suspend it if, inter alia, any duty or fee payable thereon has not been duly paid.

Grounds for cancellation. Section 36 enables the State Government to vest with the power of cancellation in the same authority which can grant a license under the Act with any restrictions or specified conditions as it may deem fit, on the grounds provided in clauses (a) to (g) of the same Section.

**2. Withdrawal of license whether violative of Articles 14 and 19(1)(g).** - A constitution

Bench of the Hon'ble Supreme Court consider the question whether Section 43 of the Bengal Excise Act, 1909 under which the license of liquor contractor was withdrawn, violates Articles 14 and 19(1)(g) of the Constitution. The observations of the Supreme Court are as under:

"Trade or business in country liquor has from its inherent nature been treated by the State and the society as a special category requiring legislative control which has been in force in the whole of India since several decades. In view of the injurious effect of excessive consumption of liquor on health this trade or business must be treated as a class by itself and it cannot be treated on the same basis as other trades while considering Article 14. The contention as regards the violation of Article 19 was rejected on the ground that in dealing with reasonable restriction no abstract standard or general pattern could be laid down and that in each case, regard had to be had to the nature of trade or business and the other circumstances. In the case of country liquor, according to the Court, due weightage had to be given to the increasing evils of excessive consumption of country liquor in the interests of health and social welfare.

"Principles applicable to trades which all persons carry on free from regulatory controls do not apply to trade or business in country liquor, this is so because of the impact of this trade on society due to the inherent nature."

A constitution Bench took a different note<sup>4</sup> The appellant therein who was doing business in liquor in a hotel under an annual license issued under the Jammu and Kashmir Excise Act, 1958, challenged an order of the Excise and Taxation Commissioner asking him to shift the licensed premises to some other approved locality. Arguments raised in that case were on four points (i) that if Section 20 of the Act of 1958 was construed as conferring an absolute discretion on the Excise and Taxation Commissioner in the matter of granting licenses to do business in liquor, it was void on the ground that it infringed Article 19 of the Constitution. This point was not allowed to be raised in the Supreme Court on the ground that the constitutional validity of Section 20 was not challenged in the High Court. It would, however, appear that the learned Judges of the High Court had differed on the question whether the appellant had a fundamental right to do business in liquor and the Court to make the position clear in order to avoid confusion in the matter cited the decisions in Coovejee Case Kidwai's case and Negendra Nath's case and took the view that the citations did not support the contention that dealing in liquor was not a business or trade or that a right to do business in liquor was not a fundamental right Subha Rao, CJ expressed his views as under :-

"We, therefore, hold that dealing in liquor is business and a citizen has a right to do business in that commodity; but the State can make a law imposing reasonable restrictions on the said right, in public interest."

**3. Cancellation is quasi-judicial act.** - The cancellation of license under Section 36 is to be made in a quasi-judicial manner after serving notice to show cause why it should not be cancelled. At the same time the demand for the amount of shortfall against the defaulting license as a result of re-auction cannot be quashed on account of non-compliance of rules of natural justice in proceedings under Section 36. Cancellation and recovery, both are different, one being liability and other a penalty.

**4. Power of cancellation and to revoke cancellation or suspension.** - Under Section 6(c) read with Section 18(2) of the Punjab Excise Act, 1914 to cancel or suspend the license for a breach of conditions of the license. He has also the authority to forgo or revoke the cancellation or suspension on payment of penalty. The Collector can also exercise his discretion with a view to revoke an order of cancellation or suspension passed by him. It is wrong to suggest that Collector has no option but to cancel or suspend a license.

**5. Refusal to grant for the contravention of rules previous year.** - In the absence of material to infer that the trader has been guilty of contravention of any of the provisions of the Act in the previous year the Excise Commissioner cannot refuse the grant of the privilege of supplying liquor merely on suspicion.

**6. Commissioner's power to issue directions for the removal of the defects.** - The Commissioner of Excise and Taxation has the power to direct a distillery to cover its uncovered storage tank and if there is non-compliance with this direction the Commissioner can cancel or suspend the license of the company. In alternative a penalty can also be imposed. Thus an order by the Commissioner imposing the penalty on the petitioner-company under Section 36 read with Section 50 (2) would be deemed to be in accordance with law.

A direction can be given to a licensee to cover the storage tank and in case it is disobeyed action can be taken to cancel the license.

**7. Re-auction and demand of shortfall.** - Cancellation of license under Section 36 was held to be a quasi-judicial function but the demand for the amount of shortfall against the defaulting licensee as a result of the re-auction cannot be quashed on the ground of non-compliance of rules of natural justice. The same position has been reiterated by Supreme Court again in State of Punjab v. Hem Raj, 1995(1) RRR 314.

**8. Show cause notice after suspension of license is bad.** - A show cause notice issued after suspension of license is not proper as the suspension is for inflicting punishment.

**9. Cancellation of an auction and order of re-auction is illegal.** - The highest bid was accepted by the Collector and was approved by the Excise and Taxation Commissioner. The auction purchaser had deposited 1/6th of the license fee. The highest bidder acquired a legal status of licensee even though formal license was not granted. Re-auction by the

Government without giving notice to such a licensee and without giving any reason is wholly illegal.

**10. License cannot be cancelled for default in payment of penalty.** - Where a licensee makes a default in payment of penalty imposed under the Act it does not entitle the authorities to cancel the license under the provisions of Section 36 of the Punjab Excise Act, 1914.

**11. License not revocable at pleasure.** - Excise licenses are not bare licenses. They are coupled with interest and as such are not revocable at pleasure. A bare license is revocable at the will of the licensor. There is also a distinction between licenses granted by governmental agencies and those granted by private person. Thus in the matter of grant of licenses the State has to follow the procedure indicated in the Act and the rules. No doubt lately the view of the Supreme Court is that even in matters which are of a trading nature the State has to act with a sense of justice.

**12. Resolution passed by panchayat can be ignored only after observing principles of natural justice.** - Stray incident of illicit distillation not enough. The provisions incorporated in Section 26(1) and (2) of the Punjab Gram Panchayat Act, 1952 are intended to give shape to the policy of prohibition contained in the Directive Principles of State Policy contained in Article 47 of the Constitution of India. The only just cause to deviate therefrom could be warranted by the concern of the State also enjoined in the above said article for the welfare of its citizens a sensitivity which marks out a good Government from the bad one. Only if the Government sincerely feels that the citizens are consuming liquor illicitly distilled which fact posed a hazard to their health, that it would come forward to place in their hands alcohol contents of which would be measured and quality whereof would be of the prescribed standards.

Precisely for this reason that the legislature must have incorporated the provision to sub-section (3) empowering the Excise and Taxation Commissioner to ignore the resolution of the Panchayat. But surely, a stray case of illicit distillation or smuggling of liquor would not pose threat of the kind to the health and well being of citizens and thus the requisite criterion envisaged in the proviso for ignoring the resolution of the Gram Panchayat, which is in consonance with the State Policy in regard to prohibition enshrined in the Directive Principles of Constitution would not stand satisfied in the case.

Satisfaction should be objective not subjective and to reach an objective satisfaction, it is necessary that the officer concerned should have before him views of the parties which would necessitate affording of opportunity of hearing to the Gram Panchayat.

The opinion referred to in the proviso to sub-section 3 of Section 26 of the Punjab Gram Panchayat Act is not the subjective opinion but an opinion formed objectively and judiciously. The Excise and Taxation Commissioner to record reasons in writing. Excise and Taxation Commissioner should give a hearing before an order ignoring a resolution passed by the Panchayat is passed the Gram Panchayat should be given an adequate hearing.

Before passing order of cancellation of alcohol license, opportunity must be given. Forfeiture of cancellation is not automatic. The license is cancelled and the license fee paid

and the security amount deposited by a licensee are forfeited without affording him any real and fair opportunity. the order is bad as being violative of the principles of natural justice. The licensee must not only be heard orally but he should be afforded an opportunity to produce evidence to substantiate his plea in defence.

Powers under Section 36 of the Act are of quasi-judicial nature. It is incumbent upon the authorities to follow the principles of natural justice to provide proper opportunity before taking [mal action for cancellation.

A notice given with threat to cancel a license if the amount due is not paid within specified period is not enough. Proceedings under Section 36 for the cancellation of license are of quasi-judicial nature and the authorities are required to follow the principles of natural justice to give full opportunity before taking action of cancellation of license.

An order of penalty just be passed after complying with the rules of natural justice.

**13. Auction and Resolution.** - The auction of country liquor vend by the Collector would not stand in the way of the resolution being passed by the Gram Panchayat.

**14. Suspension of license.** - Power to suspend license is only for inflicting punishment and not for facilitating departmental inquiry for cancellation of the license. The suspension-of license and suspension of Govt. servant stand on different footing, on being exonerated a Govt. servant is reimbursed the losses which is not so with a licensee. A suspension of license is thus a punishment. A suspension of license by the authorities and afterwards a show cause notice issued several days after suspension for cancellation of the license; the suspension under such circumstances amounts to punishment.

**37. Power to cancel any other license.** - When a license, permit, or pass held by any person is cancelled under clause (a), (b), (c), (d) or (e) of section 36, the authority aforesaid may cancel any other license, permit or pass granted to such person by or by the authority of the State Government, within the same district under this Act or under any other law for the time being in force relating to excise revenue or under the Opium Act, 1878, and the Financial Commissioner may cancel any such license, permit or pass granted to such person in any district to which this act applies.

## NOTES

Section 37 makes provision empowering the authorities under the Act or any other person authorised by the State Government in this behalf to cancel any other license, pass or permit relating to excise, revenue or under the Opium Act granted to the same person whose one license under the Punjab Excise Act has been cancelled for the contravention of

its condition or on any of the grounds mentioned under clauses (a), (b), (c), (d), and (e) of Section 36. However, the authorities on the district level can cancel the other license within the district under them. Financial Commissioner can cancel the license of such person relating to any district where this Act applies.

**38. Power to recover fee.** - In the case of cancellation or suspension of license under clause (a), (b), (c), (d) or (e) of Section 36, the fee payable for the balance of the period for which any license would have been current but for such cancellation or suspension, may be recovered from the ex-licensee as excise revenue.

### **NOTES**

Section 38 of the Act enables the Authorities under the Act or any other authority empowered by the State Government for this purpose to recover the balance amount of fee for the period license has been cancelled. In other words despite of cancellation of license the Govt. can recover the license fee for the whole period for which it was granted.

**39. Power of collector to take grants under management or to resell :-** If any holder of a license granted under this Act, or any person to whom a lease has been granted under Section 27, makes default in complying with any condition imposed upon him by such license or lease, the collector may take the grant under the management at the risk of the person who has so defaulted or may resell it and recover in the manner laid down in Section 60 of this Act any deficiency in price and all expenses of such resale.

### **NOTES**

By virtue of Section 39 the Collector has powers to take under his own management the business under the license or the lease granted under this Act or may resell it to some other person for the remaining period. The Collector can further proceed under Section 60 to recover the deficiency caused in the license fee or lease money due to resale and expenses incurred thereon by the department against the licensee/lessee.

Where by way of notification powers of the Financial Commissioner have been delegated to an Excise and Taxation Commissioner the Excise and Taxation Commissioner can validly cancel the license under this Act.

**40. No compensation or refund claimable for cancellation or suspension of license, etc. under this section.** - When a license permit or pass is cancelled or suspended under clause (a), (b), (c), (d) or (e) of Section 36 or under Section 37 the holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

### **NOTES**

Under Section 40 of this Act the right of an Ex. Licensee or lessee whose license/lease has been cancelled or suspended for some period under Section 36 or 37 of this Act, has been curtailed from asking for any refund, recovery, compensation or adjustment of the fee paid in lieu of license or lease or any other amount deposited required by the provisions of the Act. Since claim to refund of fees or any other money deposited under the provisions of the Act in lieu of the license or lease cancelled or suspended under Section 36 or 37 has been barred by the statutory provisions of this Act under Section 40, no civil suit for recovery/compensation of such fees/money is maintainable.

Provisions of Section 40 of the Punjab Excise Act empower the authorities to forfeit all the fees or money deposited in lieu of the license or lease were challenged. However, the same were held not to be *ultra vires* by the Punjab and Haryana High Court.

**41. Powers to withdraw licenses.** -(1) Whenever the authority which granted a license, permit or pass under this Act considers that such license permit or pass should be withdrawn for any cause other than those specified in Section 36, it may on remitting a sum equal to the amount of the fees payable in respect thereof for fifteen days, withdraw the license either :-

- (a) on the expiration of fifteen days notice in writing of its intention to do so; or
- (b) forthwith without notice.

**(2) Compensation in the case of withdrawal.** - If any license, permit or pass be withdrawn under clause (b) of sub-clause (1) in addition to the sum remitted as aforesaid there shall be paid to the licensee such further sum (if any) by way of compensation as the Financial Commissioner may direct;

**(3) Refund of fee of deposit.** - When a license, permit or pass is withdrawn under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount (if any) due to the State Government.

#### **Section 41 for Haryana**

**41. Powers to withdraw licenses.** -(1) (a) Whenever the authority which granted a license, permit or pass under this Act considers that such license, permit or pass should be withdrawn for any cause other than those specified in Section 36, it may [on remitting a sum equal to the amount of the fees payable in respect thereof for fifteen days] withdraw the license either :-

- (b) on the expiration of fifteen days' notice in writing of its intention to do so; or
- (b) forthwith without notice.

**(2). Compensation in the case of withdrawal.** - 11. any license, permit or pass be withdrawn under clause (b) of sub-clause (1) [] there shall be paid to the licensee such [] sum (if any) by way of compensation as the Financial Commissioner may direct;

**(3). Refund of fee of deposit.** - When a license, permit or pass is withdrawn under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount (if any) due to the State Government.

## NOTES

**1. Withdrawal of license.** - Under Section 41(1) the authorities can withdraw any license granted under this Act except on the grounds specified under Section 36 with or without 15 days' notice. However, it is mandatory and obligatory on the authorities to refund the fees to such licensee corresponding to the period for which it would have remained in force had it not been withdrawn. It is on the discretion of the authorities to pay any compensation in lieu of withdrawal of any license invoking the powers under section 41 to a licensee to the extent as the Financial Commissioner may deem fit.

Where the highest bid was accepted and deposited of 1/6th of the license fee as required under the Rules was accepted though no formal license was issued but the bidder had got a legal right which could not have been taken away without issuing notice and without hearing 9im. Action of the Government in conducting re-auction of the license was held to be illegal.

**2. Cancellation or non-renewal of license.** - The licenses were in fact to carry on the business under the State authority subject to public control. In fact in real sense, it can be said that a licensee works as an agent of the State. It was the privilege of the State which the licensees in respective fields were permitted to operate subject to the conditions and control as licensees of the State. It cannot be said that the principal cannot withdraw the agency or revoke the license particularly when the 'license' as understood in the trade as well as in the legal terminology is a permission to do a particular act by the licensor to the licensee who is otherwise not entitled to it as of a legal right. It cannot be said that the principal or the licensor cannot revoke the agency or license or denude the licensee or the agent of its authority on the principle of estoppel or equitable estoppel. Unless, if we may hasten to add, a license is irrevocable, protected or permitted by any statute, a right to revoke a license is inherent in the license itself.

The petitioners accepted the license or permission granted by the State to act as licensees or as agent subject to the complete control of the State, with an express or implied condition that a license can be withdrawn at any time before the expiry of the period of license in spite of the same being for a fixed period, with a specific statutory provision that a licensee much less any other person would not be entitled to claim any renewal thereof, nor they would be entitled to for any damage suffered by them as a consequence of refusal to renew the license on the expiry of the period for which it remained in force. Reference may be made to Section 43 of the Act. In spite of the above conditions and statutory provisions, the petitioners having made investment, cannot be permitted to turn round and claim that the license cannot be revoked whether on the principle of 'just expectation' or on the principle of 'equitable estoppel' or of their being rendered liable for any civil or criminal liability under some other act or contracts which they entered into in anticipation of the continuity of the license in spite of the statutory provisions. There is no doubt that the Courts are bound to take a rational view of the State's obligations to individuals, the latter's right to property as well as the fact that

meaning of the Constitution being not a static thing buried within orders under Court's opinion from time to time, yet solely on the ground of resultant effect of the law or the decision of the State being severe or harsh, a court cannot substitute its wisdom for that of the legislature in spite of the frailties and blemishes of the legislative policies or decisions. The appeal against harshness stringency if any of law does not lie to a Court of law. These are to be made within their constitutional jurisdiction. It is the Legislature which is in a better situation to judge the need of the society and individuals who are not shackled by the conventional moralities which go on changing with time and need of the society.

There can be no two opinions that there can be any estoppel against the legislation or authority exercising the statutory authority. The respondents, in exercise of their legislative powers as well as statutory powers (amended and unamended) have decided to cancel the licenses and in fact cancelled the same and introduced prohibition. The consumption of alcohol has been considered against public morality on account of its evil effects on the society at large, its effect in crime, its danger to community, the activity being condemned from ancient times. To discourage loss of the hard earned income by undiscerning and improvident conduct of the poor people deviling in the consumption of alcohol with its consequences on the family peace being the avowed object especially when it forms an odd object of the directive principles or the objects by which the people gave themselves to be governed, the petitioners' claim especially against the State when they are discharging their constitutional functions or obligation cannot be sustained. No policy or statutory provisions or any act or conduct on the part of State ordinarily would stop it to discharge its constitutional obligations much less a contract of license upon which the entire claim of the petitioners is based. Interest of an individual cannot be preferred to that of the Society as a whole. Individual interest has to give way to the interest of the society. If we may hasten to add, there is no such principle in our law, nor any authority for the same has been cited, that there can be an estoppel against legislation for exercise of statutory powers or in the discharge of constitutional functions. No act of an individual or subordinate Officer can bar an authority or legislature from enforcing the statutory duties or discharging its constitutional functions.

It was observed that, no contract express or implied can be entered into debarring the legislation to enact laws and amend laws, affecting the contractual rights of the parties.

### ***Section 41A for Haryana only***

41A. Surrender and disposal of stock. - (1) When a license, permit or pass is withdrawn under sub-section (1) of section 41 or amended under subsection (3) of section 34, the holders of licenses, permits or passes shall surrender the stock, as required in the notice issued in this behalf, remaining unsold with them on the date of withdrawal or amendment in the license takes effect to the Deputy Excise and Taxation Commissioner or Excise and Taxation Officer (Excise) of the district concerned and any excise duty realised by the Government on the stock so surrendered shall be refundable.

(2) Notwithstanding the fact that the period during which any license, permit or pass is to be

in force has not expired, the Collector may direct the holder thereof to dispose of his stock off intoxicant or export the same against valid permit before such date as may be specified in the order.

(3) The Collector may also direct the owner of the stock of any intoxicant, who does not hold any license, permit or pass for such stock to surrender such stock to the Deputy Excise and Taxation Commissioner or the Excise and Taxation Officer (Excise) of the district concerned before such date as may be specified in the order, and the owner shall comply with such direction.]

**42. Technical irregularities in license etc.** - No license, permit or pass granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof.

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

**43. No claim in consequence of refusal to renew a license etc.** - No person to whom a license permit or pass may have been granted shall be entitled to claim any renewal thereof and no claim shall lie for damages or otherwise in consequence of any refusal to renew a license, permit or pass on the expiry of the period for which it remains in force.

## **NOTES**

Section 41 permits the authorities under the Act to finalise any license, permit or pass granted under this Act in spite of there being technical defects, irregularities or omission on the part of the authorities. Under Sub-Section (2) the Financial Commissioner has been made the final authority in this regard to decide regarding the effect of such technical irregularities, defects or omissions and to order accordingly.

**1. Discretion.** - The discretion for the renewal of the license, permit or pass is given to the authorities concerned and a licensee is not renewed, is not entitled to any damages in consequence of any refusal to renew a license etc. on the expiry of its period. Such a discretion must be used impartially and without unjust discrimination. There was no warrant for unjust discrimination between the two sets of associations and the order refusing to grant a License to the Lamsden Club was void as it contravened the provisions of Act 14 of the Constitution. In this case the Excise Commissioner has rejected the club application for renewal of the license under the Punjab Excise Act.

**2. Renewal of license.** - The Excise Commissioner deleted the name of partner from

license issued in name of firm. A writ was filed challenging the order. A preliminary objection was taken that the writ has become in fructuous because of the expiry of annual term of license. The provision for grant of license from April to March does not contemplate issue of fresh license every year. It was held that the right of the holders of license cannot be said to be extinguished on expiry of term particularly when provision for renewal exists. The objection is not sustainable.

**3. No Automatic Renewal.** - There is nothing which permits the conclusion that Rule provides for automatic renewal on the contrary Section 43 specifically lays down that no one to whom a license has been granted shall be entitled to claim any renewal thereof. There is thus no right to renewal of a license. It is not possible to envisage an automatic renewal of a license. The renewal of a license is intended to be conscious deliberate act. There must be an express order of renewal by a competent authority. The fact that the petitioner continued for some times to carry on the business even after March 31, 1972 and that they were allowed to draw a further stock of denatured spirit does not strong then their case.

**4. Renewal is not a right.** - No license can as of right claim to have his license renewed. Section 43 of the Punjab Excise Act makes it clear that no licensee can as of right claim to have his license renewed and consequently Rule 5.12 Punjab Excise Rules must be regarded merely in the nature of a direction to the subordinate officers of the Govt. while dealing in such cases and does not do away with the discretion of Govt. in withholding renewal of any particular license at their will. As the rule amounts to a mere direction it does not create legal obligation on the part of the Government to hear a licensee before deciding against the renewal of his license and correspondingly no right has been created of getting a hearing by the licensee. Petition for a Writ of Mandamus against the Government, therefore, does not lie.

**5. Partnership firm can be licensee.** - The objection that a partnership firm cannot be a licensee was over-ruled and it was observed. "The preliminary objection which has been raised is that a firm cannot be the holder of a license and it is only the partners of the firm who hold the license in their individual names. The objection also has no substance because Rule 5.4 of the Delhi Liquor License Rules talks of grant of a license, inter alia, specifically to a partnership of firm."

**44. Surrender of license.** - (1) No holder of a license granted under this Act to sell an intoxicant shall surrender his license except on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same and on payment of the fee payable for the license for the whole period for which it would have been current but for the surrender:

Provided that, if the Collector is satisfied that there is sufficient reason for surrendering, the license, he may remit to the holder thereof the sum so payable on surrender or any portion thereof.

(2) Sub-section (1) shall not apply in the case of any license granted under Section 27(2).

*Explanation.* - The words "holder of a license" as used in this section include a person whose

tender or bid for a license has been accepted although he may not actually have received the license.

## **CHAPTER VII**

### *Powers and Duties of Officers, Etc.*

45. Power to enter and inspect places of manufacture and sale. - Any excise officer not below such rank as the State Government may prescribe to:

- (a) enter and inspect at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of or stores any intoxicant;
- (b) enter and inspect at any time within the hours during which sale is permitted, and at any other time during which the same may be open, any place in which any, intoxicant is kept for sale by any person holding a license under this Act;
- (c) examine accounts and registers, test, measure or weigh any materials, stills, utensils, implements, apparatus or intoxicant found in that place;
- (d) seize any account, registers, measures, weights, or testing instruments which he has reason to believe to be false.

**46. Power of Excise Officers to investigate offences punishable under this Act. - (1)**  
The [State] Government may by notification invest any excise officer, not below the rank of [Inspector] with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.

(2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer incharge of a police station may exercise in a cognizable case under the provisions of [Chapter XII of the Code of Criminal Procedure 1973.]

### **Section 46for Haryana**

**46. Power of Excise Officers to investigate offences punishable under this Act. - (1)**  
The [State] Government may by notification invest any excise officer, not below the rank of sub-inspector with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.

(2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer incharge of a police station may exercise in a cognizable case under the provisions of Chapter XIV of the Code of Criminal Procedure 1898.

## **NOTES**

**1. State Government.** - Term 'State Government' has not specifically been defined in the Punjab Excise Act, 1914. However, to issue notification under this Section the Government

will mean the Government of the State or the officer to whom the powers of the State Government have been delegated under the provisions of this Act for this purpose.

**2. Excise Officer.** - Every Excise Officer of 1st and 2nd Class has been invested with powers to act under his Section. Term 'Excise Officer' has been defined under sub section (8) of Section 3. Other classes of excise officers are given under Section 10 of the Act. Under Section 11 the Govt. has power to invest any other officer being not an Excise Officer with the powers to perform the functions of an excise officer under this Act. A reference may be made to the notification No. 990-P&T-57/724 dated 29.3.1956 titled as Punjab Excise Powers and Appeal Orders.

Every police officer of the rank of Head Constable or above has been invested with the powers of a first class Excise Officer to investigate offences under this Act and to submit report to this effect to the Magistrate.

**3. Private citizen cannot detain liquor.** - No private person has any authority to seize or detain any article/liquor which he may believe liable to be seized under this Act. Only the specified officers of the Revenue, Police and Abakari Departments are competent to enter such places for this purpose where illicit liquor is prepared, stored or sold.

Tehsildar took cognizance of the case ordering Naib Tehsildar to search of the house of the accused on a complaint made by a contractor - Complaint neither by the Collector nor by an Excise Officer but that of an opium contractor - Trial vitiated and illegal - Conviction was set aside. The Excise Act contains no provision which would relieve any person from liability to prosecution for an offence for keeping an article discovered in an illegal search.

**47. Powers of arrest, seizure and detention.** - Any officer of the excise, police, salt, or land revenue department, not below such rank and subject to such restrictions as the State Government may prescribe, any other person duly empowered by notification by the State Government in this behalf, may arrest without warrant any person found committing an offence punishable, under Section 61, or Section 63, and may seize and detain any intoxicant or other article which he has reason to believe to be liable to confiscation under this Act or other law for the time being in force relating to excise revenue; and may detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be.

## **NOTES**

**1. Excise Officer.** - Section 47 empowers the State Government to declare and specify the officers of Excise, Police, Land Revenue and Salt Department as Excise Officers. The Government has to declare the lowest rank of such officer of the respective departments who may exercise such powers of arrest and seizure under this Act. For this purpose *qua* Excise Officers, Punjab Excise Powers and Appeal Orders, 1956 and further notifications issued

thereunder, if any, will be relevant.

**2. Police Officers.** - All Police officers not below the rank of Head Constable have been invested with the powers of 1st Class Excise Officer and a constable as a 3rd class excise Officer. Their powers regarding arrest and seizure are mentioned under Order 8 of the Punjab Excise Powers and Appeal Orders, 1956.

Every Police Officer not below the rank of Head Constable has been invested with the powers of First Class Excise Officer.

A Sub Inspector of Police or any other Police Officer invested with the powers of an Excise Officer comes within the definition of the Excise Officer.

Every Police Officer is an Excise Officer and the reports made by Police Officers vested with the powers of Excise Officers under section 71 may be considered falling within the ambit of Section 75 and the Magistrate can take cognizance of an offence under Section 61 of this Act of a report made of such Police Officers.

**3. Officers of Salt Department.** - Refer to Order 8-A of the Punjab Excise Powers and Appeal Orders, 1956 for the purpose of powers of the officials under this Act. Inspector incharge of the circle, Kotgashts and Jamadars and peons exercise powers of 3rd Class Excise Officers under this Act for the purpose of Section 47.

**4. Officers of the Revenue Department.** - All Assistant Commissioners and Extra Assistant Commissioners, Tehsilaars and Naib Tehsildars have been invested with the powers of the Excise Officers 1st Class and all field Kanungoes have been empowered to exercise the powers of Excise Officers of 3rd Class under Section 47 of this Act. .

When there are specific provisions specifying the officers to the excise officers for the purpose of arrest and seizure of offenders and goods, no other public or private officer or person can arrest or seize any articles prohibited or regulated under this Act and Rules made thereunder.

**48. Power of Magistrate to issue warrant for search or arrest.** - A Magistrate having reason to believe that an offence under Section 61 or 63, has been, is being or is likely to be committed, may :-

- (a) issue a warrant for search of any place in which he has reason to believe that any-intoxicant, still, utensil, implement, apparatus or materials, in respect which such offence has been, is being or is likely to be committed, are kept or concealed; and
- (b) issue a warrant for the arrest of any person whom he has reason to believe to have been, to be or to be likely to be engaged in the commission of any such offence.

## **NOTES**

**1. Magistrate.** - Earlier the term 'Magistrate' was used in the definitions under section 2(15) of the Punjab Excise Act which was deleted by Punjab Separation of Judicial and Executive Functions Act, 1964.

The magistrate can take cognizance of an offence under section 61 of the Punjab Excise Act on a report of a police officer vested with the powers of an excise officer under this Act.

Magistrate can issue warrant under clause (a) only when he has reason to believe that an offence under Section 61 or 63 has been or is being or is likely to be committed and he can issue warrant under clause (b) of this Section only for the arrest of any person whom he has reason to believe to have been, to be or to be likely to be engaged in the commission of any offence under Section 61 or Section 63 of the Act.

**2. Reasons for conducting search.** - While issuing search warrants the Magistrate has necessarily to record reasons for proceeding to make the search. It is an important step to be taken for conducting search and where such necessary implication is ignored it will result in ignoring the material part of the provisions of this Act governing the proceedings of search.

Where the excise officer without recording reasons enters the house of the accused for conducting search and, therefore, was given beating by the accused for entering his house illegally without disclosing any reason it was held that since the entry was illegal no offence can be made out under section 332 of the Indian Penal Code.

The purpose for making it necessary to record reasons and forwarding the same to the Magistrate is to restrain the police officers from conducting searches in a general manner illegally.

Where an Excise Officer proceeds to conduct search at his own, he is to record reasons and to send the same to the Magistrate at once. However, it is not necessary that these reasons record and sent by the Excise Officer to the Magistrate must reach the Magistrate before initiating the search by the said Excise Officer.

The excise Officers are empowered in their own right to make a search and that power would be analogous to that of a Police Officer empowered to search himself. By virtue of Section 18 of the Central Excise and Salt Act. The position is the same under the Punjab Excise Act, as the provision of CrPC have been applied according to Section 50 of the Act. Section 165 of CrPC authorising a police officer to make a search after certain formalities becomes applicable, and that brings in the further requirement of stating the grounds of the belief and the specification of the article to be searched to be recorded in writing. Otherwise, Section 18 of the Central Excise and Salt Act would become nugatory.

On the evidence on record it was held that it was not proved to the satisfaction of the Court that the reasons were recorded before the excise officers proceeded to take the search. Therefore, the search attempted to be taken was not in accordance with law and if the

accused resisted the search no offence under Section 358. Penal Code had been committed.

The power of search given under Chapter 14 of the CrPC is incidental to the conduct of investigation which the police officer is authorized by law to make. Searches made by a police officer during the course of an investigation of a cognizable offence can properly be approximated with the searches to be made by the authorized officer under Rule 201 of the Rules; for in the former case, the police officer makes a search during the investigation of a cognizable offence and in the latter the authorized officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules, which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer under Section 165 of the Criminal Procedure Code, but no such safeguard need be provided in the case of a search by the excise officer under the Rules. The legislature; by stating in Section 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to searches clearly indicated that the appropriate provisions of the Code shall govern searches authorised under the Act and the Rules. Therefore the provisions of Section 165 of the Code must be followed in the matter of searches under Rule 201 of the Rules. The recording of reasons under Section 165 does not confer on the officer jurisdiction to make a search though it is a necessary condition for making a search. Section 165 of the Code lays down various steps to be followed in making a search. The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure; it would be a search made in contravention of the provisions of the Code.

The non-observance of the formalities laid down in Section 165 of the Code cannot be lightly brushed aside. The simple safeguards incorporated by the Legislature in Section 165, CrPC are mandatory, not directory, and must be carried out immediately and fully, or as merely so as they can be in the exigencies and circumstances of each case. Thus, the reasons recorded for the search should be sent to the Magistrate at once, though it is not necessary that they should be in the hands of the Magistrate before the search is carried out.

Unless this is done the search is without jurisdiction and bad in law. Section 99, Penal code, will in no way cure this, for the police officer who carries out a search under Section 165, CrPC without complying with its requirements, which are intended to be mandatory is acting without due care and attention.

The requirement in Section 165(1) that in the record of the grounds of his belief the officer about to make the search shall specify the thing for which search is to be made, or to be caused to be made is clearly intended to restrain a police officer from initiating or conducting anything in the nature of a general search.

**49. Powers of Excise Officer to search without warrant.** - (1) Whenever any excise officer not below such rank as the State Government may by notification prescribe, has reason to believe that an offence punishable under Sections, 61, 62, 63 or 64, has been, is

being or is likely to be committed in any place, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time, by day or night enter and search such place.

**(2) Further powers of seizure, detention, search and arrest.** - Every excise officer as aforesaid may seize anything found in such place which he has reason to believe to be liable to confiscation under this Act and may detain, and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid .

## **NOTES**

**1. Excise Officer.** - Only the Excise Officers of 1st Class have been empowered to exercise powers under this section to conduct search without warrant under the Punjab Excise Powers and Appeal Orders.

**2. Circumstances when powers under section 49 are to be exercised.** - This section specifies also the circumstances under which powers to search without warrant is to be exercised. Therefore, the excise officers cannot conduct searches without obtaining search warrants first in each and every case. Powers under this section can be exercised in the following circumstances :-

( a) When an Excise Officer has reasons to believe that an offence under punishable under sections 61 to 64 of this Act has been committed or an offence punishable under Sections 61 to 64 of this Act is being committed or An offence punishable under sections 61 to 64 is likely to be committed in any place. And

(b) When the Excise Officer has also reasons to believe that if he first goes to obtain search warrants to conduct search of such premises the Offender will get an opportunity either to escape arrest or/and to conceal evidence of the offence, he can conduct search of any place/premises without obtaining search warrants in exercise of powers under this Section.

**3. Illegal Search - Resistance is lawful.** - Illegal searches include those vexatious searches for which an Excise Officer is liable for penalty and also includes searches conducted in violation to the procedure laid down under Sections 165 and 166 of Criminal Procedure Code and the officers conducting illegal searches would not be saved under section 353 of Indian Penal Code.

Where the Excise inspector without recording grounds of belief entered the house of accused as he found that he was causing evidence of the offence to disappear which he wanted to prevent and the accused beat him and was therefore prosecuted under Section 332, Penal Code. It was held, that the entry was illegal as before proceeding to enter the

place to seize any article, he did not record the grounds of his belief. It is not permissible to engraft exceptions to the provisions of Section 50 of the Excise Act based on urgency that if he had waited to record the reasons before entry, the evidence would have been destroyed.

A subordinate police officer conducting a search without any written authority from his superior officer as required by Section 165(3) acts without jurisdiction, and resistance to his search proceeding is not illegal and therefore the members of an assembly whose common object was to resist the search by the subordinate police officer cannot be convicted on the charge of rioting,

Where on the evidence it was not proved to the satisfaction of the Court that the reasons were recorded before the excise officers proceeded to take the search, the search attempted to be taken was not in accordance with law and if the accused resisted the search no offence under Section 353 IPC had been committed.

**49-A. Power of excise officer to obtain information.** - (1) Any excise officer not below such rank as the State Government may by notification prescribe, may by order require any person to furnish to any specified authority or person any such information in his possession concerning any unlawful import, transport, manufacture or possession of any intoxicant, or any materials, still, utensil, implement or apparatus whatsoever, for the purpose of manufacturing any intoxicant, or any unlawful cultivation of any plants from which an intoxicating drug can be produced as may be specified in the order.

(2) Any person upon whom an order is served under sub-section (1) shall be bound, in the absence of reasonable excuse, to furnish correct information.

## NOTES

**Object and Scope.** - This section has been added by East Punjab Act 9 of 1948, Section 3. The purpose of adding this section was to avoid unnecessary searches on suspicions and apprehensions and to help unfolding offences committed or likely to be committed in water-light premises or in an unknown or abandoned areas or in some other concealed manner which otherwise cannot be seen or foreseen.

Disobedience to the orders of the officers exercising powers under this section will be punishable under section 68 of this Act.

**50. Procedure relating to arrests, searches etc.** - Save as in this Act otherwise expressly provided, the provisions of the [Code of Criminal Procedure 1973] relating to arrests, detentions in custody, searches, summonses warrants of arrests, search warrants, production of persons arrested and investigation of offences shall be held to be applicable to all actions taken in these respects under this Act, provided that :-

(1) any offence under this Act may be investigated by an officer empowered under Section 46 without the order of a Magistrate.

(2) whenever an excise officer below the rank of Collector makes any arrest, seizure or search he shall within twenty four hours thereafter make, a full report of all the particulars of the arrest, seizure or search to his immediate official superior and shall unless bail be accented under Section 73 take or send the person arrested or the article seized, with all convenient dispatch to a [judicial Magistrate] for trial or adjudication ..

## **NOTES**

**1. Applicability of Sections 50, 100, 103 and 165-166 Cr.P.c.** - Section 103 of Criminal Procedure Code not applicable to search of persons under Section 51

Where an accused himself produced the articles to be searched, provisions of sections 103 of Cr.P.c. and 165 will not apply.

Section 103 of Criminal Procedure Code does not apply to the search of a person under section 51. Section 103 applies only where a search of a place has to be made.

Section 103 does not apply to the search of a motor car as a motor car is not a place within the meaning of sections 102 and 10\ However, the searching officer is not expected to disregard the provisions of section 100.

**2. Investigation.** - For the purpose of investigation of the cases registered under this Act, the procedure and provisions provided in Sections 155 to 172 of the Criminal Procedure Code shall apply. Since every police officer who is competent to investigate the cases is also an Excise Officer under this Act the said police officer while investigating offences under this Act will act as a police officer as well as an Excise Officer.

**3. Search.** - There are two types of searches under the Criminal Procedure Code i.e (i) search of persons and (ii) search of places.

The provisions of Criminal Procedure Code relating to the searches have already been re-produced above.

Section 103 of Cr.P .C. does not apply to the searches of persons under section 51.<sup>5</sup> Section 103 does not apply to the search of a Motor Car as a Motor Car is not a place within the meaning of sections 102 and 103 of the Criminal Procedure Code.

**4. Official witnesses** - Statements of official witnesses have to be considered like the statements of other witnesses - But where the case is based on the testimony of the official witnesses only, it is the duty of the court to scrutinise their evidence with care and caution - Testimony of official witnesses cannot be discarded only because of their official status.

**5. Non-compliance of the provisions of search.** - Since there is a set procedure laid down in Criminal Procedure Code for the purpose of searches to be conducted under this Act which have been made applicable fur this purpose under this Act, non-compliance of the procedure may render the searches illegal. Therefore, the Searching Officers have to follow the procedure laid down for this purpose. In case search is not conducted in accordance with the provisions of CrPC the evidence collected during search will be admissible and it will not ivalidiat the search, it can be regarded as mere irregularity in

search and recovering.

However, where an accused was searched by the Searching Officer on the road and no village or town was near to that place. The searching officer joined only one witness available person at the place of search. The irregularity was held to be excusable and no bar to the conviction if the court was satisfied the articles were actually found in the possession of the accused.

If after a careful scrutiny the court comes to the conclusion that the article was actually recovered from the possession of the accused the conviction is a legal. Irregularity during search, therefore, does not unnecessarily invalidate the subsequent proceedings.

There is nothing in law which makes evidence relating to an irregular search inadmissible. Therefore, conviction passed on even an irregular search cannot be invalidated only on this ground.

Non compliance of the procedure laid down in the provisions of the Act. Non admissible in evidence.

**6. Absence of accused during search** - It is not necessary to join the person during search whose premises are searched.

Therefore, where the owner of the premises to be searched either does not come present or is not easily available to join search, the searching officer can proceed to search his premises even in his absence. However, giving due regard to the every necessary provision.

**7. Search during Night.** - Mostly the searches are conducted during the day time. However, where the searching officer feels it necessary in the circumstances of the cases that if the search is delayed till the next morning the accused will extinguish the evidence or will escape there is no bar in conducting search during night time even.

Law does not provide searches to be conducted during night time. However, it is desirable that the search should be conducted during day time but where it is inconvenient to conduct the search during day time or it is necessary to conduct search during night to avoid complaints from the accused or to avoid any other unfair practice or illegality banishing articles or evidence, the search can be conducted during night time also.

**8. Search without warrants.** - According to the provisions of Criminal Procedure Code, a searching officer is required to take warrants of search prior to initiating search. However, an Excise officer or the Police Officer can even conduct a search without warrants in special circumstances specified in the procedure under the Criminal Procedure Code. The only ground for conducting search without warrant is lack of time and where the searching officer has reason to believe that if the search is delayed for want of warrants, the very purpose of the search will frustrate.

Where the search was conducted without warrants but there was no consideration to the fact of lack of time, the search was not proper. The recovery, if any, made during such a

search will itself come under suspicion.

**9. Locality.** - The term locality as has been used in section 104 does not refer to any specific locality. However, the inference co-relating to the purpose of the provisions may be that the locality will mean the inhabited area surrounding the place to be searched. However, the locality will also include the nearest village and town if the other requirement of the provision cannot be fulfilled from the adjoining locality. The main purpose of the Legislature for incorporating the term locality in the provisions is as to make it necessary for the Investigating/Searching Officers to conduct fair searches without violating the personal rights of the people and to avoid mala fide involvement of innocent people.

Where the search has to be conducted in densely populated town, the term locality will mean the minimum vicinity from the place of search from which the witnesses should be joined as witnesses to the search.

Person appearing as a witness in other cases is not disqualified to be a witness in subsequent cases.

A person has been convicted for illegal possession of illicit liquor under the Excise Act. Conviction cannot be set aside only on the ground that the witnesses were not joined from the same locality.

The search witnesses were joined from a locality different from the place searched without making any attempt to join witness from the same locality. }be search was held not to be good and the prosecution cannot be abased on the search alone.

Term locality has not been defined in the Act on the basis of distance in furlongs etc. A person joined as a witness living at a distance of one furlong in the same locality. It was held that there was nothing on in joining a person living one furlong away from the place of search as a search witness.

The object of the search frustrate but the search cannot be held to *b/* vitiated merely on the ground that witnesses to the search were not from the same locality.

Excise Inspector failed to call witnesses of the locality to join the search. Prosecution failed and the conviction was set aside.

The term locality does not mean a locality at some's throw from the place of search or locality within the same quarter. The term is comprehensive and includes the places even within 34 miles, from the place of search. It is also not necessary implication of the provision that the witnesses must be from the one locality. The witnesses can be joined from the different localities surrounding the place of search. The legislators have laid much emphasis on the respectability and not on the term locality. Therefore, joining the respectable witnesses from different locality does not vitiate search.

Where the panches of the Gram Panchyat were joined as witnesses, it is not necessary that they should be immediate neighbours.

Term witness from the locality includes a person staying as an accused to a person of the locality.

A Person known to be of doubtful integrity should not be joined as a witness from a distant place.

The witnesses were taken from different localities. One witness taken from the same locality was not examined. Purpose of taking witnesses from different localities including the localities distant from the place of search conveys intention of the Searching Officer to join various type of witnesses to make easily available to support every type of story forwarded by the prosecution. Recovery held to be under suspicious circumstances.

The searching Officer started search without joining respectable persons available in the locality but leaving the door open with the purpose and intention to facilitate the person to witness the search with an intention to make easily available every type of witness to support every type of story forwarded by the prosecution.

Search /witness conducted on the basis of prior information not joining independent witnesses creates suspicion.

Search of a person without calling witnesses of the locality. Prosecution doubtful.

Various persons available to be joined from the adjoining shops as witnesses to the search. The Joining only official witnesses. Recovery becomes doubtful.

Where the search is to be made on the basis of prior information, it is incumbent upon the searching Officer to join independent witnesses from the locality. Prosecution based on testimony of the Police Officers alone is not sustainable.

It is the duty of the Police to join independent witnesses in the raid. Independent witnesses easily available but not joined prosecution case becomes doubtful.

A person from the neighbourhood called to be a witness of recovery of incriminatory articles from the accused, it becomes incumbent upon the said person to attest the recovery memo.

Where independent witnesses were easily available from the locality to join raiding party. Raiding party had availed opportunity to do so but failed. Only the official witnesses in the circumstances cannot be relied upon and cannot sustain the conviction.

Non independent witnesses despite being available joined. Prosecution tried to prove the recovery by an alleged eye witness who refused to support the prosecution case. Recovery was held to be doubtful and conviction set aside.

The testimony of official witnesses loses its evidentiary value where the available independent witnesses were not joined. Prosecution held to be doubtful and accused was acquitted.

Search/raid conducted at the Bus-stand without joining any independent witness. Search conducted on the basis of a secret information held. It would cause doubt even on the testimony of the official witnesses.

Official witnesses can also be relied upon where no independent witness was available to be joined and no animus against the Police Officer was alleged. But where the prosecution had availed opportunity to associate independent witnesses and they had not done so, the prosecution becomes doubtful and conviction was set aside.

**10. List of Articles seized/Search List.** - By virtue of section 103(2), it has been made incumbent upon the searching officer to prepare list of articles recovered called as a recovery memo under the Criminal Procedure Code and to get the same attested from the search witnesses at the spot and to deliver a copy of the same to the occupants of the premises, if any:

According to section 103(2) of Cr.P.c. recovery memo must be signed by the witnesses the search. However, the facts regarding recovery recorded in the recovery memo by the police Officer not be taken as statements of the witnesses under section 161 of the Cr.P.c.

**11. Raid Report.** - Under section 50(2), An Excise Officer making any arrest, seizure search is required to report to the Judicial Magistrate within 24 hours with full report of particulars of arrest and/or articles searched and seized. The searching officer may submit rep' in person or through any other official as may be permissible under law.

The Searching Officer is required to deliver a list of articles to the person from whom or the person under whose custody or occupant the same were seized. However, he is not required to show or to deliver copy of raid report to the accused as the raid report has been regarded to be a highly confidential document under section 50 of this Act.

The accused are not entitled to see the raid report submitted under section 50 of the Punjab Excise Act as the raid report is recorded as a highly confidential document

**12. Occupant of the Place.** - Requirement of sub-section 6 of Section 100 of the Criminal Procedure Code is that the occupant of the place to be searched or any other person on his behalf shall be permitted to attend the search and will be provided with a copy of the list of articles seized duly signed by the witnesses. The Searching Officer has to offer to join' occupant of the premises during the search. However, it is at the option of the occupant or charge of the place to attend search. But where the occupant of the place searched was not allowed to attend the search, it has to be regarded as an irregularity for which the court is bound to scrutinize the evidence more carefully. A occupant, owner, incharge must be allowed to tend the search.

Where the accused was in the Police custody and could have easily joined in the search, witness but the wife of the accused was joined. In such a case it cannot be said that the wife represented the accused during search. It is the duty of the Police to join the accused during the search. The action of the Police was held to be highly in disregard to the law and procedure.

It is not necessary to join the owner of the premises during search.<sup>6</sup>

**13. Illegal Search.** - There is a set and exhaustive procedure laid down for the conduct of search and raids under the Criminal Procedure Code which are required to be followed by Searching Officers though not strictly in every case but in general failure to follow the procedure may render the search/raids illegal and prosecution may fall on this simple ground.

Search may be illegal but accused can still be convicted if the other evidence against him is conclusive.

Where the failure to comply with the procedure laid down for the purpose of conduct of search/raids amounts to rendering the other evidence unsatisfactory to prove the recovery actually from the possession of the accused, conviction cannot be sustained.

Failure to comply with the provisions of Section 103 of Cr.P.C. will not be fatal unless the accused is not produced in any manner. But where even a slightest doubt is created for which the accused may be a victim of irregularity on the part of the Raiding Party, the court of justice must give full benefit of doubt to the accused.

Though the evidence regarding irregularity during search is admissible but the trial cannot vitiated on this ground alone. It may create doubt regarding search but where there is a reliable and convincing evidence of recovery, conviction can be passed thereon.

Search conducted without jurisdiction creates suspicion. Prosecution passed on solitary evidence of Investigating Officer. Court can reject such evidence.

**14. Postal Articles.** - Under section 93(3) of Cr.P.C. a District Magistrate can also grant a warrant to search of a document/parcel or other thing in the custody of the Postal or Telegraph authorities. Sub-section (3) of Section 93 of Cr.P.C. is reproduced as under:-

Section 93(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

**51. Police to aid excise officer.** - All police officers are required to aid the excise officers in the due execution of this Act, upon request made by such excise officers.

## **NOTES**

Police has to help the Excise Officers in detecting and prevention of offences under this Act. The police can render help to the Excise Officers in two different manners as under:-

- (a) On demand. - As and when any Excise Officer requires help of the police for raid, arrest, seizure of things and search etc., he can call for the police for such help and an adequate strength of police as he may think necessary. However, the Excise Officer will avoid incorporating police officials as witnesses except for the purpose it is necessary. It will also be a duty of the Excise Officer as well as of the police not to use force more than it is required for the purpose and in any case avoid such bodily hurt which may prove fatal.
- (b) As most of the offences under this Act are cognizable offences the police can take cognizance of the matter in their own to detect or prevent commission of any offence under this Act or to apprehend any offender.
- (c) Every police officer not below the rank of Head Constable is an Excise Officer under this Act as has been defined under Section 3(8) and therefore, can act as an Excise Officer as also a Police Officer. Every Police officer has been held to be an Excise Officer for the purpose of Section 3(8) of this Act.

A sub-Inspector of the police can arrest an accused under Section 50 as an Excise Officer

for any offence committed under Section 60 of this Act.

Police Officers not below the rank of Sub-Inspector have been invested with the powers of an Excise Officer.

## **52. Duty of landholders and others to give information.**

- (a) every owner or occupier of land or any building and the agent of any owner or occupier of land or any building on which,
- (b) every lambardar, village headman, village accountant, village watchman, village policeman and every officer employed in the collection of revenue or rent of land on the part of Government or the court of wards in whose village:-

there shall be any manufacture or illegal import or collection of any intoxicant not-licensed under this Act, or any unlawful cultivation of any plants from which an intoxicating drug can be produced, shall be bound, in the absence of reasonable excuse, to give notice of the same to a magistrate or to an officer of the excise, police or land revenue department as soon as the fact comes to his knowledge.

### ***Section 52A for Haryana only.***

**52-A. Use of premises or vehicle owned by owner or occupier.** - (1) Every owner or occupier of any premises and every owner of any vehicles shall be bound to exercise due diligence in order to make sure that such premises or vehicle is not used for commission of any offence punishable under this Act.

(2) Any person who acts in contravention of the provisions of sub-section (1) shall be liable for an offence committed under this Act.]

**53. Duty of officer incharge of police station to take charge of articles seized.** - Every officer incharge of a police station shall take charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector or of an officer empowered under Section 46(1) to investigate the case, all articles seized under this Act which may be delivered to him, and shall allow any excise officer who may accompany such articles to the police station, or may be deputed for the purpose by his superior officer to affix his seal to the articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer incharge of the police station.

**54. Power to close shops for the sake of public peace.** - (1) The District Magistrate or sub-Divisional Magistrate by notice in writing to the licensee; may require that any shop in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.

(2) If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, [an Executive Magistrate] of any class may require such shop to be kept closed for such period as he may think necessary :

Provided that where any such riot or unlawful assembly occurs the licensee shall, in the absence of, a Magistrate, close his shop without any order.

(3) When any sub-Divisional Magistrate makes a direction under sub-section (1) or [any Executive Magistrate] makes a direction under sub-section (2) he shall forthwith inform the Collector of his action and his reasons thereof.

## **CHAPTER VIII**

### *General Provisions*

**55. Measures weights and testing instruments.** - Every person who manufactures or sells any intoxicant under a license granted under this Act shall be bound;

- (a) to supply himself with such measures, weight and instruments as the Financial Commissioner may prescribe, and to keep the same in good condition; and
- (b) on the requisition of any excise officer, duly empowered by the Collector in that behalf at any time to measure, weight or test any intoxicant .in his possession in such manner as the said excise officer may require.

**56. Power of State<sub>2</sub>Government to exempt intoxicants from the provision of the Act.** - The [State] Government may by notification, either wholly or partially and subject to such conditions as it may think fit to prescribe, exempt any intoxicant from all or any of the provisions of this Act.

**57. Bar of certain suits.** - No suit shall lie in any civil court against the Government or any officer or person for damages for any act in good faith done, if ordered to be done, in the pursuance of this Act or of any other law for the time being in force relating to the excise revenue.

#### ***Section 57 for Haryana***

**57. Bar of suits.** - (1) No suit or other proceedings shall be entertained or continued in any civil court against withdrawal or amendment of a license, permit and pass for any damages, remission or compensation on the ground that any loss is sustained by the withdrawal or amendment thereof.

(2) No suit shall lie in any civil court against the Government or any officer or person for damages for any act done in good faith or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise revenue.

## **NOTES**

**1. Scope.** - The provisions of this section protect the officers and other persons acting under the orders of the officers exercising powers and jurisdiction under this Act; from any

liability on them or on the Government in pursuance of their act under this Act done in good faith. Any act done or ordered to be done in pursuance to any other law, orders or instruction relating to the Excise Act for the time being will also be saved within the scope of the provisions of this section if the same is done in good faith. The scope of the provisions of this Act is limited only to the extent to save the officers/officials performing their duties under this Act in good faith and creates a bar upon the jurisdiction of the civil court from entertaining a civil suit or any other proceedings for the claim of damages on account of their acts under this Act.

**2. Good faith.** - The term 'good faith' envisaged in Section 57 of the Punjab Excise Act has not been defined in the Act anywhere. But so far as the penal provisions of this Act are concerned, the procedure for their implementation has been borrowed from the Criminal Procedure Code. Therefore, as and when the situation arose and it is required to be determined as to whether a particular act of an officer or any other person was in good faith as envisaged in Section 57 of this Act the definition and precedents under Section 52 of the Indian Penal Code is followed. The term 'good faith' has been defined in Section 52 of the Indian Penal Code as under :-

**Section 52 Indian Penal Code - 'Good Faith'.** - Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

Section 52 of the Indian Penal Code defines the term 'good faith' in a negative manner and excludes from its protection every that act which is clearly done or seem to be done without due care and attention. Therefore, if the definition of the term is followed from the Indian Penal Code, the person seeking the protection of Section 57 of Punjab Excise Act, will have to establish that he acted in good faith as well as with full care and attention at least as a reasonably prudent person.

The other aspect of the matter is totally other way sound when we read the definition of the term 'good faith' under General Clauses Act, 1897. Section 3(22) of the General Clauses Act defines the term 'good faith' as under :-

**The General Clauses Act (x of 1897) "Good Faith" Section 3(22).** - A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

It will be seen that this definition materially differs from that contained in Section 52 of the Indian Penal Code. As per the principles of criminal jurisprudence, a person charged of an offence, is innocent unless charge is positively established against him. Therefore, the intention of the law being equitable the definition of the term 'good faith' in Section 3(22) is better and equitable. Lord Delman, C.J. (England) remarked in a case in 1836 "gross negligence may be evidence of *mala fides*, but not the same thing. We have shaken off the last remnant of the contrary doctrine."

The term 'good faith' has also been defined in the limitation Act, 1963. Clause (h) of Section 2 of the Limitation Act reads as under :-

**Section 2(h) "good faith".** - nothing shall be deemed to be done in good faith which not done with due care and attention.

This definition says more stress on the principle that every inadvertence does not necessarily indicate want of due care and attention.

The definition of "good faith" in the General Clauses Act lays stress on the aspect of honesty only irrespective of there being element of negligence. But the definition of this term in the Indian Penal Code lays stress on two aspects, i.e., honesty of intention and due care and attention together. Both the definitions retain the real essence of good faith, which is honesty which is a common feature to both the definitions.

***Section 57A for Haryana only***

**57-A. Fixation of price of intoxicant to be sold by distilleries.** - (1) The State Government may, from time to time by notification, fix the prices of plain, [rum and gin of specified strength, bulk or bottled or both, for sale by the distilleries after taking into consideration their manufacturing cost.

(2) The licensee shall maintain in the office of the Distillery for inspection a statement of the current prices of plain, [rum and gin of specified strength, bulk as well as bottled, in accordance with the prices fixed by the State Government under sub-section (1).]

(3) No licensee shall sell country spirits, rum and gin of specified strength at prices different from those fixed under Sub-section (1)

**58. 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 or any other law for the time being in force relating to excise revenue.

(2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may make rules :-

- (a) prescribing the duties of excise officers;
- (b) regulating the delegation of any power by the Financial Commissioner, Commissioner or Collector, under Section 13, Clause (b);
- (c) prescribing the time and manner of presenting and the procedure for dealing with appeals from orders of excise officers;
- (d) regulating the import, export, transport or possession of any intoxicant or Excise bottle and the transfer, price or use of any type of description of such bottle;
- (e) regulating the period and localities for which, and, the persons, or classes of persons, to whom licenses, permits and passes for the vend by wholesale or by retail of any intoxicants may be granted and regulating the number of such licenses which may be granted in any local area;

- (f) prescribing the procedure to be followed and the matters to be ascertained before any license is granted for the retail vend of liquor for consumption on the premises;
- (g) for the prohibition of the sale of any intoxicant to any person or class of persons;
- (h) regulating the power of excise officers to summon witnesses from a distance;
- (i) regulating the grant of expenses to witnesses and compensation to persons charged with offences under this Act and subsequently released, discharged or acquitted;
- (j) for the prohibition of the employment by a license holder of any person or class of persons to assist in his business in any capacity what so ever;
- (k) for the prevention of drunk ness, gambling and disorderly conduct in or near any licensed premises and the meeting or remaining of persons of bad character in such premises;
- (l) Prohibiting the printing, publishing or otherwise displaying or distributing any advertisement or other matter commending or soliciting the use of, or offering any intoxicant 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 there under, or the conditions of any license, permit or pass obtained there under :-
- (m) prohibiting within the State the circulation, distribution or sale of any newspaper, book, leaflet, booklet, or other publication printed and published out side the State which contains any advertisement or matter of the nature described in clause (1):
- (n) declaring any newspaper, book, leaflet, booklet, or other publication, wherever printed or published, containing any advertisement or matter of the nature described in clause (1)] to be forfeited to the State Government; and
- (o) implementing generally the policy of prohibition.

**(3) Previous publication of rules.** - The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication;

Provided that any such rules may be made without previous publication if State Government consider that they should be brought into force at once.

**59. Powers of Financial Commissioner to make rules.** - The Financial Commission may, by notification, make rules.

(a) regulating the manufacture, supply, storage or sale of any intoxicant, including:-

- (i) the character, erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply storage or sale of such article and the fittings, implements apparatus and registers to be maintained therein;

- (ii) the cultivation of the hemp plant and the collection of spontaneous growth of such plant and the preparation of any intoxicating drug.
  - (iii) the tapping of drawing of tari from any tari producing tree. (b) regulating the bottling of liquor for purposes of sale.
- (c) regulating the deposit of any intoxicant in a warehouse and the removal of any intoxicant from any warehouse or from any distillery or . brewery.
- (d) prescribing the scale of fees or the manner of fixing the fees payable in respect of any license, permit or pass or in respect of the storing of any intoxicant;
- (e) regulating the time, place and manner of payment of any duty or fee; (f) prescribing the authority by, the restrictions under, and the conditions on, which any license, permit or pass may be granted including provision for the following matters :-
- (i) the prohibition of the admixture with any intoxicant of any substance deemed to be noxious or objectionable;
  - (ii) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength;
  - (iii) the fixing of strength or price below which any intoxicant shall not be sold, supplied or possessed;
  - (iv) the prohibition of sale of any intoxicant except for cash;
  - (v) the fixing of the days and hours during which any licensed premises mayor may not be kept open, and the closure of such premises on special occasions;
  - (vi) the specification of the nature of the premises in which any intoxicant may be sold, and the notice to be exposed at such premises;
  - (vii) the form of the accounts to be maintained and the return to be submitted by license holders; and
  - (viii) the prohibition or regulation of the transfer of licenses;
- (g) (i) declaring the process by which spirit shall be denatured;
- (ii) for causing spirits to be denatured through the agency or under the supervision of its own officers;
  - (iii) for ascertaining whether such spirit has been denatured;
- (h) providing for the destruction or other disposal of any intoxicant deemed to be

- unfit for use;
- (i) regulating the disposal of confiscated articles;
  - (j) prescribing the amount of security to be deposited by holders of leases, licenses, permits or passes for the performance of the conditions of the same.

### ***Section 59 for Haryana***

**59. Powers of Financial Commissioner to make rules.** - The Financial Commission may, by notification, make rules.

- (a) regulating the manufacture, supply, storage or sale of any intoxicant, including :-
  - (i) the character, erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply storage or sale of such article and the fittings, implements apparatus and registers to be maintained therein;
  - (ii) the cultivation of the hemp plant and the collection of spontaneous growth of such plant and the preparation of any intoxicating drug.
  - (iii) the tapping of drawing of tari from any tari producing tree. (b) regulating the bottling of liquor for purposes of sale.
- (c) regulating the deposit of any intoxicant in a warehouse and the removal of any intoxicant from any warehouse or from any distillery or brewery.
- (d) prescribing the scale of fees or the manner of fixing the fees payable in respect of any license, permit or pass or in respect of the storing of any intoxicant;
- (e) regulating the time, place and manner of payment of any duty or fee;
- (f) prescribing the authority by, the restrictions under, and the conditions on, which any license, permit or pass may be granted including provision for the following matters :-
  - (i) the prohibition of the admixture with any intoxicant of any substance deemed to be noxious or objectionable;
  - (ii) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength;
  - (iii) 1 [the strength at which intoxicant shall be sold], supplied or possessed;
  - [(iii-a) the fixing of the price below and above which any intoxicant shall not be sold or supplied by the licensed vendors;]
  - (iv) the prohibition of sale of any intoxicant except for cash;
  - (v) the fixing of the days and hours during which any licensed premises mayor may not be kept open, and the closure of such premises on special occasions;
  - (vi) the specification of the nature of the premises in which any intoxicant may be sold, and the notice to be exposed at such premises;

- (vii) the form of the accounts to be maintained and the return to be submitted by license holders; and
- (viii) the prohibition or regulation of the transfer of licenses;
- g)(i) declaring the process by which spirit shall be denatured;
- (ii) for causing spirits to be denatured through the agency or under the supervision of its own officers;
- (iii) for ascertaining whether such spirit has been denatured;
- h) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use;
- i) regulating the disposal of confiscated articles;
- j) prescribing the amount of security to be deposited by holders of leases, licenses, permits or passes for the performance of the conditions of the same.

**60. 1) Recovery of dues.** - The following moneys namely

(a) all excise revenue.

(b) any loss that may accrue, when in consequence of default a grant has been taken under management by the Collector or has been resold by him under Section 39; and

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

May be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his moveable property or by any other process for the recovery of arrears of land revenue due from land holders or farmers of land or their sureties.

(2) When a grant has been taken under management by the Collector or has been resold by him under Section 39 the Collector, may recover in any manner authorised by sub-section (1) any money due to the defaulter by any lessee or assignee.

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

**NOTES**

**1. Due meaning of.** - The word 'Due' includes even an amount regarding which a dispute has been raised. Where the licensee raises a dispute as to the liability of the amount it cannot be said that amount ceases to be due.

**2. From whom recovery to be made.** - Where in the case of recovery as arrears of land

revenue the liability of the petitioner for the balance of the amount that remained unpaid by the defaulters named in the certificate was determined by the Recovery Officer himself and not by any competent authority under the Act the recovery proceedings initiated against the petitioners were wholly unauthorised and could not be sustained.

**3. Recovery of arrears of land revenue.** - The process for the collection of land revenue is given in detail in Chs. 6 and 7 of the Punjab Land Revenue Act, Sections 61 to 99. The following are the chief modes for the recovery of arrears of land revenue as given in Section 67 of the Punjab Land Revenue Act 1887 :-

- (a) the service of a writ of demand on the defaulter; (b) by arrest and detention of his person;
- (c) by distress and sale of his movable property and uncut or ungathered crops; (d) by transfer of the holding in respect of which the arrears is due;
- (e) by attachment of the estate or holding in respect of which the arrears is due;
- (f) by annulment of the assessment of that estate or holding;
- (g) by sale of that estate or holding.
- (h) by proceedings against other immoveable property of the defaulter.

**4. License fee is excise revenue.** - License fee is covered by the definition of the Excise Revenue. That being so the balance or arrears of license fee is clearly recoverable under Section 60 of the Act. This mode of recovery is not made subject to the expiry of the excise year nor made subject to the cancellation of the license.

**3. Deficiency in price on resale of excise shop is excise revenue.** - The liability to pay for the shortfall comes within the definition of excise revenue as contemplated by Section 3(9) of the Act. The recovery of this amount can be made by distress sale.

## ***CHAPTER IX***

### *Offences and Penalties*

61. Penalty for offences triable by a court - (1) Whoever in contravention of any section of this Act, or of any rule, notification issued or given thereunder or order made, or of any license, permit or pass granted under this

- (a) manufactures or collects any intoxicant ;or
- (aa) imports, exports, transports or possession intoxicants, namely, lagan or all liquid consisting of or containing alcohol manufactured otherwise than in a licensed distillery, brewery or bottling plant in the State of Punjab; or
- (b) constructs or works any distillery or brewery; or
- (c) uses, keeps or has in his possession any materials, still, utensil, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari.

shall be punishable for every such offence with imprisonment for a term which may extends

to three years [and with fine upto to [twenty five thousand rupees.

Provided that in the case of an offence relating to the possession of:

- (i) a working still for the manufacture of any intoxicant, such imprisonment shall not be less than one year and such fine shall not be less than five thousand rupees;
- (ii) Lahan, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees;
- (iii) country liquor manufactured otherwise than in a licensed distillery in Punjab, in a quantity not exceeding ten bottles, each bottle containing 750 milliliters, such imprisonment shall not be less than three months and such fine shall not be less than five hundred rupees; and in a quantity exceeding ten bottles of the aforesaid capacity, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees;
- (iv) foreign liquor other than -
  - (a) manufactured in a licensed distillery or brewery in India; or
  - (b) imported into Indian on which custom duty is leviable under the Indian Tariff Act 1934 or the Customs Act, 1962.
  - (c) such imprisonment shall not be less than six months and such fine shall not be less than two thousand rupees.
- [(v) foreign liquor manufactured in a distillery or brewery in India, in quantity exceeding ten bottles on which the excise duty or any other levy payable under this Act, has not been paid, such imprisonment shall not be less than six months and such fine shall not be less than two thousand rupees.]

**(2) Penalty for unlawful import, export, transport, manufacture, possession, sale etc. -**

Whoever in contravention of any section other than Sections 29 and 30 of this Act or of any rule, notification issued or given there under or order made or of any license, permit or pass granted under this Act-

- (a) sells any intoxicants; or
- (b) cultivates the hemp plant; or
- (c) removes any intoxicant from any distillery, brewery or warehouse established or licensed under this Act; or
- (d) bottles any liquor for the purposes of sale; or
- (e) taps or draws tari form any tari producing tree,

shall be punishable with imprisonment for a term which may extend to two years and fine which may extend two thousand rupees].

**Section 61 for Haryana**

**61. Penalty for offences..** - (1) Whoever, in contravention of any section of this Act or any rule, notification issued or given thereunder or order made, or of any license, permit or pass

granted under this Act -

(a) manufactures or collects any intoxicant; or

(aa) imports, exports, transports or possesses any intoxicant other than liquor; or

[(aaa) imports, exports, transport or possesses any liquor; or]

(b) constructs or works any distillery or [brewery; or]

(c) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari,

(i) shall, for offences covered by clause (aaa), be liable to payment of penalty of not less than fifty rupees and not more than five hundred rupees per bottle of 750 millilitres or part thereof of liquor in respect of which offence is committed, which may be imposed by the Collector in the manner prescribed except when the case is referred to by the Collector to the court for trial; and

(ii) shall, for other offences and the cases referred to by the Collector to the court, be punishable with imprisonment with a minimum term of sixty days which may extend to three years or with fine of not less than five thousand rupees and not more than one lac rupees or with both. In case the fine is not paid, he will have to undergo further imprisonment.

Provided that in the case of an offence of possession of -

(i) a working still for the manufacture of any intoxicant, such imprisonment shall not be less than six months and such fine shall not be less than [ten thousand] rupees;

(ii) Lahan, such imprisonment shall not be less than three months and such fine shall not be less than [five thousand] rupees;

(iii) (iv) [Causes (iii) and (iv) omitted by Haryana Act No. 19 of 2002.]

(1A) A penalty imposed under clause (i) of sub-section (1) shall be recoverable by an excise officer in the manner prescribed.]

(2) whoever, in contravention of any section other than sections [29 and 'this Act or of any rule, notification issued or given there under for order made, or of any license, permit or pass granted under this Act -

(a) sells any intoxicant; or

(b) cultivates the hemp plant; or

(c) removes any intoxicant from any distillery, brewery or warehouse established or licensed under this Act; or

(d) bottles any liquor for the purposes of sale; or

(e) taps or draws tari from any tari-producing trees,

shall be punishable with imprisonment for a term which may extend to two years and fine which may extend to [twenty five] rupees.]

## NOTES

**1. Misbranding of whisky bottles is an offence under Food Adulteration Act.** - Though no standard of alcoholic strength for whisky or other alcoholic beverages has been prescribed under the Rules but, under the definition of 'food', wine, liquor and other excisable articles (intoxicants) have not been excluded by the Legislature. Rule 29 of the Rules framed under the Act indicates that the use of coal tar dye is not permitted in the alcoholic drinks. Rule 55 of the Rules also deals with alcoholic wines. Therefore, wine, liquor and other excisable articles (intoxicants) are foods according to the definition of 'food' given in the Act. According to the report (Exhibit PH) of the Public Analyst, Haryana, Chandigarh, the sample gave alcoholic strength 51.99 degree proof against the label declaration of 55 degree proof. Therefore, the sample analysed by the Public Analyst is misbranded. Misbranding of an article of food is

punishable under Section 7 read with Section 16 of the Act. The fact that misbranding of an article of food is an offence punishable under Section 7 read with Section 16 of the Act was not brought to the notice of this Court in Tar Balbir Singh's case, Krishan Lal's case, Chaman Lal's case Pawan Kumar's case. Therefore, the above-mentioned decisions given by the Single Judges of this Court are hereby over-ruled.

The Food Inspector found six nips of country liquor mark Jagadhri No. 1 lying in the vend for public sale. He purchased three nips of liquor mark Jagadhri No.1 against payment of Rs. 27. Each nip of liquor so purchased was in a sealed condition. Each nip was labelled and was again sealed with one seal of the doctor at its neck. Then each nip was wrapped in a strong thick paper, both the ends of which were folded in and were pasted with gum. A paper slip bearing the serial number, code number and signatures of Local Health Authority, was pasted from top to bottom on the wrapper of each bottle. Then each bottle was twined with a thread horizontally and vertically and was given sealed with one seal of the doctor and four seals of the Food Inspector. Thumb-impressions of the accused-impersonator came on the wrapper Analyst. The Public Analyst gave his opinion as mentioned in the earlier part of the judgment. Therefore, three nips of liquor, purchased by the Food Inspector, have been found misbranded and the prosecution has proved beyond doubt that the three nips of liquor mark Jagadhri No. 1, purchased from the respondent, were misbranded. Therefore, the respondent is liable to be convicted.

**2. 'Working Still'- Meaning explained.** - A "Working Still" would obviously mean a Still which has been set up, or is being worked, for the *purpose* of distilling illicit liquor and has, in fact, at the time of the recovery been found to be in productive process. To put it plainly, in that apparatus, the receptacle must bear the recipient as illicit liquor, for that obviously is an intoxicant within the meaning of the word used in Section 3(12-A). That says that the word 'intoxicant' means any liquor or intoxicating drug.

Accused allegedly apprehended with working Still. The investigating Officer did not join the independent witnesses from the locality. Prosecution story rested mainly on the official witnesses. It is not safe to place reliance on the official witnesses. Accused acquitted.

Accused found distilling illicit liquor by means of a working still. Component parts recovered cannot be utilised for the purpose of distilling illicit liquor. Only independent witness produced by the prosecution not supporting the prosecution version. Benefit of doubt. Accused acquitted. Held, that it is not safe to maintain the conviction as the component part recovered from the possession of the accused cannot be utilised for the purpose of distilling illicit liquor. Moreover, the only independent witness produced by the prosecution has not supported the prosecution version. The case is not free from doubt. Accordingly, the accused is entitled to the benefit of doubt.

It the component parts of a still were lying. Does not mean that accused was found working the still for the distillation of illicit liquor

Petitioner apprehended distilling illicit liquor by means of working Still at the dhan of a river. Prosecution story rests solely on the testimony of two official witnesses. Case of Secret information. No effort made to join the independent witnesses from the village. Case not

proved beyond shadow of doubt.

Recovery of working Still from accused. For conviction of accused under section 61(1)(c) its working is also required to be proved. No evidence to show that actual process of distillation was going on at the time of raid and apprehension. Accused acquitted.

**3. Import, export and transport.** - The word, import, export and transport have been defined respectively in Section 3(12), 3(10) and 3(21) of the Punjab Excise Act and the same are reproduced below :-

Section 3(12) "import" (except in the phrase "import into India"), means to bring into Punjab otherwise than across a customs frontier as defined by the Central Government.

Section 3(10) "export" means to take out of Punjab otherwise than across a customs frontier as defined by the Central Government';

Section 3(21) "transport" means to move from one place to another within Punjab. Sections 16 to 19 embody the provisions relating the subject of import, export and transport.

**4. Importing.** - The offence of importing is an offence constituted by bringing it into the territory in question. It does not matter where it was before, provided it was outside the province. If the goods once come across the border of the territory in question, if they come for and on account of the accused with his consent, the offence of importing is complete. It is not necessary to show that the accused did any thing outside the territory.

A, who was a resident of Assam, sent from Cooch Behar a parcel which was subsequently found to contain opium addressed to B in Assam which B was to receive on his behalf. The post master getting suspicious requested B to take open delivery and on his refusal duly opened the parcel and it was found to contain opium. A was guilty of importing opium.

Where a person under a pretended name consigned from Kotah, a native state, into Cawnpore in British India bags of Maize containing a considerable quantity of opium which was detected at Cawnpore and searched in his presence. Held, that the offence under Section 9 of the opium Act was committed ..

**5. Import.** - Mere possession does not carry the presumption of the fact of import unless any act of import, export or transport is established.

The offence of importing would be complete when the prohibited article is brought into the territory in question. Once the prohibited article comes across the border of the territory the offence of importing would be complete. The offence of importing opium is an offence constituted by bringing it into the territory in question. It does not matter where it was before provided it was outside the province. In this connection the reference may be made to the observations made by Hon'ble Judges, where they have observed as under:-

The offence is in the bringing it in and the word bring may be specially noticed as part of the definition. If the goods once come across the border they come for and on account of the accused with his consent let alone by his procurement the offence of accused did

anything outside. The accused went outside the State of Assam into Cooch Berar and posted the parcel in effect to Bokahat for himself which was exactly the same as if he posted it to his own address and in his own name; but the offence of importing into Assam would be equally complete had the goods been despatched pursuant to the accused's order by somebody in New York and it would be equally complete if when the goods crossed the border the accused had been taking a voyage on the high seas for the benefit of his health. The coming of the goods for the accused, on his account and with his consent is bringing them into Assam and is an offence of importing the goods.

"I say nothing to discourage the view that a person who exports from outside the United Provinces to a warehouse inside the United Provinces of which he is really the proprietor or temporary possession, even under a false name, is in fact committing an offence under the Act of importing into the United Provinces, although he is also the person who exported from outside. It is perfectly possible for me to send an article for myself from the High Court at Allahabad to my Chambers in London, and if I did so with a dutiable article without declaration, I should be guilty of importing into England." The person who imported must be a person who was intending or had the right to take delivery or desire to take delivery inside the areas. I am quite satisfied on the evidence in the present case that the substance of the matter is that those goods were sent by the accused from Cooch Berar to himself in Assam on his own account and the fact that they were to be taken delivery of by Khagendra under an arrangement with him had no importance at all. The position under the Opium Act is exactly the same as if he had kept a warehouse in Assam and he had sent the seeds to that spot.

Registered parcel containing Cocaine addressed to the daughter of the accused at the address of a house in which the accused was not residing. When the parcel was received the Excise Officer arrested the accused for the offence of importing cocaine. Plea taken by the accused was that she had ordered for the import of some toys for her daughter and that she took the delivery of the parcel thinking that it contained toys for her daughter. Presumption would be that the accused ordered for the import of cocaine. Unless and until the accused provided that similar parcel containing toys was also expressed it could not be accepted that accused was absolved of her liability.

The offence of importing is constituted by bringing a contraband into territory in question. It does not matter from where it was brought provided it was outside the State. It is not necessary to show that the accused did anything outside the territory. When a person under a pretended name consigned from Kotah, a native state into Cawnpore in British India bags of maize containing a considerable quantity of opium which was detected at Cawnpore and searched in his presence. It was held that he was rightly convicted of importing contraband.

**6. Import - Presumption of intention.** - A registered postal parcel containing cocaine addressed to accused's daughter aged 10 years to a house, in which accused was, not living, was received by appointment by the accused from the postman in charge; the parcel remained unopened for about 10 minutes when the Excise Officers entered and arrested the accused for importing cocaine. She pleaded that she had ordered some toys for her girl, that she took delivery of the parcel thinking it to be the expected one containing toys, she had

asked the parcel to be addressed at her friend's house as she contemplated moving from her own house, and that she hesitated to open the parcel as she could not identify the sender's name as being that of the person whom she had ordered the toys from, but offered no proof of any of these facts which peculiarly were within her sole knowledge. It was held that in the absence of evidence that the accused was at the time expecting a parcel, addressed identically with that seized but with different contents the inference was that the parcel seized was the one expected and it contained what she had ordered.

**7. Import - Attempt to import.** - Where the accused was found in possession of a bill of lading and an invoice relating to six bales of old wearing apparel which contained, to his knowledge, a large quantity of contraband cocaine purporting to be consigned to R.P. by a firm in London, and he made over the documents to a firm of shipping agents for clearance from the Custom House and failed to produce the alleged consignee for whom he professed to be acting, or to give any clue about him. It was held that the conviction of being in possession of such cocaine, under Sections 46(a) and 52 of the Bengal Excise Act, was not sustainable, but that the accused should, having regard to Sections 236 and 237 of the Criminal Procedure code, be convicted, on the same facts, of attempting to import the cocaine into Bengal under Section 61 read with the sections 46(a) and 2(12) of the Act.

**8. Imported article does not cease to be imported.** - Cocaine dispatched from Germany in two registered packets, one consigned to Multan and the other to branch post office in the Multan district to fictitious addresses. The packets, which came via Karachi, were opened at that port by the custom officials, who on examining them and ascertaining the nature of the contents, sent them on to the post office for delivery to the consignees. On the petitioners calling at the post office for the packet in question, it was handed over to them after certain enquiries had been made and the petitioners were then arrested and convicted under Section 61(1)(a). Held that the act of the Custom officials being authorised by the Customs Act and the regulations made thereunder, the articles do not cease to be imported by the consignee merely because they were interrupted in transit by the Customs officials acting under and in accordance with their statutory power.

**9. Import** - Illegal import and possession separate offence. - A man who illegally imports liquor may keep it in his possession for sometime after he imports it. The importation and possession in such a case would be distinct offences. But where the importation involves possession of liquor, the accused can only be convicted of the offence under Section 43 of the Act.

**10. Exporting.** - An unlawful possession of opium with the intention of eventually exporting it, does not by itself amount to "exporting" opium under Section 9( e) of the Act. Where the authorities suspecting a parcel tendered for dispatch by post opened it and finding that it contained opium sent it on to the destination, after intimating the excise authorities there, with view to trace the consignee.

Held that the consignor only attempted to export opium in view of the fact that the parcel was seized by the authorities and from that moment it ceased to be in the possession of the consignor. Therefore he cannot be convicted for exporting opium and as the Act did not make the attempt punishable he could not be convicted for the offence.

Export from outside to a warehouse by its proprietor or temporary possessor though under fake name - is an offence of importing under this Act. The person may otherwise be an exporter from outside does not make any difference .

**11. Attempt to export** - The authorities suspected a parcel tendered for dispatch. It was opened and found that it contained opium. The accused attempted to import opium. The accused tendered at a post office a parcel containing a large quantity of opium to be dispatched to Burma. The parcel was not claimed and was sent back to India. The accused was held guilty of possession. It was held that the accused was not guilty of the offence of an attempt to export opium.

**12. Transport** - Transport means transport from starting point to the ultimate destination. It is a question of fact and the court has to determine as to what is the destination. A man comes to hold that the place was the destination although it appeared that the journey was resumed subsequently. Merely passing through a place in course of journey does not amount to transporting.

It is a matter of common occurrence that intoxicants are in possession of various persons in the course of transit, from one place to another e.g. Cartman, ship owner, coolies and so forth such persons cannot be said to be in possession within Section 24 of the Act. Their possession is on behalf of another.

If the person possession opium does not carry it himself but entrust it to some other person for carriage in a car and that person carries the opium knowingly, then the driver of the car would be the person who directs him to do so would be abettor of the offence of transport. The occupants of such a car besides the driver can be said to have transported the opium only if it is shown that the opium in the car was in their possession so as to make them liable for the offence of possession. For them it can be said that they themselves transported the opium in the car.

**13. Mere transport of contraband article would be no offence.** - A person can be held guilty if it is shown that the person transporting knew that he was transporting contraband articles. The accused were caught transporting large quantity of illicit liquor in eight motor tubes by a motor car. The accused put forward a plea of innocence and did not account for their possession. All the accused were held guilty. Opium was recovered on search from a car during transport, all the occupants of the car must be presumed to commit an offence in respect of that opium unless they can show that they had a right to transport it in the manner in which they were doing.

**14. Transporting under a license in the name of other person.** - Accused was found in possession of prohibited article which he was carrying to the shop of the licensee. It was held that the person who did not had license in his name was rightly convicted. In the case of the licensee the only offence which was found to be proved was of getting the intoxicant transported through a disqualified person. For such an offence the penalty could be only of the cancellation of license.

**15. Transport - Transporter's knowledge is essential.** - Mere transport of contraband opium would be no offence. In order that a person be held to have committed the offence un-

der Section 9(b) of the opium Act there should be finding that he knew that he was transporting contraband opium. The transporting of intoxicating drugs to shop not covered by license is an offence unless bona fide.

The offence of transporting opium consists in moving opium from one place to another within the State in contravention of the Opium Rules. The possession of a person transporting opium may be temporary for the purpose of transport only. It is not necessarily the possession which constitutes an offence under Section 9(a) of the Opium Act. A person possessing opium may carry it himself or entrust it to somebody else for carriage. If a person possesses opium and carries it himself, he is guilty of both the offences of possession and of transport though by virtue of Sections 4 and 71 of the Indian Penal Code, he cannot be awarded separate sentences for the offences. If the person possessing opium does not carry it himself but entrusts it to some other person for carriage in a car and that person carries the opium knowingly, then the driver of the car would be the person who transports the opium and the person who directs him to do so would be the abettor of the offence of transporting. The occupants of such a car besides the driver, can be said to have transported the opium only if it is shown that the opium in the car was in their possession so as to make them liable for the offence of possession. For then alone can it be said that by using a motor vehicle for their own transport with opium in their possession, they themselves transported it.

**16. Transport - Mere passing through a place in course of journey.** - When the Act talks transport from one place to another it means transport from the starting point to the ultimate destination. It is a question of fact for the Court to determine what the destination may be. If a man comes to a place and stays there for an appreciable time - and what amounts to an appreciable time would have to be considered in relation to the purposes of the Act - the Court might hold that the place was the destination although it appeared that the journey was to be resumed subsequently. But merely passing through a place in the course of journey does not amount to transporting to that place.

**17. Transporting - Sending servant to sell.** - One having a license for the possession of opium as a medical practitioner, limited to eight maddams of opium, sent his servant to buy from licensed dealer at Sholavaram and bring it to Madras four maddams of opium; he was convicted of the offence of transporting opium without license. The conviction was held to be right. Ordering servant to carry arrack to another place amounts to transporting.

**18. Transporting - Taking opium from one district to another.** - The accused a licensed cultivator of opium was convicted under Section 9 of Act 1 of 1878 of having transported opium from Hoshiarpur to Jalandhar district, where he sold it to a retail vendor. In taking the opium from one district to another the accused must necessarily have transported it within the definition of Section 3 of the Act, and as under Section 9 no person can transport opium except in accordance with the rules and under the rules only a farmer, a licensed vendor, or a whole sale licensed vendor is entitled to transport opium, and further, a "licensed vendor" cannot be held to include a licensed cultivator, the accused was liable to punishment under Section 9 of Act.

**19. Transporting by a person under another man's license.** - A who was a debarred per-

son was found in possession of half a cake of opium which he was carrying on behalf of B to the latter's opium shop. When asked to account for his possession, he produced a transport license issued in the name of B who was a licensed vendor. In the conditions governing the sale of opium it was provided that "no person who has been debarred by the Collector from bidding at the sales of abkari or opium shops shall be employed in any capacity in connection with management or the working of shops or depots, licensed for the sale of liquor, opium or intoxicating drugs."

Held that those words were sufficiently wide to cover the transport of opium from one shop to another in accordance with rules; and as the permit which the debarred person A had in his possession was not issued in his name, his conviction under Section 9(b) cannot be assailed.

Held further that B committed a breach of condition 14 of his license by employing A as a servant to carry the opium from one shop to another, but as the rules stand, this was punishable only by cancellation or suspension of the license under R. 11 (b) or 21 of the Rules. B's conviction under Section 9(b) must be set aside.

**20. Transporting - Permit forged - Person acting under instructions of liquor licenses had no knowledge or reason to suspect permit forgery is not guilty.** - One F.C. was bringing 500 gallons of rectified spirit from Meerut to Punjab. He was traveling in a truck and was in charge of the load. The permit of the Excise and Taxation Officer was a forged document. On the strength of this permit the rectified spirit was purchased from the Central Distillery at Meerut and a regular transport pass was obtained from the Excise Officer. F.C.'s defence was that whatever he had done had been done under the instructions of one S.C.L. a liquor license at Ambala. It was proved that S.C.L. was present at Meerut on the day when the spirit was purchased and arrangement made for its transport to Punjab. There was nothing to show that F.C. knew or had reason to suspect that the permit was a forgery. Held, the F.C. was not guilty of an offence under Section 61 (1).

**21. Transport - Recovery of opium from car during transport.** - Where opium was recovered on search from a car during transport, all the occupants of the car must be presumed to commit an offence in respect of that opium under the Act, unless they can show that they had a right to transport it in the matter in which they were doing.

**22. Transporting - Consignment through Railway.** - Prohibited articles were consigned and were booked with the railway. It was held that the accused conspired with the railway company to carry those goods without a permit and was not guilty. It was held that he was not guilty even of abetment.

**23. Interception of packet during transit.** - Cocaine was dispatched from Germany in two registered packets. The contents of the packets were examined by the custom authorities and after the examination they were delivered to the person addressed. It was held that the act of the custom officials being authorised by the Customs Act and the Regulation made thereunder the article does not cease to be imported merely because it was intercepted in transit by the custom officials.

**24. Possession** - The term 'possession' as relevant under this section can be classified fur-

ther. Such clarification may be possible or necessitated by the situation, time, duty, profession etc. etc. Possession of intoxicants without due permission under the provisions of this Act is not per se punishable as an offence. Different situations relevant under this section may be classified as under:-

Possession by one community legal and possession by another community of the same articles illegal. This amounts to discrimination against community. Such provisions are hit by the provisions containing equality clause of the Constitution of India.

Possession does *not* mean only physical or actual possession but includes constructive possession also.

In order to decide whether a quantity of illicit liquor is in possession of the accused person, the courts have to consider not merely whether the article lying in the house of the accused person or at a place accessible to other, but a number of other circumstances the proof of which will persuade the court to come to the conclusion that the offending material was not in fact under the control and absolute domination of the person concerned. Recovery of illicit liquor from the field of another on information given by the accused would not amount to possession within the meaning of the Section 61 (1). Under the circumstances, it is probable that the accused gave information relating to liquor belonging to some one else and therefore, the accused could not be said to be in possession of such discovered liquor

Accused stated before Police that they had buried pitchers of lahan under trees in their family fields. Pitchers of lahan recovered. This was sufficient to establish the conscious possession of the articles in question and the accused were guilty of an offence under Section 61(1)(a) of the Excise Act.

Essential ingredient of offence. Accused found traveling in a car driven by his co-accused. Bottles of beer recovered by police from the dicky of the car. Dicky was locked and its key was with the driver. No evidence that accuse~ had any knowledge about existence of bottles of beer in the dicky. Charge quashed.

Illicit liquor recovered from possession of the accused in consequence of a disclosure statement. Prosecution story regarding disclosure doubtful. Exclusive possession of liquor with the accused not proved. Conviction set aside in revision.

**25. Possession is itself an offence - Onus to prove innocence is on the accused.** - In a case under Kerala Act which came before Supreme Court contention raised by the petitioner was that mere possession arrack or intoxicating drug without proof by the prosecution that it was mixed with noxious substance is *per se* arbitrary, unfair and unconscionable procedure violating Article 14 and 21 of the Constitution. It was further contended that the universal declaration of human rights, the civil and political rights, Convention to which India is a Member, guarantee fundamental freedom and liberty to an accused. The procedure prescribed for trial must also stand the test of the rights guaranteed by those fundamental human rights. In criminal jurisprudence, the settled law is that the prosecution must prove all the ingredients of the offences for which the accused has been charged with. The proof of guilt of the accused should be on the prosecution and be beyond reasonable doubt. At no stage of trial, the accused under an obligation to disprove his innocence. Supreme Court

held that it is true and in disputable that the golden rule that runs through the web of all the civilised criminal jurisprudence is that the accused is presumed to be innocent unless he is found guilty of the charged offence. The burden to prove all the facts constituting the ingredients of the offence against the accused beyond reasonable doubt rests on the prosecution. If there is any reasonable doubt the accused gets the benefits of acquittal. But the rule gets modulated with the march of time, whether the legislature could step in and provide exceptions, create offences and also place part of the burden of proof on the accused, where the facts are within his special knowledge or intention is locked up in the mind of the accused to prove the said facts is constitutional and violate fundamental human rights. Supreme Court further held that the question of intention bears no relevance to an offence under Section 57-A and equally of culpability or negligence. It is seen that mixing or permitting to mix noxious substance or any other substance with liquor or intoxicated drug or omission to take reasonable precaution or being in possession without knowledge of its adulteration for the purpose of unjust enrichment would be without any regard for loss of precious human lives or grievous hurt. The legislature has noted the inadequacy and deficiency in the existing law to meet the menace of adulteration of liquor etc. and provided for new offences and directed with mandatory language protection of the health and precious lives of innocent consumers. While interpreting the law, the court must be cognizant to the purpose of the law and respect the legislative animation and effectuate the law for social welfare. The legislature enacted deterrent social provisions to combat the degraded human conduct. These special provisions are to some extent harsh and are a departure from normal criminal jurisprudence. But it is not uncommon in criminal statutes. It is a special mode to tackle new situations created by human proclivity to amass wealth at the alter of human lives. So it is not right to read down the law.

**26. Prosecution to explain that articles recovered could be used for manufacturing intoxicants.** - Held, that the Excise Officers must explain to the Court that the articles recovered from the accused could be used for the purpose of manufacturing illicit liquor or other cants. In the instant case, some spirit in a tin was recovered. The P.Ws stated in Cross-examination that spirit could be used for lighting stoves and lamps. None of the prose witnesses stated that the articles recovered could be used for manufacture of intoxicant. Therefore, the conviction of the accused under Section 61 (1)(c) cannot be maintained.

**27. Possession should be actual and conscious.** - To constitute criminal liability, possession of incriminating article must be actual and not constructive. Possession of incriminating article of which a man is not conscious, cannot constitute an offence.

Illicit liquor in rubber tube packed in gunny bags found in a Car in which the petitioner sitting. Car was owned and driven by somebody else. Petitioner had no connection with the alleged offence nor any such evidence was brought on the record of the case<sub>3</sub> to connect petitioner with the offence. Non-conscious possession. Petitioner acquitted.

**28. Conscious possession.** - Illicit liquor recovered from bed room of father of accused Cannot be said that accused was in conscious possession of liquor - Accused rightly discharge by *Magistrate.state of Hmyana v. Chander Mohan, 2001 (2) RCR(Criminal) 63(P&H)*

Recovery of Charas - It has to be established that accused were in conscious possession of Charas - In the instant case Charas was found from car near driver and co-accused - Held were in conscious possession - Conviction upheld. 1976 P.L.R. 288 and AIR 1979 SC *relied.Raj Kumar v. State of Haryana, 2000(3) RCR (Criminal) 344(P&H)*

Recovery of rectified spirit from rear portion of motor car. Held, accused was in conscious possession of spirit.

Recovery of illicit liquor. Conscious possession. Recovery of rubber tubes from a car in which accused was traveling. Tubes were quite heavy and big objects. Cannot be said accused was not in conscious possession of illicit liquor.

In the absence of any indication to the contrary in the Abkari Act, the word 'possession' its ordinary meaning. Where a person is transporting any excisable article, he is also in possession of the same within the legal meaning of the term.

Where a dagger was found in a room in a house jointly occupied by the father and his son, but there was no evidence to show that either of them was aware of its existence, it held that neither of them could be convicted of an offence under section 19 of the Arms Act. The principle would apply equally to Excise cases.

In prosecution for possession of an excisable article under this section it is necessary to prove that the accused knew or had reason to believe that the excisable article was unmanufactured or to set up circumstances for which a presumption of such knowledge or belief may be presumed.

Accused stated before police that they themselves had buried the pitchers of lachar trees in their family fields. Pitchers recovered in consequence of these statements. This held sufficient to establish their conscious possession of the incriminating article to justify conviction under Section 61(1)(a) of the Punjab Excise Act.

In order to establish an offence under Section 37, it is necessary that the guilty knowledge or belief which is an essential ingredient of the offence should be included in the particulars of the offence stated to the accused and proved at the trial.

**29. Knowledge of possession - Karta of Joint Hindu Family** - Possession without knowledge is not actionable (For practical and legal purposes knowledge means the state of mind entertained by a person with regard to existing facts which he has himself observed or the existence of which he has been communicated by persons whose veracity he has no reason to doubt).

In the absence of accused, Karta of joint Hindu family search was made and keys of the premises were received from his brother. If there is no evidence to show that the accused was aware of the existence of intoxicant, he cannot be held to be in its possession.

Actual knowledge may also be inferred circumstantially from the fact that a party had reasonable means of knowledge. A person is said to have notice of a fact when he actually knows that fact or when, but for willful abstention from inquiry or search which he ought to have made, or gross negligence he would have known it. (Section 3 of Transfer of Property Act, 1882).

**30. Possession - Constructive possession.** - The doctrine of constructive possession must be very cautiously applied especially in the department of criminal jurisprudence.

The word "possession" means actual possession only and not constructive possession. It is only people who are actually in possession of contraband liquor without license who can be punished under the Act. The mere fact that Bhang was detected in a house which the accused occupied with his residence does not make him guilty unless there is evidence that he brought and kept in the house.

**31. Possession,- Knowledge is essential.** - The word 'possess' in Section 9 Opium Act connotes some sort of knowledge about the thing possessed. So we have to determine what is meant by the word 'possess' in Section 9 of the Opium Act. The question is whether the possessor of a parcel is necessarily in possession of everything found in it.

The word 'possess' is not crystal clear. There is no clear rule as to the mental element required. It is necessary to show that the accused had the article which turned out to be opium. In other words, the prosecution must prove that the accused was knowingly in control of something in circumstances which showed that he was assenting to being in control of it. It is not necessary to show in fact that he had actual knowledge of that which he had.

Knowledge is an essential ingredient of the offence as the word 'possess' connotes, in the context of Section 9, possession with knowledge. The prosecution need not prove that the accused was knowingly in possession.

**32. Possession - Mens rea essential.** - The word possession and control means something more than mere constructive or legal possession and control. Possession and control required to constitute offences must mean conscious possession and actual control.

As the possession of incriminating article constitutes serious criminal offences there must be mens rea or guilty knowledge before a person can be convicted of such possession. Consequently where incriminating articles are recovered from a place in the occupation or possession of more persons than one and it is not possible to fix that liability on any particular individual, a Court is not bound to hold that the said articles are in possession or control of the head of the family.

The full bench judgment of the Lahore High Court is under the Indian Arms Act, as well as, under the Explosive Substance Act, but the principle laid down in the full bench is applicable also to cases under the Punjab Excise Act. This full bench judgment has overruled 1930 Lahore 884 which was a case under the Punjab Excise Act laying down that where illicit liquor is found in a room occupied by the son for sleeping the legal possession remains with the father as house master and the son does not become guilty merely by sleeping there.

In order to sustain a conviction under Section 19(f) of the Arms Act on the ground that the accused was in possession of unlicensed arms or ammunition, must be shown that his possession was a conscious possession accompanied by the necessary mens rea or intention to possess them and with intent to protect them against others. There must be mens rea and 'animus' accompanying possession.

Under Section 19(f) Arms, Act, possession or control of any arms without license is an offence. Possession as a test or an element of a crime must be of such character as can relate to the fundamental principle of mens rea in criminal jurisprudence. The animus must be there and the mens rea must be there unless these notions are specially excluded by any statute under consideration. They are basic tests which must be satisfied before a person can be said to have committed a crime whose basis is possession. It is this element of intention or consciousness or knowledge which must be established and must be present as a fact before possession under the Arms Act can be said to constitute an offence. It does not matter whether such possession is actual or constructive or physical or mediate or immediate or direct, indirect or exclusive or joint or concurrent. Corpus without the animus is ineffective. It cannot be said that the wife's possession is the husband's possession unless such possession also satisfies the above test of criminal jurisprudence relating to the theory of possession. Where the place in which an article is found is one to which several persons have equal right of access it cannot be said to be in the possession of anyone of them.

**33. Possession in excess** - A person in possession of liquor in quantity in excess of the quantity stipulated in the license would be committing an offence.

Section 3(1)(4) of the Excise Act, 1896 provides quantity of liquor which can be possessed by a licensee. Therefore, the licensee can possess the quantity only prescribed in his license. If he is in possession of more than the prescribed quantity of the liquor license granted to him, he is liable to be punished under Section 61 or any other law in this behalf.

Even a licensee in possession of excess of the quantity of the liquor prescribed in the license granted to him and also outside the premises for which license has been granted is also punishable under Section 61 of the Punjab Excise Act, 1940 for the contravention of the provisions of Section 24(3) of this Act.

When admittedly a prohibited article under the Act has been found in possession of the accused then the accused are to prove that they had sufficient reasons for being in possession of the said prohibited article

Prohibited Articles found in the joint Hindu family house. Joint Hindu family consisted of two brothers. Both the brother must be presumed to have knowledge of possession of the prohibited articles.

Possession of prohibited articles by the accused must be proved for inferring presumption of guilt against them. A person in occupation of a house cannot be presumed to be in possession of all the articles within his knowledge unless it is proved that the fact of possession of prohibited articles was within his knowledge

**34. Possession by consignee of railway receipt - Parcel containing contraband opium lying undelivered in railway office.** - A railway receipt which covered a parcel of opium was issued to the possession of the accused. There was also found in his possession a letter addressed to him advising him of the dispatch of the parcel.

Held: (per **Richardson, J.**) - That as the accused knew that the parcel sent to him contained opium, the possession of the railway receipt constituted possession of the opium within the meaning of Section 9 of the opium Act.

Held: (per **Shamsul Huda, J.**) - That, although under the circumstances of the case, it was doubtful whether the accused was guilty of the offence of possession of opium under clause (c) he was clearly guilty of the importing of opium under clause (e) of Section 9 of the Opium Act.

**35. Possession during transit on behalf of others.** - It is a matter of common occurrence that toxicants are in possession of various persons in the course of transit from one place to another e.g. cartmen, ship-owners, coolies and so forth. Such persons cannot of course be said to be persons with possession within Section 24 of the Act. It is, therefore, reasonable to hold that the person in possession contemplated by that provision is one who is in possession of the toxicant on his own behalf, and not one who is in temporary custody or charge of the same on behalf of another in the course, and for purposes of transit. What is such temporary custody or charge depends upon the facts and circumstances of each case, so that what is temporary custody or charge on behalf of another person initially may be converted into illegal possession at a subsequent stage. This may, for instance, take place where a person initially in charge of the intoxicant on behalf of another person in the course, and for the purpose of transit detains the consignment longer than necessary for transmission or for a purpose unconnected with the transmission.

Possession of intoxicant in transit by a person not on his behalf but for purpose of transit to destination for 10 days was held not unreasonable, considering the tardy nature of communication and long distance to be covered. The possession did not, therefore, become illegal merely because of the long period.

**36. Possession - Endorsement on Railway receipt.** - A railway receipt may be a document title to goods, but an endorsement may therefore, authorise the possessor of the

document receive goods referred to therein. But an endorsement on the R.R. need not always amount transfer of the property in the goods. The endorsement does not mean that the accused was possession of the goods. It only conferred on the accused a right to take possession.

**37. Possession of Lahan is an offence.** - Lahan is the substance out of which alcohol is distilled and if the person who possesses any quantity of this substance has no license for distilling Alcohol, its possession is a criminal offence under the Excise Act, although Lahan may not in itself be an intoxicating substance, is particularly if it recovered before the process of fermentation has had time to take effect. It is open to the Government to include, lahan as such falling with in the term liquor and thereby to make its possession without a license an offence under the Excise Act, "Lahan" is lahan, once the ingredients have been mixed whatever stage the process of fermentation may have reached.

If all the ingredients of lahan are present mixed in the vessels recovered from the accused or in other words the mixture is ready for the fermentation which would inevitably follow, it is immaterial whether the ingredients have been mixed sufficiently long for the process of fermentation to have advanced very far or not at the time of the recovery, in order to sustain conviction of the accused under Section 61(1)(a) of the Punjab Excise Act.

**38. Possession utensils and articles merely smelling liquor.** - The accused persons were alleged to possess liquor and when the police party entered the house after breaking open the doors, some liquid was found flowing inside the house and there was much smell of liquor. Merely from the smell of the instruments and utensils, it could not be possible to say that the articles seized contained liquor or that the accused were in possession of the liquor.

**39. Possession of arrack - Strength reduced owing to natural causes.** - Where the strength of arrack is reduced owing to natural causes while the seals are intact, no offence is committed by possessioning the arrack ..

**40. Possession of mhowra flowers.** - The accused consigned certain mhowra flowers for conveyance to another place and the railway company took these goods in the course of the conveyance to a place in the prescribed area within which even the possession of mhowra flowers without a permit was unlawful. The applicant was not guilty of the possession of the flowers, and in the absence of any evidence that he conspired with railway company to carry these goods without a permit, he was not guilty even of the abetment.

**41. Possession of denatured spirit** - A person in possession of liquor a valid permit issued of another person cannot be said that the person was in possession without authority of law.

Where a person is found in possession of denatured spirit the case would be covered by Section 61 and not by Section 63

Thus where a large quantity of denatured spirit was found in possession of the accused they were rightly convicted under Section 61 (i)(a). It was observed that the denatured spirit being a liquid containing alcohol is an intoxicant falling within the mischief of Section 61 of the Act.

**42. Possession - Actual control of the accused to be proved.** - In order to decide

whether a quantity of illicit liquor or illicit arm is or is not in possession of the accused person, the courts will have to consider not merely whether the article is lying at the house of the accused or at a place accessible to others, but a number of other circumstances, the proof of which will persuade the court to come to the conclusion that the article was in fact under the control and absolute dominion of the person concerned. Recovery of illicit liquor from field of another on information supplied by the accused - several persons distilling liquor in that village and this fact known almost to all villagers. It was probable that the accused gave information relating to liquor belonging to some one else and therefore accused could not be said to be in possession of that discovered liquor. The fact that a man buries an article in his own kotha shows that he retained control over it and therefore, the article must be said to have continued in his possession.

**43. Possession must be of prohibited article.** - Accused convicted of having been in possession of 40 bottles of tincture Zingiberis - No proof on record that what was found in his godown was tincture Zingiberis. Conviction could not be maintained.

**44. Possession of illicit liquor when not proved.** - Two bottles of illicit liquor were recovered from a sweet meat shop kept by the accused who were father and son. The portion of the shop from which the bottles were recovered was accessible to the public. At that time the father was absent from the village and returned several days later. The son was not shown to be a drinker or to be selling liquor from the shop. It was held under the circumstances that the possession of the illicit liquor was not brought home to the accused and that they were not guilty.

**45. Temporary Possession** - What is temporary custody or charge depends upon the facts and circumstances of each case. When a legal possession should be converted into illegal possession. Possession of intoxicant in transit by a person not on his own behalf but for the purpose of transit to its destination. Possession for 10 days during transit was held not unreasonable. It was held that the possession did not become illegal merely because of the long period.

**46. Possession not to be presumed.** - When a person is prosecuted it is for the prosecution to prove beyond reasonable doubt or at any rate up to a high degree or probability that the article had been kept where they were found, by the accused or with the knowledge. Although it may be presumed that the accused has committed an offence in respect of any excisable article etc. for the possession of which he fails to account satisfactorily, yet before the presumption can arise possession itself must be proved. The section does not say and does not mean that possession is to be presumed.

Conviction of accused is illegal when no legal evidence to show that it was his house from which non duty paid article was recovered.

When it appears that the Courts have shown a great tendency to treat mere inferences and probabilities as proof, and evidence has not been properly weighed, the Court will interfere in the interests of justice.

In order to raise presumption of guilt against an accused it must be established/proved that he was in possession of an intoxicant. A person in occupation of a house cannot be

presumed to be in possession of every thing found in the house. Where a person who was of a different caste and had no relation with the occupants of the house where the intoxicants were found concealed, it was held that it was possible that the person might have brought the intoxicants in the house and concealed them without the knowledge of the occupants about it.

**47. Possession and sale in contravention of license.** Accused granted license to sell liquor - Accused, however, selling liquor from an unapproved site in contravention of Haryana Liquor License Rules, 1970 - FIR under Section 61 of Excise Act - According to accused no offence was made out under Sections 61 and 65 of Excise Act - No ground to quash the FIR - As to whether the possession and sale of Liquor by Licensee at an unauthorised point makes the possession and sale of liquor an offence under Section 61 of Pan jab Excise Act or it is a contravention of the terms of license and is not so punishable can be urged before trial court. 1991(3) R.C.R. (Criminal) 383 (SC).*M/s Goyal and Co. v. State of Haryana* 1997(2) *RecentCR* 585(P&H)

**48. Conviction where contents of bottle not properly sealed and so could be changed.** - Where the contents of the bottles found in the possession of the accused could have been subsequently changed and from the circumstances of the case it cannot be said that accused was in possession of illicit liquor, a conviction under Section 60( a) cannot be sustained.

Petitioner found in possession of illicit country liquor. Sample of liquor sent to Chemical Examiner. No evidence to show that the sample was handed over to Chemical Examiner who had analysed the sample. No evidence of any other person to whom the sample packet was delivered in the office of Chemical Examiner and it remained intact. Petitioner acquitted.

Pitcher containing lahan handed over to Head Constable. Head Constable not examined. Nor affidavit filed to show that so long the pitcher containing lahan remained with him was not tampered with. Link evidence not complete. Accused acquitted. Held, that it has been maintained that Sub-Inspector handed over the pitcher containing lahan with the Moharrir Head Constable on the same day with seals intact and that the seal after its use was retained by him. Neither the Moharrir Head Constable was examined nor his affidavit was filed to show that so long the pitcher containing lahan remained with him was not tampered with. The inevitable effect of this omission is that the prosecution failed to rule out the possibility of the pitcher containing lahan being changed or tampered with till the time lahan was tested by the Excise Inspector. In the circumstances link evidence not being complete the petitioner has to be acquitted.

Recovery of seven bottles of illicit liquor by Police. Sample sent to Public Analyst. No evidence to prove that case property remained intact from time of its seizure until it was delivered to public analyst. It is incumbent upon prosecution to prove that sample was du1Y sealed and was not tampered with by anybody. Accused acquitted giving benefit of doubt.

**49. Recovery of lahan in premises - Easily accessible - Whether owner guilty?** - The finding of articles suggesting illicit distillation in a place easily accessible, such as an ordinary cattle-shed, which usually remains open and is situate outside the village is not sufficient for convicting the owner of the shed under Section 51 of the Act XII of 1896, particularly where the search was made at the instigation of the pers9fs's enemy, and no other incriminating ar-

ticle was found in any part of his dwelling house.

Where some articles which might have been used for distilling country liquor were found in the yard of an unoccupied house adjoining that of the accused over which the accused had no control and the place could be reached from outside and the accused was convicted of an offence under Section 45 of Act XII of 1896.

Held, that the conviction must be set aside.<sup>5</sup>

**50. Possession - Joint Possession or Exclusive possession.** - When it is sought to establish that possession and control of a place are with some member of the family other than the managing members, there must be good and clear evidence of the fact before the Court can arrive at such a conclusion.

**51. Possession by two brothers.** - Where illicit liquor is found in a house which is occupied by two brothers, the presumption is that elder brother was in possession of the liquor.

Where the 'haveli' from where the illicit liquor was recovered, was owned and possessed by the accused and his four brothers the fact that the accused knew that the illicit liquor was there in the haveli alone was not enough to say that he was in possession thereof.

**52. Possession by husband and wife.** - Where liquor, and apparatus of manufacturing it, are found in a house which is the joint occupation of husband and wife, but which belongs to the husband, the latter alone must be regarded as being in possession of the articles. The wife in such a case is not guilty of an offence under Section 61 of the Punjab Excise Act.

The production of stolen property by the wife from the house in which both the husband and wife were living cannot warrant the conviction of the husband.

**53. Brothers serving in a shop where cocaine found.** - Where cocaine was found in certain pots containing grain in a banias shop where accused both brothers were serving habitually. Held both liable as both must have been daily handling the said pot and so must have been aware of the existence of cocaine.

**54. Visitors found sitting round cocaine in accused's house.** - Accused alone is guilty. The accused and three other persons were found sitting round a fair quantity of cocaine in a house. The cocaine as well as a pair of scissors and paper were lying on the ground before them. One of the three persons was not an inmate of the house and the remaining had come from some other places. The house had been leased to the accused. It was held that under these circumstances accused alone should be held to have been in possession of the cocaine.

**55. Presence of accused at the spot and found working the still accepted. Question of possession no longer important.** - If the prosecution story of the presence of the accused at the spot when he was found working the still is accepted then the question of the possession of the precise place, where the still was being worked, loses importance.

**56. Joint owners of distilling apparatus liability.** - The mere fact of a person being a joint owner of a house and field in which illicit liquor and distilling apparatus are found, without anything further to connect him with the illicit distillation, is not sufficient to warrant his conviction under Section 61.

**57. Accused not in exclusive possession of house.** - Where it cannot be said that the accused was in sole possession of the house wherefrom the incriminating articles (liquor and other articles) were recovered and it is clear that when the recovery was made, the accused was sleeping and it is not clear that the accused was in charge of the incriminating articles at the time when they were recovered, and the possibility of some one having started the still cannot be ruled out especially when there were other persons besides the accused living in the house, the accused cannot be convicted under Section 48.

**58. Owner of the house where liquor is brought.** - Bringing of liquor by A to B's house does not make B a joint possessor nor can the latter be said to have joined in the sale if he asks A to bring the bottle and hand them or the money to him.

**59. Manager present at the time of search - Guest - Liability.** - Where at the time of search of cocaine a person, not an inmate of the house, and two persons of a different station were found present on the premises searched, none can be convicted for being in unlawful possession of cocaine found in the premise's in contravention of the provisions of Excise Act. The person residing in the house cannot be exonerated on the ground that it cannot be said which of the persons present was in possession. It is not a case of joint possession.

**60. Ownership of house is no test of possession.** - The ownership of the house is not an

essential element but the nature of the occupation of the house might and often is a circumstance of to very great importance in estimating whether the particular accused possesses the excisable article. Where three men, two of whom were brothers and third their cousin, were in occupation of house, in which on search cocaine was discovered and they were carrying on the same business and set up same defence. All were held to be liable.

The mere fact of a person being a joint owner of a house and field in which illicit liquor and distilling apparatus are found, without anything further to connect him with illicit distillation is not sufficient to warrant his conviction under section 61 of the Excise Act. Where any incriminating article is found concealed upon premises which, though legally joint family property, were in fact in exclusive possession and control of the accused at the time of search, the accused alone can be held guilty of being in its possession.

**61. Joint family of several member male and female.** - When in a house occupied by several male and female members of a joint family a locked box containing stolen property was found of which the key was produced by the wife of a member who was not in the house then. Held, that from the mere fact of the actual possession being with the wife it cannot be presumed in every case of this kind that possession of the wife was per se that of the husband. There must be something more to connect the husband with the possession.

Where a man furnishes a house for his mistress occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in possession or his mistress on his behalf. But the inference must be inapplicable to articles of which the mistress is in possession illegally or contrary to the provision of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress's possession.

**62. Recovery from kitchen of hotel and from manager's table.** - The liquor found from kitchen of a hotel cannot be said to be in possession of the manager of the hotel unless the prosecution could prove that it was kept there by order of the manager. But where whisky is recovered from the table of the manager in the hotel premises, it cannot be said that he had no knowledge of the fact that it was kept in his drawer within the hotel premises. He can thus be rightly held to be in conscious possession of the incriminating article.

The possession of an intoxicant in contravention of the Act or of any Rules, notification or orders made or issued under the Act, is an offence under the Act and if the owner or occupier allows the use of the building for storage of these incriminating articles he would be guilty. In order, therefore to convict the owner of hotel under that section, it was not only necessary to prove that he was the owner of the hotel, but it was further necessary to prove that he knowingly permitted the building to be used for the commission of an offence. Where a large quantity of intoxicant was recovered from the kitchen of a hotel, in the absence of any evidence to establish that there was some sort of implied consent by the owner to carry on that activity in the hotel premises it cannot be said that the proprietor permitted the hotel building to be used for such illegal purposes.

**63. Articles found in kothris occupied by three persons - All liable.** - Things used for the illicit distillation of liquor were found and the illicit distillation was being conducted in the

kothris occupied by the three accused persons. The articles found were of such a nature that they obviously could not escape the notice of the occupants. The pitchers, canisters, the drum of wash, were large articles which anyone, merely entering kothris would be bound to see. The distillation of liquor was accompanied by a characteristic smell which also could not escape notice. The articles found were such that they must have been with in the knowledge of the accused, who were occupying the kothri and the articles were being used by them. The accused were thus guilty.

**64. Small room in joint occupation of brothers.** - When cocaine and weighing machine and packing materials are found in a small house occupied by joint brothers, both must be supposed to have knowledge of dealings with cocaine. One brother could not possibly carry on the business without the others knowledge in such a small confined room. Onus, would be on person in possession of cocaine to prove satisfactory reason for being not in possession of cocaine.

**65. Punjab Police Rules, Rules 27.7 and 22.15** - Recovery of case property (Illicit liquor) - Under rule 22.15 it is responsibility of Officer- in-charge of Police Station to examine the property twice a month - Under Rule 27.17 it is his duty to maintain the property till final orders are passed - Recovery of illicit liquor - Leakage of liquor - Case property not produced in court - Accused acquitted. *Partap Singh v. State of Haryana* 1997(4) RCR (Criminal) 401 (P&H)

**66. Illicit liquor produced by son when father present at search.** - Where on a search the son produced key of the box in which a bottle containing illicit liquor was found, but at the time of the search the father was not present. Held, that before a presumption could be raised that this bottle was in the joint possession of both the son and the father it was incumbent upon the Crown to prove that both of them had either physical or constructive possession of the contraband liquor, or if the son had such possession that he had it on behalf of himself and to the knowledge of the father.

**67. Three brothers belonging to joint Hindu family** - Bottles containing liquor found in god own owned by them - Joint illegal possession. - In order to convict a person of illegal possession of contraband liquor it is necessary for the Crown to prove that he had knowledge of his possession, and a person who was unaware that it had been placed in his custody cannot be convicted. The mere fact that the three brothers belong to a join Hindu family, and as such own the godown in which the bottles containing the liquor are found concealed does not in a charge under Section 43(A), Bombay Abkari Act, prove that anyone of them was in conscious possession of the bottle lying there so as to bring them within the preview of Section 53. In such a case it is incumbent upon the Crown to prove: (a) that each of the accused had either physical or constructive possession of the property in question; (b) that one or more of them had possession thereof either physical or constructive on behalf of themselves and the other accused and to their knowledge.

**68. Exclusive - Possession if necessary to justify conviction.** - The accused lived jointly with his two brothers in a clump of huts. All the three huts that were there, the middle one was occupied by the accused with his family, the two adjoining huts by his two brothers and their families. At the back of the huts there were some fields joint cultivated by the brothers.

In each of the three huts were found articles which suggested that the inhabitants were or had been in possession of illicit liquor and in the fields were found some bottles containing liquor and tins of jaggery wash intended for preparation of illicit liquor. Held, that the only reasonable inference which could be drawn from the possession of these articles would be that the accused or the accused and his brothers were manufacturing illicit liquor, and that the possession of these articles, which could not be explained on any other hypothesis was for the purpose required by Cl (h) Section 43, Bombay Abkari Act. The fact that the evidence of possession would tell with almost equal force against the brothers of the accused was no ground for holding that possession has not been proved against the accused himself. If the evidence as to possession is adequate in the case of accused, it does not assist him at all to say that on the same evidence other persons might have been tried and convicted along with him.

**69. Defence charge of being in possession of opium greater than licensed capacity. -**

The defence to a charge under the Opium Act, of being in possession of a greater quantity of opium than allowed by law, that other persons living in his house also consumed opium is of no avail, unless it is conclusively shown that the possession of the accused was the joint possession of himself and others and that he held on behalf and for the use of all.

In a case where I seer 11-3/4 chittacks of liquor, being a mixture of spirit and lahan was found in the house of the accused in which house his son also resided and where it was impossible to say how much lahan was mixed with the spirit owing to an accident in distillation. It was held, that the accused has rightly been convicted by the Magistrate. In the absence of proof of a joint possession, the possession must be deemed to be that of the accused, the owner of the house, the presence of a son making no difference, as it was not proved that the son had joined in the purchase, or the liquor had been held jointly with him and that the whole of the liquor was country spirit within the definition of Section 3(1)(i) of the Excise Act, the fact of lahan being mixed with lit making no difference, as the whole was liquor containing alcohol obtained by distillation.

Where the accused was charged with having more than one tola of chandu in his possession in contravention of the Rules under the Opium Act (1 of 1878). He did not deny that 2-1/2 tolas were found in his house, but his defence was that there were four other inmates of the house, and that they all smoked chandu. The Magistrate convicted the accused, but the Sessions Judge, on appeal, acquitted him on a finding that there were three other inmates of the house who smoked chandu, and that therefore, the amount in the possession of each was less than one tola, the amount allowed by law. An appeal was preferred on behalf of Government to contest the correctness of the legal consequence which the Sessions Judge held must follow his finding. It was held, that accused had rightly been convicted by the Magistrate and that his acquittal by the Session Judge must be set aside.

*Roe, CJ.* - Accused had not proved that as a matter of fact a certain number of persons living in one house had joined in the purchase of the drug, and that it was actually held by one for the use of all.

*86. Frizelle, J.* - As it is the possession of more than one tola of intoxicating drug that constitutes the offence, and not the amount that the person in possession may himself own, ac-

cused had been rightly convicted on the ground that he was in possession of 2 1/2 tolas, although there may have been three other persons each using a fourth of it, and accused's own share may have been only a fourth.

The accused were all caught in one sampan, and in the sampan were found thirty-six quarts of kazaw-ye in nine bundles of four bottles each. Conviction of them all, on the ground that they were in joint possession of thirty-six quarts was held bad.

The Excise Act prohibits the joint possession by several persons of more spirit of fermented liquor than may be sold retail to one person. If two persons, having each bought 4 quarts of liquor, put it together and carry it home, each of them is in contemplation of law in possession of the whole.

**70. Two accused riding a camel loaded with contraband liquor.** - The two petitioners were riding a camels on which was loaded contraband illicit liquor. They were hauled up in a picket of them one was convicted under Section 61(1)(a) of the Punjab Excise Act and on account of previous conviction sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 400 or in default to undergo rigorous imprisonment for a further period of six months. The other culprit, was convicted under Section 61 (1)( a) of the Punjab Excise Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 200 or in default to undergo rigorous imprisonment for a further period of the three months. A point of law was agitated before a single judge of this Court in the first instance. On reference it had been found by a Division Bench of this Court that the rule obtainable in joint possession was also available in the instant case, where two petitioners were riding the camel and from camel back illicit liquor had been recovered. For ascertaining culpability it is necessary to prove that either or both of the petitioners were in conscious possession and control of the illicit liquor recovered. In this case it was not proved that the petitioners were unconscious possession or control of the liquor nor could they be convicted as carrier as there was neither charge nor evidence. The conviction could not be maintained as no independent evidence was produced though available.

**71. Joint possession-Proof of Mens rea.** - The possession or control might well be possession or control of two or more persons. Every case depends upon its particular facts. The courts must consider each case and come to a conclusion whether it is proved that the incriminating article is in the possession or under the control of more than one person. If on the evidence the Court, cannot hold possession or control by any person or persons, then the case is not established.

Where therefore, the evidence was conclusive on the point that two persons know where certain sten-gun was and they could have restored to the place without let or hindrance and taken out the gun whenever they wanted to use it and the condition under which it was recovered further showed that it was kept and secreted with care and mens rea was also there. *Held*, that a case under Section 19( t) of Arms Act was made out against both the persons and that they were rightly convicted.

Where a house or place is jointly occupied by several persons or several persons have access to it and there is nothing on record beyond the fact that articles have been found from

such house or such place, none of such persons can be convicted. Even knowledge of the fact that the article is lying in the house is not sufficient to sustain a conviction unless the 'animus' or the will to possess or control is established against the persons sought to be made liable.

**72. Possession of key.** - Where an unlicensed pistol is recovered from a flour mill of which the key was supplied by A it cannot be said positively that A was in conscious possession and actual control of the pistol when there were 3 persons including A working at the mill. Possession of key of box tends to show that accused must have given knowledge of the arms inside and hence is sufficient. possession for purposes of the Act. .

Where the convict was found sleeping in front of his cattle house and himself produced the key with which the lock of the cattle - house containing lagan was opened. He was deemed to be in the exclusive possession of the cattle- house and lagan which was recovered from inside ..

**73. Possession of unauthorised person.** - A licensed vendor of liquor, who had gone to attend a marriage, sent a ruqa by the hand of accused, one of the guests present, authorising his assistant at his liquor shop to deliver to accused 8 bottles of liquor. The accused was arrested with the liquor and convicted of an offence under Section 61(1)(a) of the Punjab Excise Act.

Held that, as under Government Notification No. 840, dated 12th June 1915. The licensed vendor himself was not entitled to possess 8 bottles for sale or to present them to the marriage party without a pass, the accused could not legally be in possession of the liquor on his behalf and his conviction was therefore correct.

**74. Possession of agent - Possession of liquor bottles on behalf of a person not entitled to possess it amounts to offence.** - The notification makes incumbent to obtain a pass from the District Excise Officer in order to possess liquor upto 10 gallons for purposes of marriage or like festivities. The Notification covers the case of a liquor contractor who also would be guilty of disobeying the provisions of the notification must more than the person acting on his behalf.

Recovery of 360 bottles of country liquor from accused - Accused had no permit - Contention of accused that he was a labourer and cart driver and carried the liquor at the behest of a contractor - Contention repelled - Accused should have been vigilant enough and not to carry the liquor without valid permit.

Where coolies were engaged in the preparation of ganja beedies at the instance of their master, it was held that they could not be said to be in possession of beedies.

A labourer found carrying a bedding which contained ganja was convicted. It was held, that the mere fact that the applicant was carrying the bedding was not sufficient to impute knowledge of the contents of the bedding to him.

**75. Possession of illicit liquor and apparatus for manufacturing are distinct offences.** - The offence of possessing illicit liquor is not necessarily covered by the offence of possess-

ing the apparatus for manufacturing such liquor. The two offences are quite distinct. If the accused is guilty of both the offences he can be convicted separately for each.

**76. Discrepancy in witness account.** - Recovery of Lahan - One of the witnesses stated that 50 Kgs. of Lahan was recovered - Other witness stated that quantity was 100 Kgs. - No ground to acquit the accused - Discrepancies are bound to occur when P. W s. come to witness box after long *time*. *Anokh Singh v. State of Punjab, 2001 (2) RCR(Criminal) 337(P&H)*

Recovery of working still- Case based on testimony of official witnesses - Material contradictions in their statement - Even if testimony of witnesses had been recorded 2/3 years after the occurrence, a human being has photographic memory and can very easily give details of official duties performed by him if they had been actually performed in the given manner - If they contradict each other it may result into the doubt - Benefit of doubt must go to *accused*. *Baljeet Singh v. State of Haryana, 2000(3) RCR (Criminal) 350(P&H)*

**77. Different excisable articles found in possession** - Liability only if prescribed limit exceeded. - Where the limit prescribed is for each kind of excisable article separately, there is nothing to prevent the possession of each kind of article upto the limit prescribed, although if a person possess two or more such articles the total of all may exceed the prescribed limit of each. The possession of more than prescribed quantity of each article does not make up one offence. Each kind of excisable article must be considered separately, when different kinds of liquor are however seized together, it is undesirable that more than one punishment should be inflicted.

A person cannot be convicted under Section 47(a), Bihar and Orissa Act when the weight of the packet of ganja along with the papers in which it is wrapped exceeds three tolas, as it is in such a case, impossible to know what the actual weight of the ganja is.

**78. Accused transporting illicit liquor at night - Inference of possession.** - Four accused were caught transporting a large quantity (95 gallons) of illicit liquor in eight motor tubes by a motor car at 1 A.M. in the night. The accused put forward a false plea and did not account for possession of the liquor. It was held that on the facts and circumstances of the case, all the accused must be held to have been in possession of the illicit liquor. Possession is a matter of inference to be deduced from all the circumstances of a given case and the circumstances in which the accused were caught were such that only one inference was possible, namely, that all the persons found seated in the car at the time the car stopped and searched, were in possession of the contraband article. The accused were, therefore, guilty under Section 31 in view of presumption under Section 38.

**79. Sale of wine in retail by a wholesale licensee is an offence.** - The offence of selling wine retail by a person who is only a wholesale licensee is an offence of a like nature to that of selling wine without a license at all, within the meaning of the term "like offence".

**80. Restaurant keeper procuring liquor for customer.** - A restaurant keeper, who holds no license for the sale of liquor and who, to oblige a customer, procured for him a bottle of beer from a liquor shop, cannot be convicted under Section 30(b) of the Burma Excise Act of

selling liquor without a license.

**81. Sale at a place other than licensed.** - Where a license holder for sale of the liquor sells Government licensed liquor at a place other than one specified in his license, he is guilty under Section 47(a) of Bihar and Orissa Act and the same will be offence under Punjab Excise Act.

**82. Selling and possession whether distinct.** - Possession is not a necessary part of element of the sale of an excisable article and on the same facts an accused person may be convicted of possession of an excisable article and at the same time of selling such article or part of it. But the question whether a conviction should in any particular case be under both charges or not must depend upon the particular facts of that case. Where the possession was only for the purposes of the sale and there was no evidence to prove that the accused or any of them had any prior possession of the excisable article. *Held*, that the facts were not sufficient to base a conviction for such prior possession against either of them in addition to a conviction for selling.

Under the exception to rule 27 it is permissible for the licensee of a bar to allow another person to conduct sales without previously submitting his name to the Collector for approval. Therefore, such a person as the contractor of the bar can sell liquor to person visiting the bar, and it cannot be said that his contract for the purchase of liquor was unlawful on the ground that he did not hold a license to sell retail liquor.

**83. Cultivation.** The onus of accounting for possession of a ganja plant is not on the accused. It is the prosecution that must prove that he cultivated it. '

Where there was spontaneous growth of hemp in a neglected garden open to the public and no attempt at secrecy was made. It was held the owner cannot be convicted under Section 61, 2(b) and his negligence in not recognising these plants and having, them weeded out of his garden did not make him guilty of the offence of cultivating them.

Where the accused persons are prosecuted for unlawful cultivation of poppy, the accused had contravened Section 21 of the Opium Act of 1857, section 9 of that Act has nothing to do with the offence. In such a case the question is one of cultivation and not of possession of opium.

**84. Information as to past history of article or its user.** It is fallacious to treat the "fact discovered" within the section equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered. The condition necessary to bring S, 27 into operation is that discovery of a fact in consequence of information received from an accused in police custody must be proved, and there upon so much of the information as relates distinctly to the fact there by discovered may be proved. The words "as relates distinctly to the fact" are very significant and must not be lost sight of Section 27 is based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence. The

extent of the information admissible must however depend on the exact nature of the fact discovered to which such in formation is required to relate distinctly. Generally Section 27 is brought

into operation when a person in police custody produces from place of concealment some object such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.

**85. Recording and proving information.** (i) Whenever a police officer is intimated that the accused proposes to give information leading to discovery, he should proceed to record it as far as possible in the language spoken by the accused and in the first person, otherwise, doubts are likely to be entertained as to the accuracy and correctness of the information.

(ii) Although as a matter of law the presence of motive witnesses at the time of recording information is not necessary but as a matter of prudence the police officer should secure the presence of motive witnesses, if such witnesses are available without much inconvenience or difficulty. The presence of the motive witness at the time of recording the information and the subsequent production of a motive witness are likely to lend considerable support to the testimony of the police officer.

(iii) As regards the proving of such information, ordinarily the police officer of a motive witness should state in Court from memory what information was given by the accused and, if such a witness is in a position to give the precise information he should do so without referring to the written memo containing the information. (iv) If the police officer or the motive witness on account of lapse of time or otherwise, is not in a position to state with the help of memory what the information was and thus makes out a case for referring to the memo, for refreshing his memory, he is entitled to do so. But, even then, he should not merely remain content by proving his signature on the information memo, but should reproduce in Court the information given.

**86. Admissibility when the accused takes police and himself produces or police leave accused behind and recover themselves.** An accused admitted before the police that he had concealed a rifle in a manure heap lying outside his house, and thereafter took the police there and took out the rifle from underneath the manure heap. It was held, that statement made by the accused to the police was admissible in evidence and it made no difference whether the accused takes the police to that place and himself produced the object or the police leaves the accused behind and themselves go to the place mentioned by the accused and find the object for themselves.

**87. Admissibility of disclosure statement Investigating Officer not examined.** The disclosure statement made by accused upon interrogation by an investigation police officer in the presence of a disinterested witness is admissible in evidence against the accused, even if the interrogating officer, for some reason or the other cannot be examined, when the person in whose presence the statement was made is examined. Section 27 which is an exception to Sections 25 and 26 nowhere lays down that to prove a disclosure statement it is obligatory to examine the investigating officer who interrogated the accused. The requirement of this section is that the person when he makes the disclosure statement should be accused of an offence and should be in the custody of a police officer. Even then only so much of the information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, can be proved.

**88. Confession hit by Section 24 - Leading to discovery - Admissibility.** It is true that

confessions caused by inducement, threat or promise are inadmissible, under Section 24. But though they are inadmissible they may lead to discovery of facts or of things in consequence of the information received from the accused in custody. When statements made by accused person in police custody are confirmed by finding of the property or facts, those portions of the confession that lead to discovery cannot be held to be false. Section 27 is based on the theory of confirmation by subsequent facts. The theory is that where in consequence of a confession otherwise inadmissible search is made and facts are discovered which confirm it in material particulars, the possible influence which through caution had been attributed to the improper inducement is seen to be nil and the confession may be accepted without hesitation.

In fact Section 27 provides an exception to the prohibition imposed by Sections 24 to 26.

Article 20(3) therefore applies to discoveries under Sec, 27 of the Evidence; Act, if these discoveries are the results of compulsion. The scope of section 27, Evidence Act, is thus restricted by Article 20(3) of the Constitution and the discoveries which follow a confession brought about, by compelling an accused person, cannot be used against him.

**89. Statement after arrest.** Disclosure statement is not admissible unless the accused person is in police custody. Portion of the statement made by accused to the police is rendered admissible by the law, purely because of the discovery of a relevant fact to which it led, and not because it inherently amounts to any confession of a crime. Consequently, the question whether it was voluntarily made after arrest, or whether accused was earlier under police influence for some time, is really not material.

**90. Confessional statement by person while not an accused and not in police custody cannot be proved against him when he is subsequently accused of offence.** - The confessional statement which is being considered in Section 27, is a statement which is made by a person in police custody. It is also a person "accused of an offence". If these two phrases are considered together, it follows inevitably that the person when he made the statement, was an accused person and he was also in police custody. To place any other interpretation upon the working of Section 27, would be to do violence not only to its spirit but also to its language and, therefore, it is quite clear that only those confessional statements are being considered under Section 27 which are made by accused persons while they are in police custody. Such confessional statements are admissible in evidence provided they have led to the discovery of a fresh fact. If the statement is made by a person who is a stranger or is a prosecution witness, then such statement is not admissible in evidence despite the fact that it amounts to a confession and does lead to the discovery of a new fact.

In this case, the accused was a peon of the Corporation of Delhi. He had been entrusted with a sum of money to be deposited in the Zonal Office at. He reported that he had been robbed and that the money was lost. The police began an investigation of the alleged case of robbery. He then told the police that he had kept the money with a friend. The police recovered the money from the friend. It was held that the accused's statement was not admissible in evidence in the prosecution against him, as at the time when he made the statement he was neither an accused person no in police custody.

**91. Introducing wholesale confession under the guise of Section 27.** The practice of in-

roducing wholesale confession to the police under the guise of a recovery under Section 27 is to be deprecated. The Court expressed its disapproval of the police recording a confession by accused running to four or five pages incorporating, most incriminating statements against a co-accused and getting it attested by witnesses and then making it invisible by a legal fiction of 'bracketing' as it was bound to seriously prejudice both the accused. The Legislature had a purpose in excluding from evidence a confession made to a police officer by an accused person and also a confession made while in the custody of the police except in the immediate presence of the Magistrate. Under Section 27 only that portion of the information which led to the recovery is made admissible.

**92. "Information" - "Statement distinction".** An information is actually the content or substance of a statement and may be the same in several statements which may substantially be repetitions. The discovery for the purposes of Section 27 need not be the direct consequence of this or that statement, but should be the direct consequence of this or that information. So, where the information is the same, it is immaterial if the statement is repeated.

**93. Statement not leading to discovery not admissible.** After arrest the accused pointed out the place where the articles recovered from him were stolen; held, that this amounted to a confession and without leading to any new discovery was inadmissible under Section 27.

Incriminating statements made to a police officer are hit by Sections 25 and 26 of the Evidence Act. The statement that the axe is one with which the murder had been committed is not a statement which leads to any discovery within the meaning of Section 27 of the Evidence Act. Nor is the alleged statement that the blood-stained shirt and dhoti belonged to him a statement which leads to any discovery. It is fallacious to treat the 'fact discovered' within Section 27 as equivalent to the object produced the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. It is wrong to admit in evidence the statement of the accused that the axe had been used to commit murder or the statement that the blood-stained shirt and dhoti were his.

**94. Statement of accused outside Court - Refreshing memory.** Normally, a police officer should reproduce the contents of the statement made by the accused under Section 27 of the Evidence Act in Court by refreshing his memory under s. 159 of the Evidence Act from the memo earlier prepared thereof by him at the time the statement had been made to him or in his presence and which was recorded at the same time or soon after the making of it. Where the police officer swears that he does not remember the exact words used by the accused from lapse of time or a like caused or even where he does not positively say so but it is reasonably established from the surrounding circumstances, that it could hardly be expected in the natural course of human conduct that he could or would have a precise or dependable recollection of the same, then under Section 160 of the Evidence Act, it would be open to the witness to rely on the document itself and swear that the contents thereof are correct.

Statements and reports prepared outside the Court cannot by themselves be accepted as primary or substantive evidence of the facts stated therein Section 159 then permits a witness, while under examination, to refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in the memory. Again, with the permission of the Court, the witness may refresh his memory by referring to a copy of such document. And the witness may even refer to any such writing made by any other person but which was read by him at the time the transaction was fresh in his memory and when he read it he knew it to be correct. Section 160 then provides for cases where the witness has no independent recollection say, from laps of memory of the transaction to which he wants to testify by looking at the document and states that although he has no such recollection he is sure that the contents of the document were correctly recorded at the time they were. Where a case of this character arises and the document itself has been tendered in evidence, the document becomes primary evidence in the case. The fundamental distinction between the two sections is that while under Section 159 it is the witness's memory or recollection which is evidence, the document itself not having been tendered in evidence; under Section 160, it is the document which is evidence of the facts contained in it. However in order to bring a case under s. 160, though the witness should ordinarily affirm on oath that he does not recollect the facts mentioned in the documents the mere omission to say so will not make the document inadmissible provided the witness swears that he is sure that the facts are correctly recorded in the document itself. Section 160 of the Act applies equally when the witness states in so many words that he has no independent recollection of the precise words used, or when it should stand established beyond doubt that should be so as a matter of natural and necessary conclusion from the surrounding circumstances.

**95. Recovery - Right of accused to get himself searched in presence of Gazetted officer.** - Although the question whether the concerned officer duly empowered or the police officer conducting search of a person suspected of the possession of such psychotropic substances is bound to inform the suspect of his right to get himself searched in the presence of a gazetted officer or the nearest Magistrate was not referred to the Full Bench for decision, yet, on his request of the learned counsel for the parties, we consider it desirable to settle this controversy. In this regard, it is not worthy that every person is supposed to know the law of the land. The provisions of Section 50 do not provide at all that the suspect is required to be informed in this regard by the official concerned. Thus, there is no escape but to hold that the legislature in its wisdom had not deliberately made it obligatory on such officer to inform the accused of his right regarding search before a gazetted officer or nearest Magistrate. It cannot be said to be inadvertent omission as there are many instances where the legislature has specifically provided for such intimation. The provisions of Section 130(1) of the Army Act, 1950, can be safely referred to in this regard. Under that Section, the accused is required to be informed that he has a right to object to the composition of the Presiding Officer or the members of the Court Martial. Similarly, under Section 50(2) of the Code of Criminal Procedure, 1973, it is provided that if a Police Officer arrests a person for bail able offence, without a warrant, then it is obligatory on him to inform such person that he is entitled to be released on b~1 on furnishing requisite sureties. The Full Bench of Orissa High Court in Banka Dass's case had also taken a similar view. The observations of the Division Bench of

this Court in *Amrit Singh v. State of Haryana*, as well as of the Division Bench of the Himachal Pradesh High Court in *State of Himachal Pradesh v. Sudershan Kumar*, that the officer or police official conducting the personal search of the suspect is bound to inform him of his right to get himself searched in the presence of the gazetted officer or the nearest Magistrate are, therefore, not legally sound. However, in an actual practice, it would be desirable to record the statement of suspect whether he claims search before a gazetted officer or the Magistrate because in every such case of personal search, the accused would assert having claimed such right while it would be almost difficult for the prosecution to prove that he had not done so.

In view of the above findings, with utmost respect to the learned Judges of this Court, there is no escape but to hold that in *Hakam Singh v. Union Territory, Chandigarh*, *Bhajan Singh v. State of Haryana*, *Amrit Singh v. State of Haryana* and *State of Himachal Pradesh v. Sudershan Kumar*, the learned Judges had not laid-down the correct law qua non-compliance of the provisions contained in Chapter V of the Act other than the one under Section 50 of the Act having resulted in vitiating the trial and conviction. However, their conclusions qua the provisions of Section 50 of the Act are well founded.

**96. Recovery of charas** - Sample sent to Chemical Examiner after 18 days - No tampering of seals found - Delay of 18 days not *material*. *Jagmohan Singh v. State of Punjab* /1997(3) RCR (Criminal) 804(P&H)

Witnesses examined after lapse of many months - Some minor discrepancies are bound to occur - No major contradictions in statements of witnesses - Accused rightly convicted. *Jagmohan Singh v. State of Punjab* 1997(3) RCR (Criminal) 804(P&H)

**97. Recovery of lahan and working still.** - Discrepancies in statement of PWs with regard to location of place of occurrence and surroundings. Accused acquitted. Recovery of lahan alongwith boiler. Boiler contained holes. Such a boiler could not contain lahan. Prosecution case doubtful. Conviction set aside.

98. Recovery of Lahan - Drum produced in court' contained no lahan - No seal on it No other independent witness produced. Possibility of his false implication, therefore, not safe to maintain conviction of accused. Whereas one drum containing Lahan was found in possession the petitioner which was kept concealed in his field. In pursuance of the disclosure statement made by him, the Lahan was got recovered from his field. When the drum was produced in the Court the Excise Inspector admitted that it contained no lahan and there was no seal on it. About Lahan, the learned Appellate Court has observed that as the summers had passed, the lahan was liable to evaporation, but it has been observed about the removal of the seal on the drum with the gunny bag. No other independent witness has been produced. Held, that it is not safe to maintain the conviction and sentence the appellant. The possibility of his false implication, cannot be relied out.

**99. Recovery of pitchers containing offensive matter** - Evidence not satisfactory. Not safe to convict accused. Where in a prosecution under Section 61 (1)( a) there was no satisfactory evidence produced by the prosecution regarding the discovery of pitchers

containing the offensive matter from the premises of the accused and the testimony in favour of the accused given by two lambardars of the village was discarded in the lower Court on the ground that being the co-villagers of the accused they gave evidence to oblige him. Held, taking into consideration the provisions of Sections 52 and 68 and the fact that there was no evidence on the record showing any connecting whatsoever between the accused on the one side and the two lambardars on the other, the lower Court was not justified in discarding the evidence given by them and that it was not safe to act on the evidence given by witnesses for prosecution.

100. Recovery of working still. - Contrary statements of PWs. Head constable stated that place was surrounded by Sarkandas on three sides and there was rivulet on fourth side. Another PW stated that there were wheat fields on one side and rivulet on three sides. Accused acquitted on basis of contradictions. The Excise Act provided stringent punishment. Strong piece of evidence is required to convict the accused. Foulter the offence stronger should be the evidence.

"Bhattal" not entered as case property by Investigating Officer. It was not proved that from lahan drum a plastic pipe was going to the can containing distilled liquor via 'Bhattal'. Complete structure of working still not proved to have been recovered. Prosecution failed.

Recovery of working still and three drums of Lahan containing 200 kgs of Lahan - Drums when produced in court during trial, they were empty - Drums were not having any chit or other details connected with the case of accused - Held, when case property itself is not being maintained properly and there is nothing to connect the same with the case, chances of false implication cannot be ruled out - Conviction of accused set *aside*. *Hukam Singh v. State of Punjab, 2000(4) RCR(Criminal) 146(P&H)*

**101. Property concealed in a place accessible to others.** In the case of property which is concealed, the property is in the same position as if it were kept under lock and key. Being concealed it is not accessible to other persons. It is true that as it is concealed in an open place it is possible that the accused may be only knowing that it was here while some body else may have concealed it. The prosecution should prove in such cases that the accused not only knew where the property was and pointed out or delivered but also concealed the same. Even when property is delivered by the accused the statement made to the police that he had concealed it is admissible under Section 27.

**102. Joint possession of the place of recovery. Effect.** - Held, that where illicit liquor was recovered from a haveli owned and possessed by the accused and his four brothers, mere knowledge that the illicit liquor was in the haveli is not enough to say that the accused was in possession thereof.

**103. Recovery from fields accessible to all.** Where the recovery was made from a public place easily assessable to all and that to after 3 weeks of alleged concealment the recovery becomes doubtful.

The recovery of ornaments from field which was open to all cannot be made basis of conviction under Section. 395 LP.C.

Where the incriminating article is discovered from places which are open and accessible to all at the instance of accused persons, and the words used by the accused leading to discovery were neither recorded at the time nor proved. The evidence of discovery should be discarded under such circumstances.

The circumstance that the recovery is made from an open place like a quarry which is accessible to all and sundry minimises the evidentiary value of the recovery.

**104. Property discovered in open place on information.** It is quite true that exclusive possession cannot be brought home to an accused if properties are discovered in open places equally accessible to members of the public as a result of the information given by him. But at the same time if the property is found to be so hidden away that no ordinary member of the public could know of its existence there, the fact that it is on that particular person's information and pointing out un-accompanied by any explanation of innocent knowledge, the incriminating article was discovered and recovered would lead to the presumption that he is the person who had secreted it there. It unmistakably shows that the accused was proceeding to the felony.

Police on patrol duty at a public place - Information received by Police that accused possessed illicit liquor - It is mandatory for Police to join independent witness when information was received at Public place - Accused acquitted for non-joining of independent witness.

Recovery from Public place - Accused made disclosure statement while in custody in the case under section 61 (1) (c) - He got recovery effected by disclosing the drums of Lahan concealed under the earth beneath a bridge - Earlier on receipt of secret information the police party had conducted a raid near the same bridge and found him distilling illicit liquor on a working still - Five drums 150 Kg each of lahan recovered - It cannot be said that the place of recovery and drums of lahan were accessible to the public - The accused had exclusive knowledge.

Where the Corpse discovered by police in open field where police went on information given by accused cannot be said that the police discovered the corpse as a result of the statement of accused.

Recovery from Public place. Accused made disclosure statement while in custody in the case under Section 61(1)(c). He got recovery effected by disclosing the drums of Lahan concealed under the earth beneath a bridge. Earlier on receipt of secret information the police party had conducted a raid near the same bridge and found him distilling illicit liquor on a working still. Five drums 150 Kg. each of lahan recovered. It cannot be said that the place of recovery and drums of lahan were accessible to the public. The accused had exclusive knowledge.

**105. Statements by several accused.** Where the statements leading to discovery have been made by several accused, the mere fact of the statement of any particular accused appearing in the case diary before others is no guarantee that the statements were made in that order. The fact is to be made out independently of it.

Though individual statements had been recorded from each of the accused they were all of the same pattern and referred to the same articles, and all of them declared that if the Inspector accompanied them, they would point out the place at which the articles were hidden: Held, that these statements but constituted one composite statement about the same articles, which did not serve to fasten the individual guilt, as there was no knowing on whose information the material fact was discovered.

There is nothing in Section 27 to show, beyond what the words 'a person' may themselves mean, that the Legislature intended to depart from the general rule laid down in Section 13 of the General Clauses Act. The presence of the word 'a person' in singular therefore can not mean that the information should be by a single individual only.

Thus Section 27 on its plain language does not exclude the interpretation as no plurality of information received from persons accused of any offence. It is easily conceivable that two or more persons simultaneously or jointly furnish an information and as a result of that information a common discovery is made; such a case will, if other conditions are satisfied be covered by the section. The underlying principle seems to be that the information is such information as cannot be said to be already in the possession of the police and that the discovery is made in consequence of that information and further that discovery is not re-discovery of something already discovered.

The very language of Section 27 contemplates statement by an individual accused, and the discovery which may follow such statement. A joint statement of several accused or joint recovery of articles by several accused persons is not contemplated.~ joint statement followed by joint recovery is not admissible against either of the accused.

**106. Simultaneous information by several persons.** What guarantees the truthfulness of the information is not the fact whether the information was given by one accused person or by several accused persons either simultaneously or otherwise but it is the actual discovery in consequence of the information that affords some guarantee about the truth of the information. Even in the case of simultaneous information given by several accused persons the information given by one of the accused would be admissible, if he followed it up by conducting the police to the actual spot where the 'fact' what actually discovered.

If an accused merely points out a place where the articles are hidden and produces those articles therefrom, there are several possibilities; one possibility is that he had knowledge of the exact spot where the articles were hidden, as he himself was the author of concealment. The second possibility is that he may have gathered that information from a person who was the author of concealment. Another possibility that can be envisaged that he may have actually seen a person concealing those articles. His seeing a thief concealing those articles may not be objected to by that thief, as a thief might happen to be his friend or relation. It cannot necessarily be deduced from these circumstances only that he must necessarily be a thief. His knowledge without he being a thief from other sources cannot be necessarily ruled out. The mere pointing out of the place where articles are hidden is not sufficient.

**107. Accused making two statements, Admissibility of second statement.** Two statements by accused regarding place of concealment. If the information derived as a result of in-

terrogation was merely vague and the precise information was received as a result of the statement made by the accused before the DSP and witnesses, the subsequent statement would be admissible in evidence. Likewise if the previous statement made to the investigating officer merely indicated a willingness of the accused to disclose where the incriminating articles were lying and the actual information about that place was given in subsequent statement the subsequent statement is admissible if the incriminating articles are recovered in pursuance of the statement.

Statements to police made by a second accused are not admissible in evidence when the police already know about it from the 1st accused.

Further, it is the first statement of the accused to whomsoever made, that leads to the discovery of the fact if a fact is discovered. Therefore, if the accused repeats his statement to another police officer and points out the place of burial of the person murdered it cannot be said that there is a discovery of that place pursuant to the information the accused gave to that officer. Hence, such a statement is not admissible in evidence.

**108. Successive information - Earlier information whether covered by Section 27?**

When successive information about possession of crime weapons is given to Police by several persons but weapons are recovered by Section 27. Earlier informations are only clues for investigation.

**109. Statements made by more than one accused leading to discovery.** - Where a relevant fact is discovered in consequence of statements made by one or more accused in custody, so much of those statements as relates distinctly to the discovery of that fact is admissible under Section 27. Information received from more than one person accused of an offence, whether it amounts to confession or not, may relate distinctly to the fact thereby discovered and may be proved under Section 27. What should be insisted upon by Courts is that the statement should be recorded as precisely as possible attributing the respective words to each accused, whether they made the statements simultaneously or immediately one after the other before the discovery of the fact was made. There is no sufficient reason to hold that a fact cannot be said to be discovered in consequence of information of more than one person accused of an offence. No principle in support can be found for the view that the statements of two or more accused leading to the discovery of a relevant fact will be admissible only if they are simultaneously made.

**110. "Accused of an offence" - Meaning.** Where evidence, whether oral or circumstantial, points to the guilt of a person and he is taken in custody and interrogated on that basis he becomes a person accused of an offence. The mere fact that his name was not mentioned as accused in F.I.R. will not take him out of that category. The moment suspicion attaches to him he for all purposes becomes an accused person and any self incriminatory statement made by him subsequently is inadmissible in evidence against him if it is induced by any promise, threat or violence.

**111. Whether Person giving information should be accused-** Poppy husk was

recovered as a result of disclosure statement made by accused. When statement of accused was recorded no case had been registered nor there was any complaint accusing him of the offence. Disclosure statement is not admissible in evidence. Statement of only that person alone is admissible who is accused of an offence. The words "information received from a person accused of any offence" in Section 27 cannot be read to mean that he must be an accused when he gives the information but would include a person if he became subsequently an accused person, at the time when that statement is sought to be received in evidence against him.

In order to attract Section 27 Evidence Act, the facts must, beyond controversy, satisfy all the conditions, one of which is that the person must at the time be a person accused of an offence: but it is not essential that his name must be found in the F.I.R. Therefore, a person whose name is not mentioned in the F.I.R. as the culprit but who is, arrested by the police during investigation after ascertaining his complicity is an accused person, whether he be forwarded to the Magistrate or not. A statement made by him leading to discovery while he was in custody would be admissible under Section 27 Evidence Act.

**112. Definite information.** - The phrase 'definite information' cannot be construed in a universal sense and its meaning must depend on and vary with the circumstances of each case. There is no doubt, however, that the information must be definite, that is, more than mere guess, gossip or rumour. There must also be a causal connection between the information and the discovery; but 'discovery' in the context of the section does not mean a conclusion of certainty at the stage of notice. What is necessary at that stage is that the Income Tax Officer should have formed an honest belief upon materials which reasonably support such belief.

**113. Exact words used by accused to be recorded.** - In order to permit an inference that the accused was in possession of the incriminating article prosecution had to prove that part of the confessional statement (as far as possible in the words of the accused which) relate to the fact thereby discovered. But instead of proving that, it had only sought to prove the memorandum itself as if by itself that was substantive evidence. When the memorandum alone was thus sought to be proved, there was no guarantee whether the accused had really made any statement which led to the discovery.

The fact of possession can be proved by discovery of an article at the instance of the accused because if the evidence shows that he had in any way dealt with the article prior to its discovery by him, he can reasonably be credited with its possession sometime before such an event. It is in this context that so much of his confessional statement as leads to the fact thereby discovered becomes admissible under Section 27 of the Evidence Act. But this confessional statement must be proved by persons to whom or before whom it was made and as the courts wait to know the exact words used by the accused when making the statement, the investigating officer is required by the Police Regulations to record it in the form of a memorandum in the presence of witnesses so that its authenticity may be beyond doubt and the witnesses may refresh their memory when, deposing about it in Courts. The memorandum itself cannot be used as substantive evidence. The documents, or the

memoranda of what accused said and covered by Section 27 are not by themselves substantive evidence. It is what the witness deposes in Court as having been said by an accused, when giving information leading to discovery of a fact, that is evidence. The memorandum of a statement prepared is only for refreshing memory of the witness who has drawn it at that time, or of the attesting witness in whose presence that information was given.

**114. Disclosure Statement.** - Strong proof of highest standard is required to prove that incriminating material was recovered from an accused person in pursuance of a disclosure statement made by him. Three drums of lahan allegedly recovered from an accessible place in consequence of a disclosure statement. Disclosure statement and their recovery not accepted. Conviction set aside.

Disclosure statement - Place of recovery not mentioned in disclosure statement. - Opium recovered on the disclosure statement of the accused. Statement did not talk of the "place" where the recovered opium was kept concealed. Information supplied by the accused leading to the recovery of the opium whether comes within the ambit of Section 27 of the Evidence Act. Held that the discovery of the opium from the house of the accused was not in consequence of the information given by him in his disclosure statement.

Disclosure statement - Exclusive possession not proved No: conviction. Accused was acquitted for three reasons. Firstly, the liquor was not concealed in such a manner that it could not be discovered by the police on a casual search of the accused's house so that its discovery cannot be regarded as having been made in consequence of the disclosure statement. Secondly, it was held that it appeared, that the disclosure statement was concocted after the recovery of two tins containing liquor which must have resulted from the search carried out by the Constables. Thirdly, it could not be said that the liquor was recovered from the exclusive possession of the accused as his brothers were residing with him in the same house and anyone of them could have been responsible for containing the liquor in the Bharoli even though the accused may have held knowledge of the place of concealment.

Disclosure statement by accused - Examination of Investigating Officer who recorded the statement not obligatory in order to prove the statement. - Section 27 nowhere lays down that to prove a disclosure statement to examine the investigation officer who interrogated the accused was obligatory. What is required under Section 27 is that the person when he makes the disclosure statement should be accused of an offence and must be in the custody of a police officer. Even then only so much of the information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered can be proved.

Recovery in consequence of disclosure statement - Recovery could be made in ordinary search - No conviction. Where the bladder in question is alleged to have been recovered from a Bharoli in the cattle shed of the accused in consequence of the disclosure statement, the disclosure statement cannot be used against the accused for the simple reason, that the recovery could have been made by the police on the usual search of the premises and cannot be said to have been resulted from disclosure. Where there is no other evidence

against the accused except the alleged disclosure statement, the recovery falls and the accused is entitled to acquittal.

**115. 'Discovered.'** The recovery of the articles cannot be described as a discovery under section 27 where they are not recovered from any hidden place and if in the normal course of investigation the investigating agency is bound to see them and take them in possession without the accused making any statement of pointing of them out. It has become the normal device of the investigating agency to turn an ordinary recovery into a discovery in order to utilise the provisions of section 27 against the accused person.

Where the evidence on record shows that the discovery of the article was not the result of the information furnished by the accused and that the police knew before hand what the accused was going to say that would be hit by Section 27. But that section will not apply where the discovery is made as the accused have pointed out the articles before the Panches and panchnamas were completed at the places where the articles were recovered.

'Discovery' implies finding out a thing from being concealed or secreted which cannot be easily seen or discovered on making a search of the house or so. It should lead to discovery of such articles only on the basis of the information given by the accused person. It is then that it can be called as discovered in consequence of that information. Where the articles were easily seen lying and no effort was necessary to find out the same except going to the house of the accused, no question of discovery of those articles would arise.

**116. Discoveries, result of Compulsion and use of third degree methods.** The phrase used in Article 20(3) is to be a witness and not to appear as a witness. It follows, that the protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him.

Disclosure made by accused which led to recovery of charas. Disclosure was made by accused in police station while he was handcuffed. Disclosure was made under duress, pressure or threat by the police. Disclosure thus not admissible in terms of Article 20 of Constitution of India.

Where the accused was subjected to third degree methods prior to discovery, the genuineness of the discovery is rendered doubtful and discovery becomes worthless as a piece of evidence. The reason is that although discovery by itself is a guarantee of the genuineness of the discovery there may be cases where the circumstances are such, that the fact that the discovery was induced by a promise would raise a doubt as to the genuineness of the discovery and render the evidence almost worthless. Where heroin was recovered, the accused was found to be in injured state is Police Station in absence of the explanation of injuries the defence of accused as held more probable.

It is true that after the coming into force of the Constitution, the evidence which may otherwise be admissible under section 27 Evidence Act, may be inadmissible by virtue of Article 20(3) if it could be established that such evidence was obtained under compulsion. There is however nothing on record to show that the accused was compelled to throw the stone at the place where the knife was recovered. It is true that the accused was then under police custody, but mere police custody in the absence of evidence to show that force or compulsion was used will suffice to show that a statement was made under compulsion so as to attract Article 20(3)

Where facts disclosed point to the accused having been subjected to third degree method, prior to the discovery, the genuineness of the discovery is rendered doubtful and the discovery becomes worthless as a piece of evidence.

**117. Discovery in pursuance of disclosure statement/Police having prior knowledge.**

Where police already knew of the concealment it cannot be said that recovery was made in consequence to disclosure statement. Where the alleged recovery of the substance was made in pursuance of the disclosure statement of an accused person, but the police had prior information regarding the said substance, the disclosure statement under these circumstances is not admissible in evidence.

Discovery of incriminating articles alleged to have been recovered by the accused is inadmissible in evidence if the police already knew where they are hidden.

**118. Discovery as a result of search made by Custom's officers** - Memo signed by accused - Admissibility. Where recovery memos by means of which gold was taken into possession by the custom's officers did not disclose that the accused were ever interrogated and that it was the result of that interrogation that the gold was recovered, on the other hand, these documents clearly showed that the recovery was the result of search made by the custom's officers and they were only signed by the accused petitioners, held, that the accused merely acknowledged the recovery of gold and the memos were not admissible under section 27 Evidence Act.

**119. Women to be searched by women.** - Recovery of poppy straw from a female accused. Search made by male police officials under Section 50(4) a female was to be searched by a female Police Officer accused acquitted.

**120. Order directing accused to furnish his specimen writing.** An order directing an accused to furnish his specimen writing under section 73, Evidence Act is not hit by Article 20(3) of the Constitution. The accused cannot, therefore, refuse, to give specimen writing when ordered by the Court. If he does refuse the Court can legally draw a presumption against him. It will not amount to compelling the accused to be witness against himself.

**121. Proof of recovery.** Whether the evidence of the investigating officer alone is sufficient to prove the recovery depends upon the circumstances of each case. Where the investigation inspires confidence and no criticism can be leveled against the conduct of the investigating

agency and good reasons are given for not producing other evidence, it is open, to the Court to accept the uncorroborated testimony of a police officer after a strict scrutiny.

**122. Opium recovered by Head-Constable** - No independent person present - Prosecution not to be discredited. There being no provision of law requiring the attendance of any independent witness at the time of search of the person of a suspect, the recovery proceeding cannot be held to be suspicious or unreliable simply because no independent witness was opted to join the raiding party. At best it would be a suspicious circumstance which would require the court to scrutinize the evidence carefully, but that by itself cannot warrant to discredit the prosecution case.

**123. Sale of a cocaine packet to informer helping the excise authority.** - It is exceedingly difficult to believe that the accused could have sold a packet of cocaine to an informer who was helpful to the excise authorities in a public place in the presence of other people.

**124. Statement of a single witness.** - It is not illegal to convict an accused person on the statement of only one witness, provided the evidence relied upon is free from all doubts.

Rule of prudence forbids conviction being based on the testimony of a solitary eye witness, unless there are compelling reasons for the same and the evidence of the sole eye witness is completely above board. Where on examining the evidence of the only eye witness it cannot be safely said that prosecution has proved its case beyond reasonable doubt, the accused is entitled to the benefit of doubt.

**125. Witness to Recoveries.** - Recoveries effected at different places on information of accused. Same set of Panches made to witness the recoveries is no ground to discard the testimony. There is no law or practice that different set of persons should be called in to witness the recoveries made at different places.

**126. Accused admitting that he brought liquor for his son** - No Presumption of manufacture. Accused admitted that his son was ill and that he had brought a small quantity of liquor from his brother-in-law. Held, that the only presumption to which the admission gave rise was that the accused was in possession of an excisable article, and not that he had himself manufactured the liquor.

**127. Physical test of the so called Lahan.** - The convictions under Sections 61(1)(a) and 61 (1)(b) of the Punjab Excise Act can be sustained only if from the prosecution evidence it is fully established that he was distilling liquor by running a working still. It can be possible only if the substance contained in the boiler the constituent part of the working still, is found to be Lahan or that the contents of the receiver bottle, connected by means of the tube with the boiler, are found to be illicit liquor. It is not the case of the prosecution that the so called illicit liquor and Lahan, recovered from the possession of the petitioner were sent to the Chemical Examiner. The prosecution simply examined Excise Inspector to prove that the substance found in the boiler and the pitcher etc. was Lahan. He, in his statement, does not tell about

his qualifications on the basis of which he claims himself as an expert for testing Lahan. He simply states that he is distillery trained. He has nowhere stated as to what type of training he had received in the distillery for testing Lahan. He had told that on conducting physical test (If the recovered substance, he found that it was a mixture of water, Gur and Kikar bark and its colour, smell and taste showed that it was Lahan. He has nowhere stated as to what was the colour, taste and smell like of that substance. It is also not stated by him that the aforesaid mixture, examined by him, had undergone a process of fermentation and, as such, it was fit for distillation and yielding illicit liquor. Ordinarily, when an Excise Official carries out physical test of mixture of water, Gur and Kikar bark, recovered in an excise case, he finds that its colour is dark brown, its taste is sour and bitter and that its smell is alcoholic and it had undergone a process of fermentation and as such it is fit for distillation and yielding liquor. But all this information and as such it is fit for distillation and yielding liquor. But all this information is lacking as far as statement of Excise Inspector is concerned. It is therefore, evident that Excise Inspector did not comply with even the minimum requirements of conducting physical test of the so-called Lahan in the case. Accordingly, his statement has no evidentiary value for proving that the substance recovered from the boiler and the pitcher was nothing else but Lahan. That being so, it can legitimately be stated that the prosecution has failed to prove very important ingredient of the offence under Section 61(1)(a) and Section 61(1)(c) of the Punjab Excise Act.

**128. Evidence of excise inspector as to the illicit nature of liquor - value of.** - An excise inspector is an expert on the question whether a certain liquid is illicit liquor or not. But before he is in a position to give such an opinion as an expert he has to examine it and has also to furnish the data on which his opinion is vested. His bald statement that the contents of bottles was illicit liquor is not sufficient to prove that fact.

**129. Report of Excise sub-inspector as to nature of liquor** - Whether statement of clerk sufficient. - Prosecution for possession of illicit liquor on report of excise sub-inspector. Fact in issue was whether liquor possessed was of illicit origin. Excise Sub-inspector not examined to prove fact in issue but Excise Clerk proving report of Excise sub-inspector who had been transferred. In absence of circumstances which would make report admissible under section 32 Evidence Act or some other section of Evidence it could not take the place of sworn statement of maker thereof to prove that liquor of illicit origin - Accused deprived of the advantage of testing accuracy of sub-inspector's opinion by questions in cross-examination - Conviction of accused under section 60(1) held was not proper.

**130. No evidence that substance recovered from accused same out of which sample taken and sent.** - From the report of the Chemical Examiner it could not be inferred that what was examined by him was the same article which was sent to him through a messenger for chemical examination. Having regard to the statement of the said messenger it could not be held beyond doubt that the substance which was recovered from the accused was opium and was the same out of which a sample had been taken and sent to the Chemical Examiner. There was thus clear break in the link of the chain of the evidence to prove that the accused was in possession of the opium. In this case the affidavit filed by the messenger it was not mentioned that he delivered the sample with seals intact.

**131. Prosecution to prove that material recovered was Lahan.** - It is the duty of the prosecution to prove that the material recovered from the possession of the accused or what he was found distilling was Lahan. In this case neither the illicit liquor which was found in the bottle was sent to the Chemical Examiner nor the Lahan recovered from the boiler was subjected to Chemical Test. In Punjab the Excise Officials who are examined as expert witnesses to test Lahan generally test from smell, colour and taste. The Excise official examined did not state as to what was the colour, taste, or smell of the material examined by him. Under these circumstances, the accused cannot be convicted. The Excise officials had only stated, that the colour of the material examined by him was brownish, its taste was bitter and the smell was alcoholic only, but these three ingredients are not the only things to prove, that the material contained in the drum allegedly recovered from the accused was Lahan. The excise official did not specify his proficiency or capability to distinguish Lahan from other things. He no doubt stated about his experience for 13 or 14 years but again failed to tell the field in which his experience was, i.e. whether in testing of Lahan or in the service of the department. Unless elucidation by way of explanation was available from the testimony of the Excise Inspector the court cannot read between the lines to find those words which are not actually there. One does not become an expert by simply describing himself. There failure on the part of the accused to test his expert knowledge during cross examination hardly improves matters in favour of the prosecution.

Accused found distilling illicit liquor by a working still. Lahan recovered. Recovered substance sought to be proved as being lahan by examining Excise Inspector as a witness. Statement of Excise Inspector only indicating that on conducting physical test of recovered substance, it was found to be a mixture of water, gur and kicar bark. Nature of its colour, smell and taste not described nor was it stated by him that the mixture had undergone a process of fermentation and was fit for distillation. Minimum requirements of conducting physical test lacking. Important ingredient of offence not proved. Conviction set aside.

Prosecution to prove that the drum contained Lahan or that illicit liquor was recovered from the possession of the accused. Where the Excise Inspector stated that he tasted the contents of the drum boiler and found that same to be partly distilled in a fermented condition. He did not say anything about the contents of the so-called lahan. Lahan consists of water, gur and same fermenting agent. The Excise Inspector did not say that the contents of the boiler contained any fermenting agent. In his report it is simply recorded that it was a mixture of gur, water and kicar bark. Out of which some liquor had been distilled and some could yet be distilled. He has also not stated that the kicar, bark was the fermenting agent. There is nothing in report or in the statement of the Excise Inspector, that he was an expert. He did not give his qualifications. He did not say as to how many cases of lahan he had examined. There is nothing on the record to show that he is distillery trained. He also did not state as to what was the colour, taste and smell of the alleged lahan. Held, therefore, that his evidence does not fulfill the requirements of an expert and as such the prosecution has failed to prove that the material in the drum recovered from the possession of the accused was lahan as to

fall within the mischief of Section 71 of the Punjab Excise Act.

**132. Recovery from Working Still- Proof** - Since neither the mode of proof is prescribed by the statute nor is it laid down that it must be so done on the basis of the expert testimony, with great respect. I am unable to say that the testimony of the Excise Inspector must be brought within the ambit of section 45 of the Indian Evidence Act. It follows that the prosecution has to discharge the burden in the ordinary way to bring the recovered material within the definition laid down by law. Once that is so, one must fall back on the general rules of appraisal of evidence and the weight attached there to. As an abstract proposition, therefore, the prosecution can bring in even an ordinary witness in order to satisfy the requirements of Section 3, clause 13-A of the Punjab Excise Act. Nevertheless, in the present case they did bring in a witness well-versed and well-trained in the work of testing lahan. The significant thing is that neither his capacity nor his credentials on the point of opening about the ingredients of lahan was even remotely challenged. The basic rule that where a witness deposing adversely to a party is not at all challenged then his testimony may well be relied upon, consequently comes into play. This is the more so in a case where the whole stand of the petitioner was that, in fact, the incriminating material was not at all recovered from him, but has been subsequently planted. If that be the basic plank of the defence, obviously the Excise Inspector was not at all challenged with regard to either his capacity to opine about the lahan in this case or cross-examined to show that in fact, what was recovered was something. Other than that

**133. Cognizance of offence.** - FIR lodged against accused under Section 61 of Excise Act. After investigation challan put up by the Police. Magistrate is not competent to take cognizance of offence under Section 61 on basis of a report submitted by Police under Section 173 Cr. PC-Under Section 75 of Excise Act Magistrate could take cognizance either on his own knowledge or suspicion or on a complaint or report filed by an Excise Officer. Proceedings quashed under Section 482 Cr. P.c.

Offence under Section 61. Report filed by Police Officer. Magistrate can take cognizance of offence if the Police Officer was invested with Powers of Excise Officer under Section 71.

**134. Minimum Sentence.** - Minimum sentence under the said provision. Whether operate as a bar to applicability of Sections 360 & 361 of C.P.C., 1973 or Sections 4 and 6 of Probation of Offenders Act.. No.

Accused found to be guilty of offence of distilling illicit liquor with working still- Minimum sentence of six months prescribed under the Act - Accused thus not entitled to be released on probation - Accused faced trial for 15 years - Sentence reduced to already undergone. *Anokh Singh v. State of Punjab, 2001 (2) RCR(Criminal) 337(P&H)*

**135. Modern penology leans towards reforming a criminal.** - Held, that though the nature of the offence committed by the petitioner is always a relevant circumstance but other factors also have to be taken into consideration. The petitioner who is a first offender was of a very young age at the time of the commission of the offence. The modern penology leans towards reforming a criminal and for that purpose legislature has enacted Probation of Offenders Act, 1958 and precisely for that reason Section 360 was introduced in the Criminal Procedure Code, 1973. If first offenders, who are of young age, are sent to prison, there is every

likelihood of their becoming hardened criminals. Considering the above factors the present case is one in which benefit of Section 4 of the Probation of Offenders Act should have been given to the petitioner.

**136. Proper sentence.** - In awarding punishment for an offence under the Excise Act, the Courts should bear in mind that illicit distillation implies a good deal of preparation and results not only in the loss of the excise revenue but also in drunkenness; moreover the offence often escapes detection and it is, therefore, necessary to impose a sentence which will have a deterrent effect.

**137. Accused belonging to respectable family - No light punishment.** - There cannot be one law for the rich and one for the poor or rather one for the good family and one for the bad. Therefore the mere fact that the accused belongs to a good family is no ground for awarding a light punishment.

**138. Offences under Section 61(1)(a) and (c) are distinct offences.** - The offence dealt with by the two sub-sections are quite distinct. It does not necessarily follow that excisable article in an accused's possession have been manufactured with his own material, but where that connection exists between the two offences, it may properly be taken into account in considering the sentences.

**139. Manufacturing illicit liquor - Sentence.** - The offence of manufacturing illicit liquor implies a good deal of preparation. A man found in doing so must have done many times before without detection and it is an offence which probably escapes detection and as it deprives the Govt. of revenue besides demoralising the people, deterrent sentences are necessary in such cases. The view that is sometimes expressed that because an excise offence is a malum prohibition and not a malum in se, the culprit should be mortified in pocket rather than in person is wholly incorrect. The legislature intended that substantial term of imprisonment should be awarded in these cases. Section 562 Cr. P.c. is intended to apply to those offenders (especially youthful ones) who without being persons of depraved character, may, on occasion succumb to sudden temptation.

**140. Kind of sentence on first conviction.** Though illicit distillation entails loss of excise revenue and promotes drunkenness and crime, a heavy sentence of fine is preferable to imprisonment in the case of person is otherwise law abiding for his first conviction for the offence in view of the demoralising effect of a sojourn in jail.

**141. Previous Conviction.** - Five bottles of illicit liquor recovered. Accused sentenced to R.I. for 3 months and a fine of Rs. 500/- by Sessions Judge. Conviction affirmed by Sessions Judge. However, trial court appearing to have been unnecessarily swayed by the consideration that according to a chit produced by prosecution, accused had been previously convicted five times. Previous convictions of accused not duly proved according to law. Approach of trial Court erroneous. Under the circumstances, accused ordered to be released on probation for one year by High Court and his sentence of imprisonment and fine set aside.

Accused convicted under Excise Act. Accused also a previous convict. Accused praying for

release on Probation. Accused released on probation. Previous conviction no bar to release the accused on Probation.

Previous convict. Recovery of Working Still. Accused convicted and sentenced. Accused, however, released on probation by Sessions Judge despite the fact that he was previous convict. Appeal against grant of probation before High Court. Order of Sessions Judge not interfered with.

**142. Applicability of section 562 Cr. P.C. - Distilling illicit liquor.** - In awarding punishment for an offence under the Excise Act, the Courts must always bear in mind that illicit distillation implies a good deal of preparation and results, not only in the loss of excise revenue, but also in drunkenness. Judicial experience also shows that the offence often escapes detection and it is necessary to impose a sentence which will have a deterrent effect.

The provisions of Section 562 of the Criminal Procedure Code should not ordinarily be applied to a person convicted of an offence under Section 61 (1) of the Excise Act.

**143. Probation of Offenders Act.** - It is incumbent upon the court to give benefit of probation where the offenders are entitled to it as provided in Section 360 of the Code; unless the courts find that the convicts are incorrigible and cannot be reformed. The object of punishment is not only to be retributive but also to be reformatory. Keeping in view the aforesaid principles, the petitioner is given one chance to reform himself. Section 6 of the Probation of Offenders Act lay down that when any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment, but not with imprisonment for life, the court by which the accused is found guilty shall not sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offenders it will not be desirable to deal with him under section 3 or 4 of the Act and if the court passes any sentence of imprisonment, it shall record its reasons for doing so. The provisions of section 6 are mandatory and must be complied with and if the court thinks that the sentence of imprisonment should be imposed then it must comply with the provisions of section 6 of that Act. In that instant case the lower courts did not comply with the provisions of Section 6(2) and without assigning any reason awarded sentence of imprisonment and fine to the accused which is illegal.

Accused convicted under Excise Act - Minimum sentence of six months prescribed under the Act - Accused whether can be released on probation when minimum sentence is prescribed - In the instant case accused faced protracted trial for 14 years - Accused released on probation. 1980 CriLJ 1218 and 1985(1) R.C.R. (Cri.) 36 relied. *Gurdip Singh v. State of Punjab*, 2000(4) RCR(Criminal) 176(P&H)

Recovery of one Kg. of Charas - Conviction of accused - Incident 16 years old - Benefit of probation refused - Sentence reduced to already undergone. *Umed Singh v. State of Haryana*, 2000(2) RCR(Criminal) 723(P&H)

Recovery of working still and illicit liquor in the year 1985 - Accused convicted and sentenced to one year RI and fine of Rs. 5000 - Accused a five time convict and benefit of probation given to him on earlier occasion which did not act as deterrent to him - Conviction upheld

- Probation refused *Dial Singh v. State of Punjab, 2000(3) RCR(Criminal) 44(P&H)*

Recovery of illicit liquor - Accused convicted and sentenced to six months R.I. - Accused suffering agony of criminal proceedings for 16 years - Sentenced reduced to three months. *Jagga Singh v. State of Punjab, 2000(3) RCR(Criminal) 31 (P&H)*

Accused convicted and sentenced under Section 61(1)(a) - Accused a first offender - Recovery 14 years old - Released on probation. *Rachhpal Singh v. State of Punjab, 2000(3) RCR (Criminal) 405(P&H)*

Recovery of 120 bottles of illicit liquor - Accused convicted and sentenced to six months RI and fine of Rs. 1,000 - Accused suffering agony of trial for 16 years - Accused allowed benefit of probation *Ashok Kumar v. State of Punjab, 2000(2) RCR(Criminal) 734(P&H)*

Recovery of Charas - conviction of accused under S. 61(1)(a) - Accused faced agony of criminal proceedings for 15 years - Conviction upheld, but accused released on probation. *Vel Pal v. State of Haryana, 2000(1) RCR(Criminal) 183 (P&H)*

Recovery of illicit liquor - Case based on official witnesses - No evidence of animus against Police witnesses and no dent in their statements - Accused convicted but released on probation being first offender. *Bhim Sain v. State of Punjab, 1998(4) RCR(Criminal) 618(P&H)*

Accused convicted under Excise Act - Incident 16 years old - Accused not a previous convict - Released on probation. *Banta Singh v. State of Punjab, 2000(3) RCR (Criminal) 766(P&H)*

Accused found distilling illicit liquor - Recovery of working still and illicit liquor - No independent witness joined - Held, independent witnesses do not support the Police for several reasons - Non-examination of independent witnesses only fastens the responsibility upon Court to scrutinise the evidence with more care and caution - Conviction upheld - Accused, however, released on probation as offence was 12 years old *Ajit Singh v. State of Punjab, 2000(3) RCR(Criminal) 190(P&H)*

Probation - Recovery of working still and illicit liquor - Conviction of accused - Lapse of 16 years since recovery - Accused released on probation. *Sukhchain Singh v. State of Haryana, 2000(3) RCR(Criminal) 51 (P&H)*

Recovery of illicit liquor - Case based on official witnesses - No evidence of animus against Police witnesses and no dent in their statements - Accused convicted but released on probation being first offender.

Recovery of illicit liquor - Conviction of accused under Excise Act - Accused an old man, first offender and having clean antecedents - Accused released on probation.

Accused convicted under Excise Act - Accused a young man - Not a previous convict - Accused released on probation - Accused is on the threshold of life - He should be given at least one opportunity to reform himself.

Recovery of large quantity of illicit liquor and a working still- Accused convicted - Occurrence happened 13 years back - Accused 35 years of age - No ground to release the accused on probation - Accused indulged in commercial production of liquor. 1980 PLR 585 (FB) relied.

First offender - Recovery of huge quantity of lahan and running still- It shows the accused was running a minor distillery which affected State exchequer and the illicit liquor produced by him affected the health of general public - Such boot leggers are to be dealt with deterrent punishment - Offence punishable with three years rigorous imprisonment and fine of Rs. 2000/- - Accused awarded only one year R.I. and fine of Rs. 1000/- - Not entitled to be released on probation.

Recovery of 70 bottles of illicit liquor - Conviction of accused - Accused already convicted on four occasions - Accused, though of tender age, but not entitled to benefit of probation - Recovery was quite heavy. Criminal Procedure Code, 1973, Section 360.

Recovery of working still - Accused less than 21 years of age - Accused convicted under Section 61 (1) (c) and released on probation - Suffering from agony of trial for 14 years - Object of Probation of offenders Act and Section 360 Cr.P.c. is not only to convict the offender but also to reclaim him.

Recovery of Charas - conviction of accused under S. 61(l)(a) - Accused faced agony ~f criminal proceedings for 15 years - Conviction upheld, but accused released on probation.

Recovery of 30 bottles of illicit liquor 4 Conviction of accused - Benefit of probation could not be given in view of heavy recovery.

It is incumbent upon the court to give benefit of probation where the offenders are entitled to it as provided in Section 360 of the Code, unless the courts find that the convicts are incorrigible and cannot be reformed. The object of punishment is not only to be retributive but also to be reformative. !Seeping in view the aforesaid principles, the petitioner is given one chance to reform himself. Recovery of Lahan and working still. Accused convicted and sentenced under Section 61 (1)( c). Both the accused first convict~ and faced trial for more than 3-1/2 years. Benefit of probation denied to the accused as both of them were more than 30 years of age and quite matured. Accused well knew about the consequences of their illegal act which was hazardous for public health.

Working still recovery from accused and accused convicted. Accused aged late forties, not a previous convict and no further criminal activity came to notice. Accused released on probation.

45 bottles of liquor found from accused. Accused 21/22 years of age. Accused sentenced to imprisonment but released on Probation as the accused left the business of illicit liquor.

Recovery of illicit liquor. Accused convicted and sentenced to one year RI. Accused released on probation looking to his age and antecedents.

75 kg. Lahan recovered from accused. Sentence of R.I. for 6 months and fine of Rs. 500/- imposed by trial Court and affirmed by Sessions Judge. Accused a poor labourer and first of-

fender. Report of probation officer not called for by trial Court. Benefit of probation denied to accused without considering his age, character and antecedents. Object of also reformative. Accused granted benefit of probation under Section 360 C.P.c. by the High Court.

Accused below 21 years of age on the date of his conviction by trial Court. No previous conviction. Sentence held to be improper. Accused ordered to be released on probation under Sections 4 & 6 of Probation of Offenders Act.

Accused convicted under Excise Act. Minimum sentence provided under the Act. Accused whether can be released on probation (Yes). Accused faced trial for 8 long years and not a previous convict. Accused released on probation. 1987(2) Recent Criminal Reports 496 and 1988(1) Recent Criminal Reports 703 relied.

Recovery of illicit liquor. Conviction of accused. Benefit of probation sought by accused on the ground that he was a poor man and not a previous convict. Benefit not extended as accused was found distilling illicit liquor by means of a working still. Accused, however, faced trial for six years. In view of this sentence reduced from one year to six months. Sentence of fine sustained.

Recovery of working still. Accused convicted and sentenced to one year R.I. and to pay a fine of Rs. 5000. Accused 30 years of age and not a previous convict. No indulgence of accused in illicit distillation thereafter. Accused released on probation.

Accused convicted and sentenced to 1-1/2 years R.I. and a fine of Rs. 5000/-. Accused a first offender and sole bread earner of family. Accused released on probation Fine also remitted. Accused, however, directed to pay Rs. 5000/- towards cost of litigation.

Accused convicted and sentenced under Section 61 (1)(c) of Excise Act. Accused 20 years of age at the time of commission of offence. Accused given the benefit of probation and released . A person involved in an offence under Section 61 (1)( c) of Excise Act can be released on Probation for exceptional reasons.

Accused convicted under Excise Act. Accused first offender. Accused released on probation. Probation of Offenders Act is applicable to offences under Excise Act. Court has to record special reasons if benefit of probation is not afforded to accused.

Accused convicted under Excise Act. Accused not a previous convict. Quantity of illicit liquor recovered not very large. Accused released on probation.

Accused engaged by licensee for the transport of country made liquor. Permit cSIUId not be taken in time. Accused given benefit of Section 360 Cr. PC and released on bail.

Accused were found working a still and distilling liquor. Accused below the age of 19 years at the time of commission of offence can be give~ benefit under the Probation of Offenders Act minimum sentence is provided by the statute.

Conviction of accused under Excise Act. Accused released on probations he was in twenties which is a crucial age when he was to decide whether he would lead a life of crime or a life of virtue. Probation of Offenders Act, Sections 4 and 6.

Conviction under. Benefit of probation not accorded to accused by the trial Court as well as

Appellate Court. No special reasons recorded. High Court ordered release of the convict on probation. Under Section 360(4) C.P.C .. Sentence of imprisonment and fine set aside.

Five bottles of illicit liquor recovered. Accused sentenced to R.I. for 3 months and a fine of Rs. 500/- by Sessions Judge. Conviction affirmed by Sessions Judge. However, trial court appearing to have been unnecessarily swayed by the consideration that according to a chit produced by prosecution, accused had been previously convicted five times. Previous convictions of accused not duly proved according to law. Approach of trial Court erroneous . Under the circumstances, accused ordered to be released on probation for one year by High Court and his sentence of imprisonment and fine set aside.

Previous convict. Recovery of Working Still. Accused convicted and sentenced. Accused, however, released on probation by Sessions Judge despite the fact that he was previous convict. Appeal against grant of probation before High Court. Order of Sessions Judge not interfered with.

Probation Petitioners convicted and sentenced one year's R.I. and a fine of Rs. 5000/- each. One petitioner 70 years old and the other 25 years old. Nothing to show that they were previous convicts had bad antecedents. Petitioners have been in custody for 3 months. Petitioners released on probation.

Recovery of 33930 Mls. of illicit liquor. Benefit of probation. Lower Court pointed out that a sufficiently large quantity of liquor has been recovered but did not say why he was refusing the benefit. Convict young man and not previous convict, released on Probation of good conduct under Criminal Procedure Code (11 of 1974) Section 360.

Recovery of 40 bottles of liquor. Accused convicted. Accused released on probation. From quantity of liquor it cannot be said that accused was a bootlegger.

Recovery of 45 bottles illicit of liquor. Accused convicted and sentenced to 6 months R.I and a fine of Rs. 10001-. Occurrence took place in 1983. Accused on bail since 1983. Fit case to release the accused on probation.

Recovery of illicit liquor. Accused convicted and sentenced. Occurrence took place 10 year~ back. Accused on bail for 4 years. Accused a first offender. Accused released on probation.

Recovery of Lahan. Conviction of accused. Accused 30 years of age. Did not commit the offence out of greed. Accused released on probation. Sentence of fine also set aside.

Recovery of rectified spirit. Accused convicted. Case prolonged for 9 years after recovery. Accused released on probation.

Recovery of Working Still. Accused convicted. Accused released on probation by Sessions Judge. Held, it was not a fit case for probation as minimum punishment prescribed is six months. However two years passed since grant of probation. Not proper to set aside order of probation.

Recovery of working still. Conviction of accused under Section 16(1)(c). Accused 30 years of age. Did not commit offence out of greed. Act of accused not to prove hazardous to public

health. Accused released on probation. Sentence of fine also remitted.

Recover; of working still. Conviction of accused. Accused below 21 years. Whether entitled to probation. (Yes). If the court wants to deprive the accused of benefit of probation, it is obligatory for court under Section 6 (2) to call for a report of District Probation Officer and give a specific finding that offenders were of such a depraved character which disentitled them benefit of probation.

Release on probation sought on the ground of rust offender and family circumstances. Report of the Probation Officer recommends the probation for two years. Petitioner ordered to be released on probation on his executing a bond in the sum of Rs. 3000/-.

Sentence of R.I. for 4 months and fine of Rs. 500/- imposed by trial Court. Affirmed by Sessions Judge. Revision before the High Court, conviction held to be well-based. However, considering the facts that accused aged 27 years and a first offender, quantity of lahan recovered not very huge, nothing adverse against him regarding his antecedent and character, and possibility of his reformation. It expedient to release him on probation.

The provisions of section 6(2) of the Act are mandatory. If the court on conviction decides to release the accused on probation, then the calling the report of the Probation Officer is not necessary. However, if the court decides to award punishment a youthful offender, whose age is less than 21 years, then the calling of the report under section 6(2) of the Act is obligatory and after considering that report and also the circumstances of the case, the nature of the offence and the character of the offender it can award the sentence of imprisonment and shall also record reasons for the same.

Where the benefit of the provisions of Section 360 Cr. P.C. is not accorded to the accused by the trial court as well as appellate court and no special reasons are recorded by the said courts for withholding that benefit, the High Court exercising the powers under section 360(4) Cr.P.c. can order the release of the convict on probation and the sentence of fine and imprisonment are liable to be set aside.

The object of the Probation of Offenders Act is to prevent the turning of youthful offenders into criminals by their association with hardened criminals within the walls of the prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crime. Where the accused is a young man of 22 years and is a student in a college and has no previous conviction for any offence then taking into consideration the nature of the offence and the character of the offenders, it is expedient to release him on probation of good conduct under section 4(1) of the Act. Under section 11(1) of the Act the court exercising appellate or original jurisdiction can exercise jurisdiction under that Act.

Where the accused is a first offender and is 32 years of age and the quantity of opium recovered from him is only 600 grams, then in such a case he should be released on probation of good conduct under section 360 Cr.P.C.

**144. First time offender - When entitled to Probation.** - Petitioner being first offender under Section 61 of Punjab Excise Act, aged 26 at the time of raid, suffered 10 years'

litigation, not shown to be a person with bad antecedents - It will be expedient in the interest of justice to give him a chance to mend his ways rather than to send him to jail- Conviction maintained - Petitioner released on probation on personal bond in the sum of Rs. 5,000.

75 kg. Lahan recovered from accused. Sentence of R.1. for 6 months and fine of Rs.500/- imposed by trial Court and affirmed by Sessions Judge. Accused a poor labourer and first offender. Report of probation officer not called for by trial Court. Benefit of probation denied to accused without considering his age, character and antecedents. Object of also reformative. Accused granted benefit of probation under Section 360 C.P.C. by the High Court.

First offender. Recovery of huge quantity of lahan and running still. It shows the accused was running a minor distillery which affected State exchequer and the illicit liquor produced by him affected the health of general public. Such boot leggers are to be dealt with deterrent punishment. Offence punishable with three years rigorous imprisonment and fine of Rs 2000/-. Accused awarded only one year R.1. and fine of Rs. 1000/- Not entitled to be released on probation.

Accused aged 17 years and a first offender. Revision before the High Court. Sentence imposed upon him held to be illegal and he was held entitled to be released on probation under Section 6(2) of Probation of Offenders Act.

Accused convicted and sentenced under Section 61(1)(a) of Excise Act. Accused a young man, first offender and only bread-winner of family. Accused released on probation.

Accused convicted for distilling illicit liquor. One of the accused 70 years of age and the other of 25 years of age. Accused not previous convicts and having no bad antecedents. Both the accused released of probation to enable them to become good citizens and abandon idea of committing offences.

Accused convicted under Excise Act and sentenced to six months R.I. and to pay a fine of Rs. 200/-. Accused not a previous convict and faced agony of trial for 3 years. Accused released on probation. Fine imposed by trial court also set aside.

Accused convicted under Section 61 (1)( c). Both the accused youthful first offenders. Occurrence took place in 1981. Accused released on Probation. It would not be conducive to moral health of accused if they are sent to jail.

Accused found in possession of a drum of Lahan fit for containing 20 kg. of Lahan for distillation of illicit liquor. Official witnesses testimony consistent. Accused first offender and 23 years of age}n the circumstances of the case that the accused given benefit of probation of Offenders Act.

Accused found working a still distilling illicit liquor 20 kg. of lahan and two bottles of distilled

liquor recovered. Accused being a first offender. No person given by both the Courts as to why benefit of probation be denied to him. Quantity of lahan recovered not being large and the accused a first offender, held, entitled to be released on probation for two years and directed to pay Rs. 500/- as costs towards prosecution under Section 5 of Probation of Offenders Act, 1958.

Accused not a previous convict and also nothing on record against his character. Accused released on Probation. Prescription of minimum sentence under Section 16(1)(c) is no bar to grant of benefit of Probation.

Accused released on probation because recovery was affected 5 years ago and the accused was first offender and remained on bail throughout. Prescription of minimum sentence is no bar to grant benefit of probation for special reasons.

Accused sentenced to imprisonment and fine. Accused a youthful offender. No previous conviction. Though minimum punishment is provided for offence under Section 61 (1)(c), yet the accused being below 21 years should not have been sentenced to imprisonment. Accused released on probation by the High court.

Accused sentenced to R.I. for 8 months and fine of Rs. 1000/- by Sessions Judge. Prayer for release on probation. Declined by trial Court as well as Sessions Judge on the ground of 40 bottles of illicit liquor were recovered. Accused a young man aged 26 years and a first offender. Revision before High court. Accused held entitled to benefit of probation and ordered to be released on probation for two years and his sentence affine set aside. However, he was ordered to pay Rs. 500/ as litigation costs to the Occurrence took place in 1976. Sentence reduced to 3 months R.I.

Accused youthful persons and first offenders. Sentence of imprisonment and fine imposed upon him by trial Court and affirmed by Sessions. Revision before the High Court. Sentences imposed by the Courts below set aside as illegal and accused released on probation of good conduct. Criminal Procedure Code, Sections 360 and 361.

Conviction recorded against father and son. Son only about 16 years of age and a first offender. Circumstances showing that he committed the offence under the influence of his father. On these facts, son held entitled to be released on probation under Section 360, C.P.c.

Conviction under. Benefit of Probation denied to the accused by trial Court as well as by Sessions judge on the ground that 40 bottles of illicit liquor have been recovered. Accused a young man of about 26 years and first offender. Accused held entitled to the benefit of probation. Sentence of fine also set aside. Accused however ordered to pay Rs. 500/- as litigation costs to the State.

Petitioner found working a still in his house. Petitioner aged about 72 years and first offender. Held, entitled to the benefit of Section 360 of the Code of Criminal Procedure and released on probation.

Probation. Accused convicted under Section 61(1)(a). Accused a young man and first offender and only bread winner. Accused faced trial for two years. Fit case for release on probation.

Probation. Working Still recovered and accused convicted. One of the accused 22 years old and the other 35 years. Not previous convicts. Faced trial for 5-1/2 years. Accused released on probation..

Recovery of 20 bottles of illicit liquor. Accused convicted and sentenced to 6 months and fine of Rs. 1000/- Accused a first offender with good antecedents. Accused released on probation.

Recovery of 20 bottles of liquor. Accused convicted under Section 61(1)(a). Accused a young man, 1st offender and two minor children to support. Accused released on probation because in jail he was likely to come in contact with hardened criminals and might ultimately become a hardened criminal himself.

Recovery of 30 kgs. of lagan. Accused convicted and sentenced. Accused a first offender and not indulging in illicit liquor on a large scale. Fit case to release the accused on probation.

Recovery of 40 bottles of illicit liquor. Accused convicted under Punjab Excise Act and sentenced to one year R.I. and fine. Accused first offender having clean antecedents. Accused released on probation. Probation of Offenders Act, Section 4.

Recovery of illicit liquor. Conviction of accused. Accused below 20 years at the time of commission of offence. Accused released on probation. It is not necessary to call for a report of Probation Officer for releasing an offender under Section 6(2) of Probation of Offenders Act. Probation of Offenders Act Section 6(2).

Recovery of illicit liquor. Conviction of accused. Accused first offender and on bail for about for 4 years. Accused released on probation.

Recovery of working still. Accused convicted. Accused first offender, a very poor person and faced trial for about 7 years. Accused released on probation. Accused to pay Rs. 5000/-

as costs of litigation. Fine to be adjusted towards costs.

Recovery of working still. Conviction of accused. Accused 50 years of age and not a previous convict. No further criminal case under Excise Act committed by him. Accused released on probation. Sentence of fine also set aside.

Recovery of working still. Conviction of accused. Accused less than 21 years and not previous convicts. Accused released on probation to have an opportunity to reform themselves. Sentence of fine also set aside. Mere fact that minimum punishment is prescribed under Section 61 (1) (c) would not be sufficient to deprive the benefit of probation.

**145. Release on probation - When denied.** - Accused convicted under Excise Act. No ground to release him on probation.

Accused convicted and sentenced under section 61 (1)(c) Excise Act. Accused whether be released on probation (No). Provisions of Probation offenders Act are applicable in exceptional or specific weighty reasons. Probation of Offenders Act, Section 4.

Heavy quantity of Lahan and bottles of liquor recovered from accused. Accused sentenced for the offence. It is not a fit case to give benefit under probation of Offenders Act.

Recovery of 100 bottles of liquor. Accused convicted. No ground to release the accused on probation in view of huge quantity of recovery of illicit liquor. It is a great imperative of social defence that such activities are curbed with a strong hand in view of hooch tragedies.

Accused convicted under Excise Act. Trial continued for 3-1/2 years. It is not a long period to release the accused on Probation. Probation of Offenders Act, Section 4(3).

Recovery of 35 bottles of illicit liquor. Accused convicted and sentenced under Section 61 (1)(a) Excise Act. Accused aged 22 years. Not a fit case for release of accused on probation. This decision did not take into consideration decision of supreme Court and Full Bench decision of Punjab and Haryana High Court.

**146. No proof as to the quantity discovered in accused's possession** - Presumption should be in accused's favour. - Where it has not been proved by the prosecution how much cocaine was found in possession of the accused (i.e. whether quantity large or small) a presumption should be raised in favour the accused that the quantity was small and the punishment should accordingly be light.

**147. Possession of illicit liquor - Sentence.** - It is true that what should be an adequate punishment within the maximum provided for an offence is primarily for the convicting Court to decide, but that discretion should exhibit that the reasonable proportion has been maintained between the seriousness of the crime and the punishment imposed. Although no hard and fast rule can be laid down for measuring what in a particular case would be a proper sentence: yet courts are expected to observe a desirable proportion between the gravity of offence and the punishment for it. The fact that the accused was a refugee and that he had confessed his guilt were not, by themselves, extenuating circumstances and his sentence was enhanced,

In convictions from manufacturing liquor contrary to law and being in possession of it, deterrent sentences are absolutely necessary.

**148. Sentence - Distinction between manufacture, seller and person in possession for his own use.** - When the Legislature has laid down a maximum punishment for an offence or a series of offences, it is the duty of the trial Court to apportion punishment in each case after considering all the circumstances having a bearing upon it, and not to shirk its responsibility by imposing the maximum penalty upon every offender.

There ought to be a distinction between a manufacturer or seller of an excisable article, who not only derives profit from the transaction but also demoralises other people, and a person who possesses it for his own use, for awarding sentences.

**149. Sentence of Fine.** - Offences under the Punjab Excise Act apart from other consideration are offences against the revenue and there is no reason why in such cases sentences of fine should not be imposed. Thus where a very large amount of illicit liquor has been found, it is a fit case in which in place of severe sentence of imprisonment the sentence of the fine should be imposed .

**150. Punishment for offence in case of working still.** - Although regarding many kinds of offences it is not possible to lay down any hard and fast standard of punishment it is necessary in the case of offences like the distillation of illicit liquor to maintain some consistency in the matter. The actual working of an illicit still is one of the most serious offences under the Excise Act and generally speaking is more serious than merely being found in possession of illicit liquor or of materials used in its preparation.

The standard sentence for working an illicit still has been one year imprisonment and since the introduction of Sec. 69 A into the Punjab Excise Act, it has also been almost a standard practice to require convicted persons to furnish security covering a period after their release from prison.

Where there is very little departure from these accepted standards by the trial Court, Sessions Judges in appeal should not reduce the sentence of imprisonment and set aside the order under Section 69-A. without any special reasons.

**151. Unlawful manufacture of arrack - Separate conviction for manufacture and possession.** - The offence of manufacturing arrack includes the offence of being in possession of the apparatus, etc. and there cannot, therefore, be separate convictions of an accused person under clause (b) and (g) of Section 55 of the Madras Abkari Act. Again if a person unlawfully manufactures arrack, and is thus in unlawful possession of the manufactured

arrack, he cannot be further convicted under Sec. 58 as the manufacture itself means possession.

Similarly recovery of opium from the different places constitutes one offence.

It is harsh to punish for possession and again for Bottling - bottling is only a mode of possession.

**152. Offences under Excise Act - Whether cognizable?** - Under section 4(6) of the Cr. P. Code cognizable offence means an offence for which a police officer within or without the Presidency town, may in accordance with the second schedule or under any law for the time being in force, arrest without warrant. Under section 47 of the Punjab Excise Act, the offences under section 61 and 63 are cognizable under the above definition.

**153. Reduction in Sentence.** - Accused a minor at the time of commission of alleged offence. Case proved beyond reasonable doubt. Accused acquitted by trial Court on untenable grounds. On appeal against acquittal before High Court, acquittal held to be unjustified and reversed. In view of minority of accused he was, however, released after due admonition.

Accused convicted and sentenced 2 years R.I. and fine of Rs. 2000/- Sentence reduced to 6 months R.I. in view of protracted trial. Sentence of fine, however, maintained.

Accused convicted and sentenced to one year and three months R.I. besides a fine of Rs. 5000/- accused first offender and sole bread earner. Accused not entitled to benefit of probation. Sentence, however, reduced to one year. No alteration in amount of fine.

Accused convicted and sentenced to one year R.I. and fine of Rs. 5000/- by trial court. Appeal before Sessions Court. Appeal admitted and bail granted to accused. Recovery of fine however, not stayed. High Court ordered stay of recovery of fine during pendency of appeal in exercise of its inherent jurisdiction under Section 428 Cr. P. C.

Accused convicted and sentenced to one year R.I. .. Sentence reduced to six months R.I. in view of protracted trial.

Recovery of small quantity of illicit liquor (one jerry can). Accused faced trial for 3 years. Sentence reduced to already undergone (1 months).

Accused found working a still. Apparatus of working still, pitcher of lahan and illicit liquor recovered by police from his possession. Sentence of R.I. for one year and fine of Rs. 5000/- imposed upon the accused. Revision before High Court. Conviction assailed on grounds of discrepancy in statements of P.W.'s and non-production of case property in Court. Grounds held to be untenable. In cases involving illicit distillation, leniency in sentence is uncalled for. Conviction and sentence accordingly upheld.

Accused in their early twenties. Nothing against this antecedents and character. Though quantity of lahan recovered suggest that distillation was going on large scale concept of punishment. Accused released on furnishing bond. Criminal Procedure Code (II of 1974) Section

360. Held, that it was contended that the accused were young man in their early twenties at the time of the commission of the offence, and that time was nothing on the record to suggest any thing adverse as their antecedents and character. Stressing further, the learned counsel suggested that these two Young men be not sent back to jail to share company with hardened criminals, and the beneficent provision of Section 360, Code of Criminal Procedure, be employed to put them on a reformatory path. Undoubtedly, the legislature has put a bare minimum for the offence of working a still for illicit distillation and the quantity of lahan recovered in the instant case, does suggest that distillation was going on large scale yet keeping in view the concept of punishment, which in recent times, has been undergoing a change, it would be in the fitness of things that an opportunity be given to the petitioners, so that they reform themselves.

Accused sentenced of R.I. for one year and fine of Rs. 1000/- by the trial Court. Sentenced upheld by Sessions Judge. Accused not a previous convict. No reason given by both the Courts below for awarding more than minimum sentence provided for the offence. Revision before High Court. Case held to be fit for imposition of only minimum sentence. Sentence accordingly reduced.

Accused sentenced to six months RI. Accused faced trial for 3 Years and was on bail. Fit case for imposition punishment less or than the minimum prescribed .

Conviction under Excise Act. Accused of young age and first offender and faced protracted trial for 6 years. Accused already on bail. Sentence of imprisonment reduced to already undergone.

Recovery of 20 Kg. of lahan. Accused convicted and sentenced to 6 months R.I .. Accused faced strain of prosecution for 5 years 6 months. Sentence reduced to already undergone .

Recovery of illicit liquor. Accused convicted by lower court. Appellate Court remanding the case for fresh trial after recording additional evidence. Six years passed in the process. Order of remand set aside. Accused acquitted. Accused must have undergone considerable expense, tension and harassment during six years.

Recovery of illicit liquor. Prosecution continued for six years. This is the sufficient harassment for the offence. Accused acquitted on this ground, *inter alia*.

Recovery of opium. Conviction of accused. Trial going on since 1985. Concession given to accused in quantum of sentence. Sentence reduced to already undergone.

Sentence. Accused apprehended while distilling illicit liquor. Accused a young man of 25 years and a first offender. Sentence of one year and a fine of Rs. 5000/-. Sentence reduced to six months rigorous imprisonment and a fine of Rs. 2000/-.

Recovery of illicit liquor. Conviction of accused. Accused faced protracted trial for 10 years. Sentence reduced to already undergone.

**154. Procedure for trial under the Punjab Excise Act.** - Under section 5 of the Criminal Procedure Code, all offences under the I.P.C. are to be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Criminal Procedure Code and all offences under any other law are to be investigated, inquired into, tried and otherwise

dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into trying or otherwise dealing with such offences.

**155. Limitation for launching prosecution.** - Prosecution offence under. Period of limitation for launching prosecution is one year from date of alleged offence unless special sanction is given by State Govt. extending the period of limitation. In any case, maximum period of limitation is three years under Section 468 (2) (c) of Criminal Procedure Code. Prosecution launched after three years. Proceeding illegal and quashed.

**156. Material Evidence.** - Recovery of illicit liquor. Trial of accused. Statement of Investigating Officer recorded but the officer did not appear for cross-examination despite opportunities. His testimony could not be taken into consideration and in this way material evidence was missing. Accused acquitted.

**157. Trial of warrant case as summons case.** - Though a first offence under the Excise Act may be triable as a summons case, if the offender is charged with liability for enhanced punishment for having repeated the offence, that offence should be tried as a warrant case. Though the accused had pleaded guilty the trial of warrant case as a summons case must necessarily cause prejudice to the accused.

**158. Contents of charge and the particulars** - The law relating to the form of charges and contents etc. of the same is given sections 221 to 223 of the Criminal Procedure Code. In giving the particulars of the offence charged it would be better to set out the title of the Act and not merely an abbreviation with which a particular accused may not be familiar. But in any case it is not enough merely to say that the offence has been charged under a particular section. The accused must be told what he is said to have done which he ought not to have done i.e. that he sold or offered or exposed for sale as eatable ghee, a substance which was not eatable. He must be told what the offence charged is, and that is particularly necessary under this Act because under sub-section (3) Sec. 4 the seller may rely on a statutory defence, but he must give notice of that defence within three days of the service of the summons. If he does not know the particulars of the offence, it may be quite impossible for him to determine whether or not he can rely on the statutory defence.

Charges of offences under the Opium Act, 1878, should specify not merely section 9 which prescribes the punishment for the breach of various Rules made under the Act, but also the particular rule which the accused is alleged to have broken and so rendered himself liable to punishment under section 9

As a general rule, conviction under a section which provides a penalty for a variety of acts done in contravention of the statute is bad for duplicity where the section contains a variety of inconsistent alternatives.

Conviction should state the act of which the accused is found guilty and the particular breach of the rule established against him by his act so found. A person who exports from outside to a warehouse inside of which he is really the proprietor or temporary possessor, even under a false name is in fact committing an offence under the Act of importing into UP. although he is also the person who exports from outside.

**159. Country liquor must be specified.** - "Country liquor" is a generic term which can be equally applied to tari, country spirit, and country alcoholic liquor other than spirit, i.e. country fermented liquor. In Excise cases, it is always necessary to distinguish between these different kinds of country liquor and specify which particular kind is involved in the case, as the quantities of each of these different kinds of alcoholic liquor which may be possessed without a license differ.

**160. Identification of accused.** - The identification of an accused who is already known to the identifier is futile. Magistrates and Courts of appeal should be careful not to enlarge arrested persons on bail whose test identification is desired.

Those marks which are prominent or note-worthy that they are likely to be recognised by a verbal description should be covered by slips of paper. If a subject has a large number of prominent marks on his face, the marks should not be covered at all. Small pox marks are usually so large in number that any attempt at concealing them with slips of paper would make the face totally unrecognisable. So the Court should be sure that a number of innocent men in the parade bear similar pox marks. So also no concealment of bored ears is required and all that is necessary is that the Magistrate should make sure that the parade contains a number of innocent men with similarly bored ears. If the Magistrate comes to entertain good cause for the belief that in order to avoid recognition a bearded criminal after committing the crime got himself shaved or vice versa it is open to him to defer the identification of the clean shaven suspect until he has grown a beard of the appropriate size, or to get the bearded suspect shaved. No violation of Article 20 of the Constitution occurs if the Magistrate does so.

The process of identification involves the statement by the identifying witnesses that the particular properties identified were the subject-matter of the offence or the persons identified were concerned in the offence. This statement may be express or implied. The identifier may point out by his finger or touch the property of the person identified, may either nod his head or give his assent in answer of a question addressed to him or may make signs or gestures which are tantamount to saying that the particular property identified was the subject matter of the offence or the person identified was concerned in the offence. All these statements express or implied including the signs and gestures would amount to a communication of the fact of identification. The distinction between the mental act of identification and the communication thereof by the identifier to another person is logical and such communications are tantamount to statement made by the identifiers. The physical facts of identification has no separate existence apart from the statement involved in the very process of identification.

Facts which establish the identity of an accused person are relevant under Section 9. As a general rule, the substantive evidence of a witness is a statement made in Court. The evidence of mere identification at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to

generally look for corroboration of the sworn testimony of witnesses in Court as to identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the Court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them.

Failure to hold test identification is not fatal in all cases. If the accused is well known to prosecution witnesses it would be waste of time to put him up for identification. If however, there is any doubt in the matter, the prosecution should hold identification parade. Where during the course of investigation of a case the accused files an application for holding an identification parade on allegation that the accused is not known to eye- witnesses and that application is rejected on the ground that charge-sheet against accused has been filed and the accused has been named by eye- witnesses, but during the course of the trial the allegation of the accused is found to be true, then the rejection of the application is not valid and unless there is some other evidence the trial will be liable to be vitiated.

**161. Identification - Evidentry value.** - The test identification parade conducted by a police officer alone attracts the operation of Section 162, Cr. P.Code which makes that evidence inadmissible. The evidence of identification proceedings is not to be rejected on the sole ground that the accused person was on bail. The value to be attached to an identification parade depends upon circumstances of each case. The main considerations before the court are whether the identification parade was conducted in a fair manner, and whether witnesses in fact saw the accused between the commission of the offence and identification parade. When accused person is on bail and he is to be put up for identification, the responsibility for keeping himself away from prosecution witnesses lies mainly upon him. The responsibility of the accused is all the greater in a case where he gives an undertaking to keep himself in Court till the day of identification. In such case the prosecution cannot do much for keeping the accused away from prosecution witnesses.

Where the property to be identified was not sealed at the time of the recovery, little value can be attached to the test identification proceeding.

But even a total failure to hold a test identification proceeding would not make inadmissible the evidence of identification in Court.

Normally the result of identification proceedings in which a particular accused is put up must alone be taken into consideration in deciding the value of identification of a particular witness with respect to that accused; other test identifications, provided they were held within a short period of the test under consideration, can be taken into account solely for judging the memory and power of observation of the witness concerned.

In case the witnesses do not give the name of any accused, it is necessary to hold a test

identification parade. Where, however, a witness gives the name of an accused as one whom he has identified, ordinarily no test identification parade is necessary. But if any accused holds out a challenge and says that he will not be identified by the witnesses, or makes a prayer that he should be put upon a test identification parade, such a parade must always be held in order to meet the challenge. There, must, however, be one exception. If the accused is arrested on the spot and if he is in custody from that time upto the date of his trial, there can be no question at all about his identity. If a parade is held, it will be a test of the memory of the witnesses concerned. It cannot be possibly be a factor of any if importance on the question of identification because the accused all the time remained in jail. If the Court reasonably comes to the conclusion that there may be force in the prayer of the accused for test identification, it should direct the holding of a regular test identification in order that the witness veracity may be tested. The court has ample power under Section 540, Cr.P.Code to secure this evidence.

**162. Some accused falsely implicated.** - Once it is found that some out of the accused have been falsely implicated, some material will have to be found on the record which will give an indication as to which out of the accused have actually participated in the crime before any of the accused can be held guilty. It cannot be said that witness who tells lie on one point should not be believed on the other point. The only condition is that in such a case he can be believed if there is corroboration. *it* is a settled law that a witness can be believed on a part of the story if there is corroboration.

**163. Magistrate to write order sheet in his hand and initial.** - The orders in the order sheet relating to a case must be written by the Magistrate himself and this work should not be left to a Clerk in his office. The Magistrate must remember that he is doing judicial work and that the record of the judicial work done by him on each date in a case must be written in his own handwriting in the order-sheet and initialed by him. He must also remember that the order sheet in a case will also be perused by the superior Courts when matters go up in appeal or revision.

**164. Plea of guilty.** - An accused cannot be convicted inspite of his plea of guilty where the facts stated in the challan and particulars of offence put to him do not constitute an offence.

It is open to Magistrate to accept the plea of guilty and convict accused on his own admission if put forward at initial stage but there is no provision under which court can accept such plea and base conviction when prosecution evidence has been let in and trial commenced.

**165. Affidavits - Mere attestation not sufficient.** - Affidavit can be filed by witnesses who have to depose to formal matters. Affidavit means statement of the deponent on simple affirmation or solemn affirmation or on oath. Where the affidavit only bears the words "Attested" by Magistrate 1st Class, which does not comply with the requirement of attestation of an affidavit by the authority before whom it is sworn which requires that the Magistrate has to make an endorsement that the deponent whom he knows or whom he believes to be the person who is deposing on the identification of some other person whom he knows, has made the statement on simple affirmation or solemn affirmation or on oath before him. This type of certificate is missing from both the exhibits and the mere word attested does not mean that the deponents had made the statement in accordance with law and as such the so

called affidavits cannot be taken in to consideration. In their absence there is no evidence to prove that the samples of opium were not tampered with by any person while they were in the custody of Moharrier Head Constable or in transit from Police Station to Chemical Examiner. Rules 9 and 11 of Chapter 18- B of the High Court Rules and Orders volume III have not been complied with and no conviction can be based without compliance. The mere use of word ' attested' on the affidavit does not amount to compliance with law. The attesting magistrate should mention either that he himself knows the deponent or had been identified before him by somebody whom he knows.

**166. Affidavit defective.** - Where the affidavits of formal witnesses were filed at the trial by the prosecution were not objected to as being inadmissible for want of proper attestation and it was only at the appellate stage that an objection was raised to the attestation at the argument stage, and the learned judge keeping in view the facts and circumstances of the case allowed the prosecution to place on record duly attested affidavits of two constables; it was held that there was no ground to interfere with the order of the learned Sessions Judge.

It has been authoritatively held in a number of cases that even though the evidence of formal nature can be led by way of affidavits but the same have to be properly and validly got attested. The attestation has to contain the certificate showing that either the deponent was personally known to the Magistrate who attested that affidavit or the person who identified the deponent was known to the magistrate. It has to be further clear from the attestation that it was the deponent who has made the affirmation in the presence of the magistrate. If these ingredients are missing then the same cannot be considered and the prosecution case must fail.

**167. Enmity with the witness at whose instance the involvement is alleged.** - In fact, it would have been proper on the part of the prosecution to produce Balbir Singh in Court and allow the defence to cross-examine him. The mere statement of the prosecutor that he has been won over would not be of any avail since a definite plea was taken by the petitioner that he had been involved in this case at the instance of Balbir Singh with whom he had a long-standing enmity. Consequently I am of the view that the prosecution has failed to prove the case against the petitioner beyond a shadow of doubt.

**168. Evidence interested and tainted.** - When prosecution evidence is tainted as interested and thus is not sufficient to prove the prosecution case. In such a case the accused is entitled to acquittal. The investigating officer should join in raiding party independent persons from the neighborhood and not stooges who are always at their beck and call and are willing to state anything they are desired by the prosecution.

**169. Witness alleged turning hostile.** - Independent witness turned hostile and falsified prosecution story. Witness cross examined by Prosecution but his credibility could not be shaken. Accused acquitted. Official witness under section 161 Cr. P.C, not proved on record as such the statement could not be taken into consideration.

Two principal considerations are whether in the circumstances of the case, it is possible to believe their presence at scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable unreliable in their evidence. In respect of both these considerations,

circumstance either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence.

Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses have to be examined on its own merits. Where the accused raised a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence. Even though a party calling a witness wants to treat him as hostile his opinion as to his hostility or otherwise of the witness or truth otherwise of his evidence is not final or binding in the Court. Even when the witness deposes in favour of the party calling him, the Court is entitled to either believe or disbelieve. It is wrong to suppose that whatever is stated in favour of the party calling should necessarily be believed.

**170. Evidence of police witnesses.** - Ordinarily a witness who has acted as a police witness in 7 or 8 previous cases must be regarded as a person under the influence of Police and unless there are special reasons the evidence of such witness must be rejected. In prohibitory cases if there is no independent evidence ordinarily the evidence of police officers is always suspected. There may be cases in which their evidence may be accepted for good or special reasons. The presumption that persons act honestly applies to police officers.

Police on patrol duty. Caught the accused red-handed while distilling illicit liquor by means of working still. Prosecution proved its case beyond shadow of doubt. Excise inspector, however, could not identify the drum which contained Lahan. No ground to set aside the conviction.

**171. Conviction basis of evidence of official witnesses only - Valid.** - The evidence of the official witnesses has to be weighed in the same scale as any other testimony. Where an effort was actually made by the Investigation Officer to get witnesses from the public but none were available, a conviction based on the evidence of the Official witnesses alone is not incorrect when it is not shown that they had any animus or hostility against the accused. The High Court reduced the sentence which was found excessive having regard inter alia to the fact that the accused was a woman.

**172. Conviction on the basis of statements of the Excise Inspector and the Sub-Inspector of Police only.** - It is no doubt true that, apart from minor discrepancies, the two witnesses of the prosecution have made quite consistent statements. But in the peculiar circumstances of this case, I am not prepared to affirm the conviction of the petitioner on their statements. If the Inspector was in charge of the raid, normally he should have submitted a report against the petitioner under Section 173 Criminal Procedure Code, but this report is stated to have been submitted by the sub-Inspector, without dilating any further on these points I hold that because of the omission of the prosecution to summon the Inspector as a witness in this case the case against the petitioner remains highly doubtful.

**173. Evidence of police officer** - It is true that simply because a person belongs to the police department his statement should not be ignored but rather should be treated in the same manner as that of any other witness, but where the number of independent witnesses are produced and they do not support the prosecution it will not be safe to rely on the evidence of the Investigating officer alone and convict the accused especially when some allegations of partiality or interestedness are made against such an officer. The mere fact that a witness belongs to police or their department does not justify ruling out the evidence. The case would perhaps have been different if hostility between the petitioner and the police was proved or atleast alleged.

**174. Prosecution under Excise Act maintainable** - though the act may be an offence under Cosmetic and Drugs Act also. - The Dabur India a limited company engaged in manufacture of Ayurvedic medicine and Allopathic medicaments along with cosmetics. The said company was granted a license for manufacturing SOMAMRIT and one of the ingredients of such preparation was alcohol. It is also undisputed that the representative sample of SOMAMRIT was examined by the chemical examiner, who opined that it contains 11.998% to 2.49% volume by volume of alcohol. The Chemical Examiner further reported that SOMAMRIT has not been listed in the standard Ayurvedic Pharmacopoeia recognized by the Central Government. Company contended that the entire field in regard to medical preparations and drugs is covered by the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and the Drugs and Cosmetics Act, 1940 and the dealers under these Acts cannot be proceeded against under the provisions of the Excise Act. According to the Company, SOMAMRIT is an Ayurvedic medicine and is governed by the provision of the Act of 1955 and the Act of 1940. The Act of 1940 is a self-contained one and provides for the issuance of license, enumerates the conditions of license and mentions the contravention and violation of any of the provisions of the Act and the conditions of the license; and, therefore, the manufacturers and dealers in medicinal preparations if they commit any violation of the provisions of the Act, can be effectively proceeded against under the provisions of the very same Act without resorting to the provisions of the Excise Act. Learned counsel for the petitioner further contended that in those circumstances, the Excise Act has no application to the facts of the present case, and the criminal proceedings initiated against the petitioner are liable to be quashed. It was also contended that 'SOMAMRIT' is an Ayurvedic medicine and the same is governed by the provisions of the Act of 1940, the representative samples had to be analysed by the Authority prescribed under the Act and as the representative samples had been examined by an Authority other than prescribed under the Act of 1940, no prosecution can be launched against the petitioner under the Excise Act. Reliance was sought to be placed on the decisions of the High Court of Andhra Pradesh. In both the cases prosecution was launched under the A.P. Excise Act on the basis of the report of the Chemical Examiner and the same was quashed on the ground that the sample was not analysed by the Analyst appointed under the Act of 1940.

The above contentions of the Company were resisted by the learned counsel for the State contending, *inter alia*, that 'SOMAMRIT' falls within the definition of liquor as defined in

Section 3(14) of the Excise Act, the provisions of the Excise Act are certainly attracted in the case on hand as the Company was dealing in liquor without the requisite license.

In order to appreciate the rival contentions raised in the case, it is necessary to consider the relevant provisions of the Act of 1940 as well as the Act of 1955. Insofar as the Act of 1955 is concerned, a perusal of the preamble indicates that this is an act to provide for the levy and collection of duties on medicinal and toilet preparations. This conclusion is borne out even by the provisions contained in various Sections thereof. This Act does in no way deal with the matter of regulating any law in regard to checking the misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages.

Chapter IV of the Act of 1940 deals with the provisions relating to manufacture, sale and distribution of drugs and cosmetics. Sections 27 and 27-A provide for penalty for manufacture, sales etc. of cosmetics and drugs in contravention of Chapter IV and Section 31 provides for confiscation of the stock of the drug and cosmetic in respect of which contravention has been made. The Inspectors and other authorities of the Central Government have been empowered to inspect any premises, take samples of any drug or cosmetic, enter and search at all reasonable times and examine any record, register or document or any other material in the business premises and exercise such other powers as may be necessary for carrying out the purposes of Chapter IV or any rule made thereunder. Chapter IV -A of the Act deals with the provisions relating to Ayurvedic, Siddha or Unani drugs. Sections 33-E, 33-EE and 33-EEA declare which of the drugs shall be deemed to be misbranded, adulterated and spurious respectively. Section 33-EEB regulates manufacture for sale of Ayurvedic, Siddha or Unani drugs whereas Section 33-EEC prohibits manufacture and sale of certain Ayurvedic, Siddha or Unani drugs. Section 33-EED confers power on the Central Government to prohibit manufacture etc. of any Ayurvedic, Siddha or Unani drugs in public interest. Section 33-F empowers the Central Government or a State Government to appoint Government Analysts for purpose of the Act. Under Section 33-G, the Central Government or a State Government may appoint Inspectors for exercising powers under the Act. Section 33-1 provides for penalty for manufacture, sale etc. of any Ayurvedic, Siddha or Unani drug in contravention of Chapter IV -A whereas Section 33-K provides for confiscation of the stock of the Ayurvedic, Siddha or 'Unani drug in respect of which contravention has been made. Thus, neither in the Act of 1940 nor in the Rules made thereunder, we find any provision prohibiting the Excise Authorities under the Excise Act or the police from proceeding against the dealers under the Act of 1940 if they contravene the provisions of the Excise Act. On the contrary, there is a specific provision in sub-Section (3) of Section 32 of the Act of 1940, which completely demolishes the contention of the Company. Section 32(3) is as under:

"Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

The expression "any other law" employed in sub-Section (3) is of wide amplitude and it embraces within its fold the Excise Act also. It is well settled that a particular act or omission to do a thing may constitute an offence under two or more statutes. In such an event the compe-

tent authorities are not prevented from taking any action under the various statutes. Section 26 of the General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be punished under either or any of those enactments; but he shall not be liable to be punished twice for the same offence. The only restriction is indicated in Article 20(2) of the Constitution, which directs that no person shall be prosecuted and punished for the same offence more than once. As noticed earlier, the Act of 1940 does not provide for prevention of misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages. The incidental provisions about manufacture, transport, possession and license etc. in the Rules framed under the Act of 1940 will have the effect of repealing only *pro tanto* similar provision in the Excise Act, i.e. only insofar as they have bearing with regard to levy and collection of duties and control of quality of medicinal preparations and drugs. They will not have the effect the repeating provisions of the Excise Act insofar as they relate to the prevention of misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages. As a necessary corollary, provisions regulating misuse of medicinal preparations and drugs containing alcohol can be made by the State Government as also by the competent Authority in the exercise of the powers conferred on them by the Excise Act. Such an interpretation would be in conformity with the rule of interpretation about "harmonious construction", making an endeavour "to solve the conflict" and attempting a reconciliation as laid down by the Supreme Court in **Harak Chand v. Union of India, AIR 1970 SC 1453**. Thus the Excise Authorities or the police can proceed under Section 61 of the Excise Act or any other provision of the Excise Act against a dealer under the Act of 1940, if he commits any offence under the Excise Act, although he might also be liable under the Act of 1940. That being so, the plea of the Company that it cannot be proceeded against by the Police under the Excise Act even if he contravenes the provisions of the Excise Act is not tenable. With due respect to the learned Judges of the High Court of Andhra Pradesh.

**175. Ayurvedic Medicine - when "intoxicant".** - Briefly stated, the facts are that on 15.11.1991, 177 bottles of 'SOMAMRIT', an Ayurvedic medicine manufactured by Dabur India (Ltd.), were recovered. Representative samples of 'SOMAMRIT' were sent to the Analyst, who reported that the v/v content of ethyl alcohol was in excess of the permissible limit, which is violative of the notification dated 7.12.1991 issued under the Punjab Excise Act. It was contended by the Company that 'SOMAMRIT' is an Ayurvedic medicine and not an intoxicant as its alcohol content is only 11 % v.v which is permissible under the license granted to its manufacturer, namely, Dabur India (Ltd.). As per report of the Analyst, the percentage of the strength of Ethyl Alcohol in the sampled bottles of 'SOMAMRIT' varied from 11.992 to 12.49% V/V. According to the prosecution, the volume to volume strength of the Ethyl Alcohol was in excess of the permissible limit, which contravenes the notification dated 7.12.1991 issued under the Excise Act. Whether a particular drug or any other article is an 'intoxicant' within the meaning of Section 3(12-A) or an 'intoxicant drug' as defined in Section 3(13) of the Excise Act is a question of fact depending upon facts and circumstances.

**176. Place of recovery - Recovery of illicit liquor** - Place of recovery shown in rough site plan - Evidence showed that recovery was effected from a different place - It affects

adversely on genuineness of entire prosecution version - Conviction set *aside*. *Achhar Singh v. State of Punjab*. 2000(3) RCR (Criminal) 777(P&H)

**177. Identity of the accused.** - - Prosecution version that accused saw the Police and threw away a gunny bag and jumped into the river - No cogent evidence that it was the accused who had run away - Members of Police claimed to know the accused, but no satisfactory evidence produced - Feeble evidence produced by prosecution as to identity could not be accepted Conviction of accused set *aside*. *Jaswant Singh @ Jassa Singh v. State of Punjab*, 2000(3) RCR (Criminal) 774(P&H)

**178. Contravention of Section 100(4), Cr.P.c. whether render the search defective.** - Breach of sub-section (4) of Section 100 C.P.c. which requires the officer effecting the search to call two or more independent and respectable persons of the locality to witness the search would not render the search defective. Though the contravention may affect the credibility of the evidence let in, it does not affect the admissibility of the evidence. Conviction based on such evidence is not liable to be disturbed merely because of the non-compliance of the provision.

Recovery of lahan and working still by police on secret information. Information was received by police at Bus Stand where witnesses were available but no independent witness joined. Held, it was non-compliance of Section 100 Cr.P.C .. Statement of Police Officer that witnesses had refused to join was an after-thought.

Search and seizure of working still by Police raiding party. Not necessary that witnesses to the search should be of same locality. Witnesses may be of any other locality if respectable and independent inhabitants of same locality are not available or are not willing to be witnesses to the search.

**179. Employee of a liquor vend contractor not independent witness.** - Where in organising raids the Sub-Inspector and the Excise Inspector had joined only those persons with them, who had previous association with the police and in spite of the fact that independent evidence was available which has been withheld, it could cast doubt on the testimony of the official witnesses. An employee of the liquor vend contractor is not an independent witness. It is a matter of common experience the liquor vend contractors are over zealous in the detection of boat legging as that affects their trade. In view of this the blemish attaches to the testimony of the employee of the liquor vend.

**180. Official witness - Case cannot be thrown out.** - As a rule of prudence, corroboration preferably by a reliable witness is desirable. But in all cases, such corroboration cannot be insisted as a matter of course because it may not be possible in all cases to get corroboration from an independent witness. Where the prosecution case is supported by official witnesses only it cannot be thrown out on this scope alone; but where the evidence of such witnesses suffers from some infirmity it cannot be implicitly relied upon. In the present case there were serious contradictions between the statement of the Sub-Inspector and the Head Constable about the arrest of the petitioner. If the accused had been arrested on 8th of February 1971, then the prosecution case about his working the still on the 7th of February, 1971, is obviously untrue. The accused was given the benefit of doubt and acquitted.

Prosecution based on testimony of official witness. - Nothing on record to suggest that official witness had any animus to implicate the accused falsely - He has also conscience, and why should he implicate the accused falsely when he know that this case can land him in jail for a period of one year in the *minimum*. *Rachhpal Singh v. State of Punjab, 2000(3) RCR (Criminal) 405(P&H)*

Official witnesses. Statements of official witnesses have to be considered like the statements of other witnesses. But where the case is based on the testimony of the official witnesses only, it is the duty of the court to scrutinise their evidence with care and caution. Testimony of official witnesses cannot be discarded only because of their official status.

Recovery of illicit liquor, Lahan and a working still. No independent witness joined as Police had no prior information and it was a chance recovery. Conviction based on two official witnesses. Evidence of official witnesses unimpeachable and no malice on their part towards accused. Conviction upheld.

Police on patrol duty. Recovery of illicit liquor. No independent witness joined. In such a case court is required to scan the ocular evidence of official witnesses minutely and with more caution. 1977 PLR 571 relied.

**181. Search - Section 165 Cr.PC not mandatory.** - The general principles laid down regarding the irregularities committed in searches, equally apply even to cases where the grounds of belief as required under Section 165 are not recorded. In *Bai Radha v. State of Gujarat*, while considering the scope of Section 15 of the Suppression of Immoral Traffic Act, whereunder the authorised officer had to record the grounds of his belief, on the effect of failure to do so, this Court observed thus:

"The principles which have been settled with regard to the effect of an irregular search made in exercise of the powers under Section 165 of the Code of Criminal Procedure would be fully applicable even to a case under the Act where the search has not been made in strict compliance with its provisions. It is significant that there is no provision in the Act according to which any search carried out in contravention of Section 15 would render the trial illegal. In the absence of such a provision we must apply the law which has been laid down with regard to searches made under the provisions of the Criminal Procedure Code."

While concluding on the legal effect with regard to an irregular search under Section 165 of the Code, it was observed thus:

"In conclusion it may be observed that the investigating agencies cannot and ought not to show complete disregard of such provisions as are contained in sub-Sections (1) and (2) of Section 15 of the Act. The legislature in its wisdom provided special safeguards owing to the nature of the premises which have to be searched involving inroads on the privacy of citizens and handling of delicate situations in respect of females. But the entire proceedings and the trial do not become illegal and vitiated owing to the non-observance of or non-compliance with the direction contained in the aforesaid provisions. The court, however, has to be very careful and circumspect in weighing the evidence where there has been such a failure on the part of the investigating agency but unless until some prejudice is shown to have been caused to the accused person or

persons the conviction and the sentence cannot be set aside."

The observations made in the above case have been relied upon by this Court in *Shyam Lal Sharma v. State of Madhya Pradesh*. No doubt in *K.L. Subhayya's* case failure to record the grounds of belief as required under Section 54 of the Mysore Excise Act amounted to an illegality vitiating the trial. But there it must be noted that Section 54 itself gives a mandate that such grounds of belief should be recorded. But under the NDPS Act, Sections 41 and 42(1) do not give any such mandate. It is only proviso to Section 42(1) which makes the recording of grounds obligatory. In *R. S. Seth Gopikisan Agarwal v. R.N. Seth, Assistant Collector of Customs and Central Excise*, a question arose whether the custom officer while acting under Section 105 of the Customs Act and making a search as provided under Section 165(1) should record reasons. This argument was based upon Section 105(2) which lays down that the provisions of the Cr.PC relating to search so far as may be applied to search under this Section. Considering this submission it was held thus:

"The argument is that the expression "so far as may be" in Section 105(2) of the Act attracts Section 165(1) of the Code of Criminal Procedure and under that section, as the police officer has to record in writing the grounds of his belief the Assistant Collector of customs shall also in authorizing the search record his reasons for doing so. But, in our view, Section 105 of the Act and Section 165(1) of the Code of Criminal Procedure are intended to meet totally different situations. While under Section 105 of the Act the Assistant Collector of Customs either makes the search personally or authorises any officer of Customs to do so, if he has reason to believe the facts mentioned therein, under section 165(1) of the Code of Criminal Procedure the recording of the reasons for believing the facts is only to enable him to make a search urgently in a case where search warrants in the ordinary course be obtained. It is, therefore, not possible to invoke that condition and apply it to a situation arising under Section 105 of the Act."

It therefore emerges that the empowered officer while effecting the search or arrest without warrant as provided under Sections 41 and 42(1) has to carry out search in accordance with Section 165 Cr.PC, but if he fails to record reasons, such a failure will not amount to an illegality vitiating the trial. The effect of such a failure has to be kept in view in appreciating the evidence as held in *Bai Radha's* case.

Section 52 and 57 come into operation after the arrest and seizure under the Act. Somewhat similar provisions also are there in the Cr.PC. If there is any violation of these provisions, then the Court has to examine the effect of the same. In that context while determining whether the provisions of the Act to be followed after the arrest or search are directory or mandatory. It will have to be kept in mind that the provisions of a statute creating public duties are generally speaking directory. The provisions of these two Sections contain procedural instructions for strict compliance by the officers. But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these officers null and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore it has to be shown that such noncompliance has caused prejudice and resulted in failure of justice. The officers, however, cannot totally ignore these provisions and if there is no proper

explanation for non-compliance or where the Officers totally ignore the provisions then that will definitely have an adverse effect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere non-compliance or failure to strictly comply by itself will not vitiate the prosecution.

**182. Non-official witnesses won over - Conviction proper.** - There is no rule of law that the testimony of an official witness is to be ruled out of consideration merely on account of his garb. On the other hand, an official witness is as good as a witness as any other. All that the Court is required to see is the veracity of these witnesses.

**183. Testimony of Official witness - When believed.** - Recovery of opium. Prosecution case based on official witnesses disinterested. No dent could be made against their testimony in cross examination. Testimony of official witnesses could not be doubted.

Accused along with another person found attending to the working still for distilling illicit liquor. Appellate Court acquitted the other persons for want of sufficient evidence to connect him with offence. Prosecution story resting on official witnesses found to be doubtful. Petitioner acquitted.

Accused convicted and sentenced under Section 61(1)(c). Benefit of Section 360 Cr. PC cannot be extended to cases of this kind. Evidence of Official witness has to be weighed in same scale as any other testimony if such witnesses are not held to have any animus or hostility against accused.

Accused found in possession of a drum of Lahan fit for containing 20 kg. of Lahan for distillation of illicit liquor. Official witnesses testimony consistent. Accused first offender and 23 years of age. In the circumstances of the case that the accused given benefit of probation of Offenders Act.

Conviction of accused based on evidence of official witnesses. Conviction upheld. Joining of independent witness would have leaked the information of raid and frustrated the purpose.

Police held a picket and recovered illicit liquor from accused. No independent witness could be joined in these circumstances. Accused rightly convicted believing testimony of official witness. Sentence of accused, however, reduced from 1-1/2 years to 6 months as the accused was first offender.

Prosecution story rests solely on the testimony of official witnesses. Held that it is now more than amply settled that the evidence of official witnesses cannot be thrown out of consideration merely because of their status.

Raid by Police Party. Working Still and illicit liquor recovered from the house of accused. No independent witness joined by raiding party. In such a case prosecution evidence has to be scrutinized carefully. But it cannot be doubted merely on the ground that no non-official witness was joined. No evidence that official witnesses were in any way inimical towards the accused. Conviction upheld.

Raiding party comprised official witnesses. Testimony of official witnesses is not to be discarded merely on that score.

Recovery of illicit liquor. Conviction of accused based on official witnesses. Conviction not to be set aside. An official witness commands same respect as any other witness. More so no discrepancy was pointed out in the statements of the official witnesses.

Recovery of lagan. Prosecution case based on official witnesses. An official witness cannot be doubted only on the ground that he is an official witness.

Recovery of Opium from accused. Accused suddenly intercepted by Police. No occasion for Police to join any witness from Public. Conviction validly based on official testimony.

Recovery of working Still. conviction based on official witnesses. It was explained that on receipt of secret information, nobody met the raiding party. Police has to act post haste. No adverse inference could be drawn as no hint of animus was suggested against the official witnesses.

**184. Testimony of Official witness - When disbelieved.** - Accused found working on Still distilling illicit liquor and convicted. Conviction resting on evidence by official witnesses. No independent witness joined although some persons from public were moving about. Conviction set aside.

Case resting upon testimony of official witnesses. Independent witnesses, joined but not examined by prosecution. Presence of one of official witnesses at the time of raid doubtful. Accused entitled to acquittal. Held, that when there is some improbability in the presence of the witness and then that improbability is further fortified by refusal to answer a relevant question it is difficult to place reliance upon the statement of such a witness. Furthermore, Excise Inspector Santokh Singh could be said to be interested in the success of the case under the Excise Act. It is highly probable that Assistant Sub-Inspector Raghbir Singh called upon Excise Inspector Santokh Singh at some subsequent stage of the case to come forward as an eye-witness to the recovery of the working still. There is thus only the statement for Assistant sub Inspector Raghbir Singh PW 2 which cannot be said to be sufficient in the circumstances of the case to prove the offence for which the petitioners have been convicted.

Conviction based on evidence of official witnesses. It is hackneyed argument that evidence of official witnesses should not be accepted. Official testimony is not on a disadvantage and has to be appraised without bias.

Conviction based on the testimony of lone official witness. Effect. Where the two non-official witnesses declined to support the prosecution case and the only evidence left was that of Head Constable. Held, that it would as a matter of prudence be not safe to sustain the conviction on the testimony of the said lone official witness.

Only one independent witness not supporting the prosecution case. Statements of police witnesses contradictory on material points. Investigation conducted by comparatively junior police official. Minor discrepancies in statements of police officials assume significance. Accused entitled to benefit of doubt. Accused acquitted.

Petitioner found engaged in the distillation of illicit liquor. Conviction resting on the testimony of two official witnesses only. Duty of the Court. Discrepancies in the testimony of both official

witnesses. Petitioner acquitted.

Prosecution case resting on evidence of official witnesses alone. Independent witness to the raid given up as having been won over and actually examined as a D.W. Statements of official witnesses inconsistent in material particulars. Defence probable. Accused entitled to benefit of doubt and acquitted.

Prosecution relied on official witnesses. Such discrepancies assume significance.<sup>2</sup>

Raid by Police party. Recovery of Lahan. No effort made by the Police to join any resident of locality. In this view of the matter, testimony of official witnesses alone cannot be sufficient to sustain conviction of the accused.

Recovery of illicit liquor by Police. No independent witness joined. Case based on official witnesses who made tutored parrot-like statements which inspired little confidence. Accused acquitted.

**185. Joining of independent witness must.** - A Head Constable, who is on patrol duty could expect that the party may detect some crime-crime detection is the main purpose of a patrolling party. It was, therefore, necessary for the Head Constable to have taken an independent witnesses with him when he went on patrol duty in the area of the Police Post. Leaving this apart there are some material discrepancies in the evidence produced and for this reason it is not safe to convict the accused.

Recovery of illicit liquor by Police party headed by Head Constable - No evidence that investigation was verified by a Senior Officer - No independent witness joined - Accused acquitted. *Jeet Singh v. State of Punjab. 1998(2) RCR(Criminal) 690(P&H)*

Recovery of working still and 250 Kgs. of Lahan - No effort made to join independent witness - Conviction could not be sustained on basis of Head Constable and one Constable who are lower in rung and were also discrepant - Conviction set aside. *Jang Singh @ Jangi v. State of Punjab, 2000(3) RCR(Criminal) 93(P&H)*

Prosecution attempting to introduce a got-up witness. Investigation tainted on this score. No independent witness from the locality joined in the raiding party. Evidence of official witnesses held to be unreliable and insufficient to sustain the conviction. Accused acquitted.

Recovery of illicit liquor. Liquor was loaded on a truck. Police chased the truck and fired three shots and burst three tyres. Recovery of liquor effected at thoroughfare. No independent witness joined. Empty cartridges and tyres not taken into possession. Accused acquitted giving benefit of doubt

Accused convicted under Excise Act. Raiding party passed through many villages but did

not join any independent witness. Accused acquitted giving benefit of doubt.

Accused found working a still near his village. Respectables from the village not associated at the time of raid. Witness associated by Police being himself a liquor vender and obviously a convenient witness of police. Held that omission to join respectables from the village makes prosecution case doubtful. Accused acquitted.

Conviction under. Five drums of lagan found from the petitioner. The prosecution did not joint anybody from the public Material discrepancies in the version about calling persons from the village to witness the recovery not safe to convict the petitioner.

Excise Raid by Police. Independent witnesses from locality not joined. Prosecution took plea that attempt was made to join witnesses from locality but none came forward. Held. it was mandatory for Police to join witnesses from adjoining locality in such a situation under Section 100(4). Accused acquitted.

Failure on the part of Police to join independent witnesses in the raiding party. Conviction on testimony of official witnesses alone. Evidence of official witnesses must be scrutinised closely. In the circumstances of the case, evidence of official witnesses found to be doubtful. Conviction set aside by High Court.

Independent witnesses joined with the patrolling party found to be inimical towards accused. Material discrepancies in statements of P.Ws. Prosecution story doubtful. Conviction set aside.

No independent person joined by the police. Material discrepancies in the statements of official witnesses produced by the prosecution. Case not proved beyond reasonable doubt. Conviction set aside. Held, that in the first place, there is hardly any reliable explanation for not associating a member of the public in the party which was out to do excise checking. Even though this fact is ignored, the discrepancies in the doubt in regard to the two official witnesses are sufficient to create reasonable doubt in regard to the prosecution version.

No independent witness joined by Police Party at the time of raid. Chowkidar of village joined who is supposed to be under influence of Police. Material discrepancies found in the statements of official witnesses. Accused acquitted giving benefit of doubt.

No independent witness joined the raiding party. One of the witnesses had already appeared in cases with the police party. Prosecution story not reliable. Not safe to convict the petitioner on the mere testimony of two official witnesses.

Non-joinder of independent witness. Accused apprehended by 'Nakabandi' party at Bus Stand of a town in broad day light. Lame excuse of the Investigator that no independent witness was then present is not acceptable. Possibility could not be ruled out that the accused was arrested from somewhere else and recovery of the liquor was effected in some other manner. Accused acquitted.

Only one independent witness not supporting the prosecution case. Statements of police witnesses contradictory on material points. Investigation conducted by comparatively junior police official. Minor discrepancies in statements of police officials assume significance. Accused entitled to benefit of doubt. Accused acquitted.

Police conducting raid and recovering 5 kgs. of Lahan from accused. Independent witnesses not joined though easily available. Held, it was non-compliance of Section 100 Cr. P.c.. Accused entitled to benefit of doubt. Criminal Procedure Code, Section 100(1).

Police conducting raid and recovering illicit liquor. Police did not join any member of Public. Conviction of accused set aside.

Police conducting raid and recovering lahan. No witness from locality associated. Statement of Police officer that no independent witness could be found. No reason given why independent witnesses not available when place of raid was not a secluded one. It violated mandatory provision of Section 100 Cr. PC. Entire investigation nugatory.

Police party found the petitioner distilling illicit liquor and lahan. Case of secret information. Police did not care to join any independent person from the locality. Presence of number of discrepancies in the testimony of official witnesses. Accused acquitted.

Police recovered illicit liquor from house search of accused. No attempt made to join two inhabitants of locality. Held it is incumbent upon Police to join two inhabitants of locality before entering the house of a citizen. Accused acquitted despite the fact that testimony of official witnesses as good as of other witnesses. It is true that the testimony of the official witnesses is as good as of other witnesses but in the circumstances of the present case when the recovery is made from the house of the petitioner without joining any body from the locality, as per the procedure laid down in Section 100 sub-section (4) of the Code of Criminal Procedure no implicit reliance can be placed on their testimony. It is provided in the above-said Section that before the police enters the house of a citizen, it is incumbent upon them to associate with them at least two inhabitants of the locality and if they are not available, from the neighboring locality and if none of them is prepared to join then the police officer is to record that fact and even the person who refused to join in the search he can be prosecuted under Section 187 of the Indian Penal Code.

Prosecution case resting on the testimony of police officials. Recovery effected by the Police while on patrol duty. No independent witness joined with the patrolling party. Material discrepancies in the statements of the official witnesses. Conviction set aside.

Raid by Police. Independent witnesses not associated. The fact whether it was necessary to associate independent witnesses or not has to be appreciated. Evidence of official witnesses could be relied upon if their deposition inspired confidence.

Raiding party did not join any public witness although some villages fell in the way. Only

solitary evidence on Sub-Inspector. Even no other official witness to corroborate him. Not safe to convict the accused.

Raiding party did not care to join any body from the public or from the locality. The statements of the official witnesses found to be discrepant on number of points. The petitioner given benefit of doubt and acquitted.

Recovery of illicit liquor and lahan. No witness from locality joined. Story that accused came out of Tubewell Kotha with bladder containing liquor not creditable. Accused acquitted.

Recovery of illicit liquor and working still by Police party headed by Head constable. No independent witness joined. Unsafe to convict the accused without independent corroboration as the raiding party was headed by a petty police official.

Recovery of illicit liquor by a Police party headed by Head Constable. No independent witness joined. Statement of Head Constable that persons residing in the village refused to join. Action taken against those persons by the Police and this fact also not mentioned in the case diary. Case doubtful. Accused acquitted.

Recovery of illicit liquor from house of accused. Prosecution did not join any independent witness. Not safe to convict the accused. It is incumbent upon Police to join two respectable persons of locality and if any body refuse to join, Police could prosecute him under Section 187 IPC.

Recovery of illicit liquor. No attempt made to join independent witness from locality. Presence of some persons at place of recovery admitted by prosecution. It offended provisions of Section 100(4) Cr. P.C .. Moreover affidavit not verified in accordance with law. Accused acquitted.

Recovery of illicit liquor. No independent witness joined. There were 20 shops nearby and Investigating Officer had ample opportunity to join independent witnesses. Statements of official witnesses not sufficient to convict the accused. Contention of prosecution that Police Officials had no ill-will to involve the accused in false case not tenable.

Recovery of incriminating article made by Police from a place accessible to all. No independent witness from the locality produced. One of the P.W.'s a stock witness of the Police. Accused given the benefit of doubt. Accused acquitted.

Recovery of Lahan and a working Still from possession of accused by Police. No independent witness joined by Police during the raid. Sarpanch of village stated that accused had been arrested by Police due to his inability to pay bribe. Material discrepancies found in

statements of official witnesses. Accused acquitted.

Recovery of liquor and working still. No independent witness joined by raiding party. Evidence of two petty police officials not believed in view of independent corroboration. Conviction set aside.

Recovery of three bottles of whisky. Accused convicted mainly on the evidence of official witnesses. Occurrence took place in heart of city but no independent witness joined by the Police. Conviction set aside.

Recovery of working still and illicit liquor by a Police party. No independent witnesses joined. Statement of Head constable that a constable was sent for Sarpanch, Chowkidar but they did not join not believed. No statement of constable brought on record that witnesses refused to join. Accused acquitted.

Recovery of working still and illicit liquor. No effort made by Police party to join independent witness. Case based on petty officials (Head constable and constable). Not safe to convict the accused.

Recovery of working still and illicit liquor. No independent witness joined. Case property not produced in the court. Accused acquitted. Non production of case property causes grave doubt about the veracity of witnesses of recovery.

Recovery of working still and lahan by Police. No independent witness joined. Accused acquitted.

Recovery of working still by Police. No attempt made by Police to join independent witness. It cannot be said that during day time there was no witness in the village. Not safe to rely on testimony of Police Officers alone when there were discrepancies in their evidence.

Recovery of working still. No independent witness. Minor discrepancies in statements of official witnesses. No witness from public examined. In such a case minor discrepancies in statements of official witnesses assume importance and cannot be ignored. Accused acquitted.

Search of house of accused conducted by the Police in contravention of mandatory provisions of Section 100, C.P.C.. No independent witness joined. Case resting merely upon statements of official witnesses. Defence version found to be probable. Benefit of doubt. Accused acquitted.

Witnesses joined by police at the time of raid. Stock witnesses of police. No independent witness joined. Evidence of stock witnesses disbelieved by trial Court. Conviction based upon the solitary statement of police official witness set aside.

Recovery of case property. There were number of houses where accused was caught but no independent witness associated. It is necessary in such like cases to associate independent, disinterested and respectable witnesses so that the investigation evokes dependability.

186. Joining of Independent witness when not necessary. - Public witness should be joined or not - It always varies with facts and circumstances of each case - If in a particular case, official witnesses are reliable and on the basis of their testimony an order of sentence is passed, it will not be illegal - But one cannot lose sight of peculiar facts of each case - Cogent reasons should be forthcoming where public witness is not joined and examined. *Achhar Singh V. State of Punjab, 2000(3) RCR (Criminal) 778(P&H)*

Police recovered Lahan and Illicit liquor on receipt of secret information - Recovery effected in mand of river - Joining of independent witness could not be insisted upon because police received the secret information at a point where no independent witness was available. *Banta Singh v. State of Punjab, 2000(3) RCR (Criminal) 766(P&H)*

Recovery of working still and Lahan on receipt of secret information - Independent witness not joined - It will not affect prosecution case if plausible explanation is available for the same - In the present case it was explained that public witnesses were not immediately available and had the Police party waited, accused could not have been caught red-handed - Explanation satisfactory. *Hukam Singh v. State of Punjab, 2000(4) RCR (Criminal) 145(P&H)*

Recovery of working still and Lahan on receipt of secret information by Police - No independent witness joined although information was received at Bus Stand and people were nearby - Disclosure statement also not witnessed by independent witness - Conviction set aside - Ipse-dixit of Investigating Officers that effort was made to join independent witness but none came forward cannot be believed. *Makhan Singh v. State of Haryana, 2000(3) RCR (Criminal) 776(P&H)*

Recovery of illicit liquor on receipt of secret information - No independent witness joined - Conviction of accused on basis of evidence of official witness - No infirmity - There is no rule that the prosecution version whenever it may be based exclusively on official witnesses must, as such, be rejected - All that perhaps can be said is that in this situation, the evidence of the prosecution witnesses should be scrutinised with more care and caution. *Dipa Singh v. State of Punjab, 2002(1) RCR(Criminal) 382(P&H)*

Recovery of illicit liquor on receipt of secret information - No independent witness joined - Conviction validly based on evidence of official witnesses - When prosecution case depends upon official witnesses, all that is required to be done is to scrutinise the same with due care and caution - It cannot be said that wherever prosecution version might depend upon statement of official witnesses, the same shall be rejected unless corroborated by independent witness. *Anokh Singh v. State of Punjab, 2001(2) RCR(Criminal) 337 (P&H)*

Accused found distilling illicit liquor - 50 Kgs. of Lahan recovered - Accused convicted and sentenced to one year RI and to pay fine of Rs. 5,000 - Conviction upheld - Non-examination of independent witness - No ground to set aside conviction - Independent witnesses do not support the Police Officials for several reasons - Non-examination of independent witnesses only fastens the responsibility upon the Court to scrutinise the evidence with more care and caution *Jagtar Singh v. State of Punjab, 2000(2) RCR(Criminal) 735(P&H)*

No independent witness joined - No ground to acquit the accused - In case Investigating Officer had taken steps to join independent witnesses from the village, the very purpose of secret information would have been defeated as there was specific information that accused was indulging in distillation of illicit liquor. *Saheg Singh v. State of Haryana, 1999(4) RCR(Criminal) 623(P&H)*

There cannot be any mathematical formula that independent witness has to or has not to be joined - There was no material contradiction which can go to show that case of prosecution was not true - This was a case where illicit liquor was being manufactured and apparatus was also seized - Conviction upheld. *Raj Pal v. State of Haryana, 2000(2) RCR(Criminal) 729(P&H)*

Trial / Raid / Independent witnesses. Petitioner was found working a still and distilling illicit liquor when the police party was just passing near the river and noticed smoke coming from the reeds. It was not a case where the police party had prior intimation and a raid was conducted. Joining of independent witnesses was not necessary.

Recovery of illicit liquor by police patrol party. No independent witness joined. Prosecution case based on official witnesses. If accused is apprehended when police party was on patrol, it could not be expected that police party should have joined independent witnesses.

Recovery of illicit liquor at thorough fare. No independent witness joined as no witness was available at relevant time. Simply because place of recovery was thoroughfare, did not enjoin any duty on Investigating Officer that he should have waited for some independent witness and only then apprehended the accused. Moreover respectable persons feel shy to become witnesses in Police cases of such type of recovery of illicit liquor or narcotic etc.

Conviction under Excise Act challenged on the ground that no independent witness joined the Police party. Accused was apprehended when Police party was on patrol. It could not be expected that Patrol Party should have joined independent witness.

**187. Secret Information - Independent witness must be joined.** - Recovery of working still and illicit liquor - Raid conducted by Police on receipt of secret information - House of

accused in middle of village, but no independent witness joined - Cannot be believed that no body came forward to join the police - Case based on testimony of Head Constable and Constable who were interested in success of the case - Conviction set *aside*. *Satwinder Singh v. State of Punjab, 2000(3) RCR(Criminal) 70(P&H)*

Recovery of illicit liquor and working still on receipt of secret information - Information was received by Police Officer at a Public place - No independent witness joined No cogent reasons given for the same - It would be unfair to base conviction solely on evidence of two Police Officials. *Jeet Singh v. State of Punjab, 1998(2) RCR(Criminal) 690(P&H)*

Recovery of illicit liquor and working still by Police on receipt of secret information - No independent witness joined as required under Section 100(4) Cr.P.C. - Conviction of accused set *aside*. *Jagsir Singh v. State of Punjab, 2000(3) RCR (Criminal) 693(P&H)*

Recovery of illicit liquor from house of accused on receipt of secret information - House in middle of village Abadi - No independent witness joined - Further, when case property was produced (components of working still), there was no identity mark or chit to indicate that it related to recovery from the accused - Conviction set *aside*. *Sadhu Singh v. State of Haryana, 2000(3) RCR(Criminal) 35(P&H)*

Police recovered 200 Kgs of Lahan on receipt of secret information - No independent witness joined - Contention that independent witnesses were contacted but they refused to join - Names of such persons not recorded in zimni and no action taken against them under Cr.P.C. - Conviction of accused set *aside*. *Aroor Singh v. State of Haryana, 2000(3) RCR (Criminal) 433 (P&H)*

Recovery of illicit liquor by Police on receipt of secret information - No independent witness joined which was obligatory on part of Investigating Officer - Recovery effected at a Public place - Investigating Officer did not explain that he was not in a position to arrange an independent witness at any stage of investigation - When secret information is received, it is obligatory that independent witness be joined. AIR 1956 SC 217 distinguished. *Massa Singh v. State of Punjab, 2000(2) RCR(Criminal) 666(P&H)*

Accused found working a still for distillation of liquor. Accused apprehended in pursuance of a raid conducted by police on the basis of secret information. No member of the public joined by police in raiding party. Chowkidar joined in the raid, but failed support the prosecution version. Accused given benefit of doubt and acquitted.

Police received secret information and recovered working still - No independent witness joined to avoid delay and leakage of information - Nothing to indicate that Police men had any grudge against accused - Conviction upheld - Incident occurred 15 years back - Sentence reduced to already undergone (two months).

Police received secret information and recovered illicit liquor and working still - No independent witness joined despite secret information - Accused acquitted - Not safe to convict the accused on sole testimony of police officials.

Police received secret information and recovered working still, illicit liquor and lahan - Police party comprised Head Constable and Constable - No independent witness joined although

such witness could be found - Not proper to believe Police version without corroboration when offence is punishable with minimum sentence.

Recovery of Lahan from accused on receipt of secret information by police - No independent witness joined - No ground to acquit the accused - In case Investigating Officer had taken steps to join independent witnesses from the village, the very purpose of secret information would have been defeated as there was specific information that accused was indulging in distillation of illicit liquor.

Accused found working a still. Lahan recovered. Police having prior secret information about the same. No independent witness joined in the raiding party. Conviction held unsustainable and set aside. Held, that it has to be noted that the raiding party had left the Police Station for the excise raid. Therefore, before reaching the village some independent witnesses sought to have been joined by the raiding party because there was every likelihood of detection of some excise case in that village.

Police Party started from Police Station with definite Purpose of conducting raid and recovered Lahan from the accused. No body from public joined. Contention of Police that no body was prepared to join investigation is not sufficient. Accused acquitted giving benefit of doubt.

Recovery of illicit liquor by Police on secret information. No respectable person joined from the locality. Only one independent witness did not support the prosecution. Law enjoins that in case of a house search, raiding officer should join two or more independent respectable persons of the locality.

Recovery of working still and lahan by Police party on receipt of secret information. No independent witness joined. Accused acquitted. Statement of police officials cannot be discarded simply on account of their officials status. Still to remove any doubt regarding the genuineness, corroboration from independent source is required.

Independent witness. Police raided the village on secret information and found running a Working Still. No independent witness joined from the village. Not safe to convict the accused.

188. Independence witness - None willing to join as witness. - Independent witness. Police conducting raid and recovered a working still. No independent witness joined from the locality on the plea that Investigating Officer tried to associate respectable of the locality but none was available. Mere statement of investigating officer is not sufficient. Accused acquitted. Provision of Section 100(4) Cr. PC are mandatory.

Petitioner found distilling illicit liquor by means of working Still. Evidence of recovery consists of a Sub-Inspector and a Constable. No witness from public join because no body was willing. Explanation not be accepted. No proceeding against any public man for not joining raiding party. Case not proved beyond shadow of doubt. Petitioner acquitted.

Police party conducting raid and recovering opium and charas from accused. Police Officer who conducted the raid stated that some persons in the village were tried to join but they refused to do so. The fact not recorded in the Zimini nor any action was taken against those

persons. Statement of Police could not be relied. Accused acquitted. Inspector Ram Bhaj has stated that he tried to join some persons from the village of the petitioner but they refused to do so. When he was questioned as to whether he had mentioned this fact in the zimini he replied in the affirmative but when he was asked to refer to the zimini he refused to do so. He further stated that he did not take any action against the persons who had refused to join the investigation. In this situation, it cannot be safely said that he in fact tried to join any persons from the village of the petitioner.

Recovery of illicit liquor. Witnesses from public not joined. According to prosecution some persons from public were asked to join but they refused. Names and addresses of persons who refused not disclosed by Prosecution. Held, had the witnesses from public refused to join, the Investigating Officer must have noted down their names and addresses and would have proceeded against them under law. Explanation for not joining the witnesses not worthy of credence. Accused acquitted.

Recovery of lahan and working still by police. No independent witness joined. Contention of Police Officer that some persons were asked to join but they refused. Officer could not give number and names of persons contacted. No action taken against such persons. Contention of prosecution not believed. Discrepancies also found in statements of PW s. Accused acquitted.

Recovery of lahan and working still by police. No independent witness joined. Contention of Police Officer that some persons were asked to join but they refused. Officer could not give number and names of persons contacted. No action taken against such persons. Contention of prosecution not believed. Discrepancies also found in statements of PWs. Accused acquitted.

Recovery of Lahan. No independent witness joined although Police party passed through three villages. Contention of Police that witnesses were asked to join but they refused. It is after-thought. Names of the persons who were asked to join not given. Accused acquitted.

**189. Independence witness turning hostile.** - Recovery of working still and Lahan by Police. Independent witness given up on the ground that he had joined hands with accused. This witness appeared as defence witness and belied prosecution version. Prosecution could not shake his evidence and no question asked in cross examination. There were also discrepancies in statements of official witnesses. Accused acquitted.

Recovery of liquor. Independent witness turned hostile and falsified prosecution story. Witness cross examined by Prosecution but his credibility could not be shaken. Accused acquitted. Official witness under section 16} Cr. P.C, not proved on record as such the statement could not be taken into consideration.

Recovery of working Still. prosecution story supported by three official witnesses. Independent witness not supporting the prosecution and denied having signed any paper during investigation. His specimen signatures not sent to handwriting expert for comparison though offered by the Witness. Prosecution story doubtful. Accused acquitted.

**190. Public witness not supporting Prosecution.** - Recovery of 73 Kgs of Charas from a car - Public witness joined, but did not support the prosecution - No reason to disbelieve offi-

cial witnesses - Conviction upheld. *Raj Kumar v. State of Haryana, 2000(3) RCR (Criminal) 344 (P&H)*

Recovery of working still and illicit liquor on receipt of secret information - Independent witness given up as won over - Law enjoins that on receipt of secret information, Police party should try to associate an independent witness which has been done in this case - If independent witness, for any reason, does not want to support the case of prosecution, it is not the fault of prosecution - Conviction upheld. *Sukhchain Singh v. State of Haryana, 2000(3) RCR(Criminal) 5 J (P&H)*

Prosecution version that accused was apprehended while manufacturing illicit liquor - Independent witness denied his presence rather appeared as defence witness - It casts doubt on truthfulness of prosecution case - Contradictions found in statements of official witnesses assumes significance - Accused acquitted giving benefit of doubt. *Joga Singh v. State of Haryana, 2000(2) RCR(Criminal) 594(P&H)*

**191. Statement of official witnesses contradictory.** - Where one witness is stock witness and the evidence given by the official witnesses is contradictory in nature and the only other independent witness has not supported the prosecution, the benefit of doubt has to be given to the accused.

**192. Testimony of official witnesses when independent witnesses available but not joined.** - It is not safe to sustain a conviction on the basis of the testimony of two official witnesses on account of the fact though independent witnesses were available yet their services were not availed of by the Head Constable. The case would have been quite different no independent witness was available when the police arrested the accused on suspicion.

**193. Recovery of huge quantity of liquor** - Official witnesses to be believed. - Where there is nothing against the official witnesses and a huge quantity of 144 bottles of liquor was recovered and it is not possible to plant such a huge quantity falsely, it is settled law that in such a case the testimony of official witness can be relied upon especially when there is no earlier enmity between the accused and official witnesses.

**194. Recovery of huge quantity of Excisable Item.** - Mere heavy recovery should not be the ground to come to the conclusion that whatever has been stated by the police official is a gospel truth. Each case has to be weighed on its own merit and circumstance. Suspicious circumstances start when the Investigating Agency ignores to procure an independent witness though he could have procured the same. Heavy quantity of liquor does not lend corroboration to the evidence of the official witnesses as the case property produced before the trial court does not bear any identity marks.

Recovery of 280 litres of rectified spirit. Contention that false case was made by Police repelled. It is not convincing that Police would have planted a large quantity.

Recovery of 35 bottles of illicit liquor. No independent witness joined. Seizure Memo did not show recovery of any money. Held, a person carrying 35 bottles of illicit liquor is expected to carry some money with him also. In view of this infirmity accused could not be convicted on evidence of official witness.

45 bottles of liquor found from accused. Accused 21/22 years of age. Accused sentenced to imprisonment but released on Probation as the accused left the business of illicit liquor.

75 kg. Lahan recovered from accused. Sentence of R.I. for 6 months and fine of Rs. 500/- imposed by trial Court and affirmed by Sessions Judge. Accused a poor labourer and first offender. Report of probation officer not called for by trial Court. Benefit of probation denied to accused without considering his age, character and antecedents. Object of also reformatory. Accused granted benefit of probation under Section 360 C.P.C. by the High Court.

Accused sentenced to R.I. for 8 months and fine of Rs. 1000/- by Sessions Judge. Prayer for release on probation. Declined by trial Court as well as Sessions Judge on the ground of 40 bottles of illicit liquor were recovered. Accused a young man aged 26 years and a first offender. Revision before High court. Accused held entitled to benefit of probation and ordered to be released on probation for two years and his sentence of fine set aside. However, he was ordered to pay Rs. 500/- as litigation costs to the Occurrence took place in 1976. Sentence reduced to 3 months R.I.

Conviction under. Benefit of Probation denied to the accused by trial Court as well as by Sessions judge on the ground that 40 bottles of illicit liquor have been recovered. Accused a young man of about 26 years and first offender. Accused held entitled to the benefit of probation. Sentence of fine also set aside. Accused however ordered to pay Rs. 500/- as litigation costs to the State.

Recovery of 40 bottles of liquor. Accused convicted. Accused released on probation. From quantity of liquor it cannot be said that accused was a bootlegger.

Recovery of 45 bottles illicit of liquor. Accused convicted and sentenced to 6 months R.I and a fine of Rs. 1000/-. Occurrence took place in 1983. Accused on bail since 1983. Fit case to release the accused on probation.

**195. Name of the accused not mentioned in F.I.R.** - The mention of the name of an accused person in the F .LR. is of considerable importance in a criminal case but omission of the name of an accused person from the F .LR. by itself is not always fatal to the prosecution case, nor is enough to justify the conclusion that the accused concerned has been falsely implicated. The value which has to be attached to the F.I.R. has to be judged in the light of various circumstances including the nature of the crime, the position of the informant and the opportunity which he had to witness the part which each of the accused played.

**196. Evidence of relative and close relation.** - The evidence of relative if it is otherwise reliable and trustworthy cannot be rejected on the ground of mere relationship. A relationship of witness is no ground for not acting on his testimony if it is otherwise reliable in the sense that the witness was otherwise a competent witness who could be expected to be near about the place of occurrence and could have seen what happened.

Where a close relation of the complainant appears as defence witness it cannot be presumed that he is invariably actuated by some feelings of animosity towards complainant.

**197. Evidence of Clerks serving in Govt. Department.** - In order to avoid criticism the police while arranging a raid should always make an earnest efforts to associate with them outsiders having some status in life. No hard and fast rule can be laid down about the

association in a raiding party, of an upper division clerk serving the Government. It cannot be said that such a witness has no such status as to justify conviction being based on his corroborative statement in all circumstances.

**198. Police witness.** - It is now an established law that police officials are as good witnesses as the other independent witnesses are. The only precaution to be taken regarding the evidence of police officials is that their evidence is to be carefully scrutinized. If there is nothing on the record which would make the evidence of the police officials in any way unreliable, they cannot be disbelieved merely because they belong to the police department.

**199. Witness under influence of Police.** - However if a witness once or twice in any case for prosecution it does not make him partial witness or he can not be said to be under influence of Police. Raid conducted. Witness liquor contractor. Liquor vend contractors are over-zealous in the detection of boot-legging. Blemish attaches to their testimony. Held, that it is also not disputed that during the days of this occurrence the witness was a liquor contractor. In view of the above it appears that witness was under the influence of the police and it would not be safe to accept his testimony. It is a matter of common experience that liquor vend contractors are over-zealous in the detection of bootlegging as that affects their trade. In view of this, blemish also attaches to the testimony of the witness.

**200. Stock witnesses.** - The conviction should not be based on the evidence of a person who is proved to be a stock-witness of the police and has been going about giving evidence in various police cases from different localities and who does not appear to have any scruples to speak the truth in the witness box. However if a witness once or twice in any case for prosecution it does not make him partial witness or he can not be said to be under influence of Police.

Recovery of working still. Police joining a witness from another village who had appeared in large number of police cases. Act of joining such a witness does not satisfy the legal requirement of joining an independent witness. Moreover no explanation why witness from village not joined. Accused acquitted.

Accused caught while distilling liquor by working a still. Both non-official witnesses disbelieved. One turned hostile and the other declared stock witness. Police witnesses interested in the success of the case. Conviction set aside.

One of the PW's a stock witness of police. Statements of official witnesses contradictory. independent PW not supporting the prosecution. Benefit of doubt. Accused acquitted.

**201. Offering for personal search by police officer before recovery.** - There is no provision in the Cr.P.c. that the police officer before recovering any incriminating article from the accused should offer himself for search. The principle of offering for search by the police officer at such juncture is a rule of caution. The basic principle in doing so is to avoid the possibility of planting incriminating material by the police officer on the person of the accused when search is made. In case the article which is alleged to have been recovered is of such a nature that it can be concealed by the police officer on his person, it is necessary that he should offer himself for search to the accused. But if the volume of the article which is to be

recovered is such that it cannot be concealed by him on his person, then it is not necessary for him to offer himself for search to the accused.

**202. Benefit of doubt.** - Where the case against the accused was not free from doubt even though there may be strong suspicion against him. Held that in such circumstances the accused is entitled to the benefit of the doubt.

While it is true that the benefit of every doubt even in the matter of interpretation of status must be given to the accused, a construction which could defeat the very object of the law must be avoided if it is reasonably possible to do so.

In a criminal case the benefit of reasonable doubt goes to the accused. Where the prosecution evidence is insufficient, the judge must acquit the accused. Where there is any doubt, the accused person must receive the benefit of that doubt.

Where it is a case of very great suspicion against the accused and there are number of facts which lead one to suspect that the real truth has not been placed before the Court either by the accused or by some of the prosecution witnesses and there is nothing in the evidence which is inconsistent with possibility of the story of the accused being wholly or to a large extent true, in such a position it is not just to convict the accused.

35 litres of illicit liquor recovered from the back seat of the tempo driven by accused. Co-accused was allegedly sitting there. Co-accused in the meantime has been murdered. Plea that accused was only a driver of tempo was not in exclusive or conscious possession of the Call containing liquor. Can was with the co-accused. Petitioner acquitted on the benefit of doubt.

Accused found distilling illicit liquor by a working still. Prosecution case resting on the testimony of official witnesses. Police held to have raided the same village earlier in the morning also. Serious contradiction between the statements of official witness. Benefit of doubt. Accused acquitted.

Accused found distilling illicit liquor with the help of a working still in his house. Plea of the accused that component parts and working still were found in the vacant site on the back of his house supported by the Lambardar of the village. Lone PW not produced to corroborate the prosecution story. Conviction set aside giving benefit of doubt. The only reason given by the courts below to discard their testimony was that they did not complain to the higher authorities in the matter. This is not a sound approach for discarding the evidence of the said DWs. Moreover, Pritam Singh Chowkidar, the lone witness who was joined by the raiding party, has not been produced by the prosecution. In these circumstances, I am of the view that it could not be safe to maintain the conviction of the petitioner.

Accused found in possession of 35 bottles of illicit liquor. Independent witness joined by the police with the patrolling party which apprehended the accused. Witness, however, not produced in Court. Accused let off by police upon his executing a personal bond. Person witnessing the thumb-impression of accused on the bond, not supporting the prosecution version. Thumb impression on the bond found to be submerged and not proved to be that of accused. Prosecution case held to be doubtful. Accused acquitted.

Accused found with a working still. Prosecution story rests on the testimony of official witnesses. Version of the official witnesses highly discrepant on material point. Story highly improbable. Benefit of doubt given. Accused acquitted.

Companion of accused acquitted by separate trial. Accused would not be discriminated. Accused acquitted giving benefit of doubt.

Conviction due to enmity of police who arrested the accused three days earlier to the actual registration of case. Complaint by the father of the petitioner about the arrest without any cause, sent to Chief Minister of Punjab, forwarded to the Superintendent of Police; Petitioner alleged to have in possession 160 bottles of liquor. Defence revision regarding sending of the complaint held to be concocted by the trial Court. Set aside by the appellate court on technical ground of proving the document. High Court set aside the order of conviction believing the defence version. Petitioner acquitted giving benefit of doubt.

Criminal cases. Defence version is not expected to be proved with as much exactness as the prosecution is expected to prove its version. Case against the accused not proved beyond a shadow of doubt. Accused entitled to benefit of doubt.

One of the three co-accused acquitted with the finding that he was falsely implicated. Involvement of remaining two petitioners cannot said to be free from reasonable doubt. Material discrepancies in the testimony of official witnesses. Independent witnesses given up at the trial. Petitioners acquitted.

Petitioner found distilling illicit liquor by working still in kitchen of his house. Only witness of the village not produced by the prosecution. Prosecution story held to be highly improbable in view of the fact that another person from the adjoining house was arrested doing the same thing. Not safe to rely on the testimony of official witness. Petitioner acquitted.

Recovery of illicit liquor. Prosecution story that accused was arrested after recovery but was bailed out immediately on the spot. Bail bond and surety bond found to be the doubtful. It made the prosecution story doubtful. conviction and sentence set aside.

Recovery of seven bottles of illicit liquor by Police. Sample sent to Public Analyst. No evidence to prove that case property remained intact from time of its seizure until it was delivered to public analyst. It is incumbent upon prosecution to prove that sample was duly sealed and was not tampered with by anybody. Accused acquitted giving benefit of doubt.

Accused in custody of police in connection with a case under Section (1) (c) made a disclosure statement leading to recovery of 5 drums of lagan allegedly kept concealed by him. No independent witness joined from the locality at the time of recovery in spite of ample time. Statement of official witnesses supporting the prosecution discrepant on a number of particulars. Accused held entitled to benefit of doubt and acquitted. The held, that apparently while the petitioner was in the custody of the raid party the police had ample time to join some independent witnesses from the locality but the police failed to do so for reason better known to them. The learned counsel for the petitioner has also taken through the statements of the two official witnesses and pointed out a number of discrepancies. In the circumstances the petitioner is entitled to the benefit of doubt.

Property entrusted to accused missing. Accused giving credible and probable account of its disappearance. The accused need not show more. The benefit of doubt is not to be given only in case where the theory of the defence is accepted to be true but on the assumption that the story of the defence might be perfectly true. Where the prosecution failed to prove its case or where the prosecution is not certain as to what happened at the actual scene of occurrence, the accused need not examine any witness in support of his statement. Unless and until the prosecution has established a prima facie case against the accused" no adverse inference can be drawn against him from the non-production of evidence by him.

In a criminal case an accused person is not called upon to prove the defence version with that exactness with which the prosecution is expected to prove. The accused is entitled to get the benefit of doubt if from the cumulative effect of all the circumstances of the case the court comes to the conclusion, that the case against him is not proved beyond a shadow of doubt. Where the partner of the accused had appeared against him as a witness, it would evidently show, that he would not have appeared if he had no strained relations with him. The accused in this case has also given explanation why he was implicated in this case by a Sup-Inspector of a different Police Station. In these circumstances, it was held, that the recovery of liquor from the house of accused could not be believed.

Factors inconsistent with theory set up by defence do not necessarily exclude probability of defence version being true. If the circumstances show a reasonable probability of the accused being true there is no option but to acquit the accused. There are two important factors for every criminal trial that weigh heavily in favour of an accused person; one is that the accused is entitled to the benefit of every reasonable doubt and the other an off-shoot of the same principle, that when an accused person offers a reasonable explanation of his conduct, then even though he cannot prove his assertion, they should ordinarily be accepted unless the circumstances indicate that they are false. Furthermore in a criminal case where different constructions can be placed on any incident consistent with the evidence in the case, it is right to put the construction which is most favourable to the accused.

The burden of proof is never shifted to the accused and if a reasonable explanation is given by the accused it would be up to Courts to acquit the accused. Wherever it may be possible to take two views of the statement of the accused the accused is entitled to the benefit of every reasonable doubt. When an accused person offers a reasonable explanation of his conduct, even though the accused cannot prove his assertions, it should ordinarily be accepted unless the circumstances indicate that it is false.

In a criminal trial, the presumption of innocence is a principle of cardinal importance and so the guilt of the accused must in every case be proved beyond a reasonable doubt, probabilities, however, strong and suspicion, however, grave, can never take the place of proof.

**203. Two possible views - Accused entitled to benefit of doubt.** - In a criminal trial,

benefit of doubt often plays an important part. If some of the evidence leads to a conclusion that a man is guilty and if another part of the evidence in the same case indicates that the man may not be guilty, or if two possible views of conflicting nature can be spelt out from the entire facts of the case, the accused gets benefit of doubt.

**204. Proof of exception.** - It is true that the burden of proving the exception on the part of the accused is not so heavy as the burden on the prosecution to prove its case beyond all reasonable doubt. At the same time, the defence has to make out a prima facie case to bring its case within the exception. Where an accused claims the benefit of an exception the burden lies on him to prove the exception, but this burden is only to be undertaken if the prosecution case establishes that in the absence of such a plea he would be guilty of the offence. Where there is no reliable evidence in support of prosecution case and where the responsibility arose only out of the pleas raised by him the court could convict him only if the plea amounted to a confession of the guilt, but if the plea only amounted to admission of facts and raised a plea of justification the court could not do so if the prosecution case was proved and the evidence did not warrant the plea of justification. Where an accused pleads an exception he must justify his plea but the degree and character of proof which he is expected to furnish cannot be equated with that which is expected from prosecution. Thus onus on the accused may well be compared to the onus on a party in civil proceedings; so must a criminal court hold the plea made by the accused proved, if preponderance or probability is established by the evidence by him.

**205. Circumstantial evidence.** - Circumstantial evidence is of great value as it enables the Court to draw inferences as to the existence or non-existence of a fact in issue. But the circumstances from which the conclusion is drawn must first be fully established. They should be of a conclusive nature and they should be consistent only with the hypothesis of guilt of the accused; otherwise, the accused will be entitled to the benefit of doubt. In other words there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The principles to be followed in criminal cases based upon circumstantial evidence have by a long trend of judicial decisions been held to be as follows: (1) The circumstances from which an inference adverse to the accused is sought to be drawn must be proved beyond all reasonable doubt and must be conclusively connected with the facts sought to be inferred therefrom and (2) in order to justify an inference of guilt the circumstances from which such an inference is sought to be drawn must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

For drawing an inference of guilt from circumstantial evidence the circumstances established must be such that the only possible inference, which a prudent man can draw from them, taken together is that the accused committed the crime and must be incompatible with the innocence of the accused.

Circumstantial evidence is sometimes of great importance in criminal cases as it furnishes links in the chain of facts which go to establish the guilt of the accused and makes inference possible. It is therefore, a principle of universal application that in order to justify inference of guilt in case dependent upon circumstantial evidence the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

In the case of circumstantial evidence, the facts must be verified with scrupulous accuracy and the facts established must be consistent only with the accused being the culprit and should not be susceptible of any rational explanation. Inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. When the evidence against an accused person is of circumstantial nature, all the links in the chain must be conclusively established by cogent and un-impeachable evidence. In dealing with circumstantial evidence rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence is of circumstantial nature the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to have any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The circumstances may lead to particular inferences and the relationship of true facts may be more apparent than real. The value of circumstantial evidence has to be assessed on consideration that it must be such as not to admit of more than one solution, and that it must be inconsistent with every proposition or explanation that is not true. If these conditions are fulfilled, circumstantial evidence may approximate to truth and be preferred to direct evidence.

Whenever circumstantial evidence is relied on to prove a fact, it must be proved and not by themselves presumed. No single item of evidence can be singled out and given prominence nor accused's theory of the case be withdrawn from consideration.

It is fundamental principle of criminal jurisprudence that circumstantial evidence should point inevitably to the conclusion that it was the accused and the accused only who were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused. In cases where the evidence is of a circumstantial nature the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. The circumstantial guidance must conclusively establish and must form such a

complete chain that it should only be consistent with the guilt of the accused in order to convict him.

**206. Link evidence.** - Affidavit of 3 Police officials who handled the sample of opium at various stages not in accordance with law. *Verification* on affidavits did not specifically mention which part of the affidavit was Correct to the knowledge and which part Correct to the belief of deponents . Held, necessary link evidence was not in accordance with law. Accused acquitted. .

Recovery of poppy straw from a female accused. Search made by male police officials under Section 50(4) a female was to be searched by a female Police Official accused acquitted.

Affidavit. Link evidence. Recovery of illicit liquor. Affidavit of constable who took the sample to Chemical Examiner not in accordance with Section 277 Cr.P.C. This point not allowed to be taken in revision for the first time. The affidavit was of formal witness.

Recovery of illicit liquor - Affidavit by concerned officials that there was no tampering with seals during Malkhana and till it reached chemical examiner - Report of Chemical Examiner also showed that sample was intact and tallied with the sample seal - No reason to hold that link evidence was not proper and did not connect the accused with the recovery, safe custody and despatch of sample of Chemical Examiner. *Pargat Singh alias Pagga v. State of Punjab 1997(3) RCR (Criminal) 677(P&H)*

Recovery of illicit liquor - P.Ws examined after lapse of many months - Memory of such witnesses may fail on minute details of recovery - Does not affect prosecution *adversely*. *Pargat Singh. alias Pagga "*. *State of Punjab 1997(3) RCR (Criminal) 677 (P&H)*

Affidavit - Link evidence - Recovery of poppy straw - Sample sent to Chemical Examiner through two constables - Their affidavits not verified as per rules - Verification did not state which part of affidavits was based on personal knowledge and which part thereof was based on information and belief - Link evidence thus missing - Accused acquitted.

Affidavits to establish link evidence that substance recovered from accused was not tampered with during transit to Chemical Examiner. Affidavits, not properly attested Affidavit evidence held to be inadmissible. Accused held entitled to acquittal on this score.

Constable handing over sample packet to functionary in office of Chemical Examiner. No affidavit of functionary to indicate that sample was handed over to him and remained intact till it was handed over to Chemical Examiner. Link evidence. Accused acquitted.

Affidavits tendered in evidence on this point of the prosecution found not to have been validly attested. Accused acquitted.

Recovery of illicit liquor and working still. Prosecution is required to prove that incriminating material was deposited in Malkhana with seals intact and further to prove that illicit liquor deposited in Malkhana reached office of Chemical Examiner safe and intact. This is what is called link evidence.

Parcel containing sample of substance recovered from the accused, delivered in the office

of Chemical Examiner. No affidavit of the concerned functionary. Link evidence not complete. Accused entitled to acquittal on this ground alone.

Recovery of illicit liquor. Affidavit of Head constable who carried the sample to Chemical Examiner not brought on record. Held, link evidence was thus missing. Accused acquitted.

Recovery of illicit liquor. Seal with which the recovered property sealed given to police constable. Not produced as a witness. Link evidence missing. prosecution failed to prove that the sample examined by the Public Analyst was illicit liquor.

Recovery of working still and illicit liquor. No evidence that sample remained intact till delivered in the office of Chemical Examiner. Accused acquitted.

**207. Report of Chemical Examiner.** - Additional evidence. Report of Chemical Examiner produced by prosecution. Report not signed. At arguments stage prosecution applying for producing Chemical Examiner as P. W to prove the report. Held, prosecution could not be allowed to patch up infirmities.

**208. Recovery of 186 bottles of liquor.** - Chemical analysis showed that it was illicit liquor. Report of Chemical Examiner not put to accused during their examination under Section 313 Cr. PC. Conviction based on report of Chemical examiner set aside. Opportunity should be given to accused to explain each and every piece of evidence.

Report of Excise Inspector not put to accused by trial court in examination under Section 313 Cr. PC. This caused prejudice to the accused. Accused acquitted on this ground alone. Accused faced prosecution for four years. On this consideration case not remanded back to remove that defect.

Recovery of liquor. Report of chemical examiner showed that it was illicit liquor. Examination of accused under Section 313 Cr. P.C.. If a question put to accused is a complex question of facts containing bundle of facts it would violate the provisions of Section 313 Cr. P .C.

Recovery of liquor. Sample of liquor sent to Chemical Examiner. Report of Chemical Examiner showed that it was illicit liquor. Report of chemical examiner with regard to sample not put to accused during his examination under Section 313 CR. Pc. This is technical defect especially when no prejudice was shown to have been caused to accused. Case law elaboratelydiscussed.

**209. Challan filed without expert report.** - Recovery of country made liquor- Sample sent to laboratory, but report not received - Charge sheet filed before Magistrate without report of expert is not incomplete challan. 1989 DLT 392 relied

**210. Seal.** - Investigation Officer did not state that seal of the Excise Inspector on the sample of material recovered from accused was entrusted to an independent witness. Possibility of the having been tampered with. Independent did not support prosecution. Evidence of official witnesses not inspiring confidence. Prosecution case doubtful. Accused acquitted.

Police Officer recovering excisable material and sealing the same. There is no statutory

requirement to hand over the seal to a third person.

Recovery of illicit liquor. Sample sealed by Investigating Officer. Seal not given by Investigating Officer to any other person but kept by him for two days. Possibility of sample being tampered with by Investigating Officer cannot be ruled out. Accused acquitted.

Recovery of illicit liquor. Seal used by Police during investigation. Seal whether be given to a third person (No). There is no statutory requirement that seal used by Police should be given to a third person.

Recovery of lahan by Police. Excise Inspector reached the Police Station and tested the lahan after breaking the seal of drums. No evidence that Excise Inspector compared the seal with sample seal. The drums when produced in could had no seals thereon which the Excise Inspector alleged to have fixed. Accused acquitted.

Recovery of working Still. Seal used by Police to seal the working Still whether should be handed over to a third person immediately. Held, there is no statutory requirement in this respect.

Samples sealed by S.I., Police with his own seal. Seal, not satisfactorily entrusted to an independent person. Accused entitled to acquittal.

Seal on the sample of illicit liquor recovered not entrusted to an independent person. Independent person though entrusted with the seal by investigating officer, however, not produced as a witness. Held that this fact 9Y itself cannot affect the merits of the trial. Prosecution case cannot be thrown on this score.

Seal used by Police Officer in course of investigation. There is no requirement of law that seal be handed over to a third person forthwith.

Since there is no evidence about the seal having been handed over to a disinterested witness, it is not possible for me to say that the sample alleged to have been sent to the Chemical Examiner was of the same material which was alleged to have been recovered from the petitioner. There is one more circumstance which militates against the prosecution. The prosecution is bound to prove that the material recovered from the accused fell within the mischief of the Punjab Excise Act.

**211. Non-examination of material witness.** - If a direct witness is available and in a position also to substantiate more material facts than the other prosecution witnesses, examined by the prosecution and also happens to be an independent witness, the giving up of such a witness would indeed create a suspicion. The stage at which any observation by the Public Prosecutor that a material witness is a partisan of the accused or has turned hostile can be made is only when such answers are given by the witness, or when the demeanour of a witness is such that such an inference becomes possible. It would, therefore, mean that it is improper for a Public Prosecutor without basing his own impressions on such material to make representations of the kind that a witness is hostile, or is a partisan of the accused offhand. The practice of relying upon mere impressional statements and justifying the non-examination of a material by Courts ought to be deprecated.

**212. Eye-witness.** - Accused found distilling illicit liquor by working a still. Component and 12 bottles of illicit liquor taken into possession. Eye witness not supporting the prosecution story. Official witnesses statements discrepant. Not safe to convict the petitioner merely on the testimony of official witness. Conviction can be maintained on the sole testimony of the police officials if the same inspires confidence and they have no animus against the accused. But in the present case, the Head Constable seems to be inimical towards the petitioner and the independent eye-witness, as observed earlier have not supported the prosecution version. In this situation, I am of the considered view that it is not safe to maintain the conviction of the petitioner on the testimony of the Head Constable and Constable Gulab Singh.

**213. Expert Witness.** - Accused found carrying a bladder containing 21 bottles of illicit liquor to prove the contents of the bladder to be liquor, prosecution examined the Excise Inspector as an expert witness. Excise Inspector opined the contents to be liquor on the basis of its taste and smell as also with a Hydrometer test. Expert witness stated to be distillery trained and having 13-1/2 years experience, type of training and service not, however, spelt out from his statement. Type of Hydrometer set used I-y him also not mentioned. His report also silent about temperature of the liquid before ascertaining its specific gravity. Examination of a liquid with help of a Hydrometer set is not an accurate test. Article recovered from accused not proved to be liquor. Accused entitled to acquittal.

**214. Excise Inspector does not fulfill the requirements of an expert** - Prosecution has to prove that the material recovered was lahan. Where the Excise Inspector stated that he tasted the contents of the drum boiler and found the same to be partly distilled in a fermented condition. He did not say anything about the contents of the so-called lahan. Lahan consist of water, gur and some fermenting agent. The Excise Inspector did not say that the contents of the boiler contained any fermenting agent. In his report it is simply recorded that it was a mixture of gur, water and kikar, bark out of which some liquor had been distilled and some could yet be distilled. He has also not stated that the kikkar bark was the fermenting agent. There is nothing in report or in the statement of Excise Inspector, that he was an expert. He did not give his qualifications. He even did not say as to how many cases of lahan he had examined. There is nothing on the record to show that he is distillery trained. He also did not state to what was the colour, taste and smell of the alleged lahan. Held, therefore, that his evidence does not fulfill the requirements of an expert and as such the prosecution has failed to prove that the material in the drum recovered from the possession of the accused was lahan as to fall within the mischief of Section 61 of the Punjab Excise Act.

**215. Written statement in place of examination under Section 342 Cr.P.C.** - Examination of the accused under Section 342 is essential even in summary trials. Where no question has been put to the accused under Section 342 for explaining the circumstance in the case from which an offence can be said to have been made out the defect is material in the trial.

The practice of filing written statement has been strongly discountenanced and severely condemned pernicious as by the Courts of this country. The written statement is evolved out of the brains of the counsel, helped by the friends of the accused and the practice has been uniformly deprecated. Where the accused, when he was being orally examined-under

Section 342, replied to all questions, except one, by saying 'I will file a written statement, it cannot be said that the written statement represented the mind of the accused or the facts as were known to him.

**216. Nature of examination contemplated under Section 313 Cr.P.C** - The offence punishable under Section 61(1)(a) clearly relates back to the provisions of Section 25 and therefore for anybody to be convicted for the possession of illicit liquor there must be two ingredients, the possession of illicit liquor and the knowledge that for one of the reasons mentioned in Section 25 the liquor is illicit. Therefore, both in the questions put to the accused under Section 342 Cr.P.C. and the charge, the element of guilty knowledge mentioned in Section 25 should also be mentioned. Where that is not done and the point is raised in appeal or revision against conviction it would be necessary to see whether any prejudice has been caused to the accused by the failure. In cases where the defence taken was a total denial of possession of incriminating articles the Court would be inclined to hold that no prejudice has been created against the accused and will, therefore, not set aside the conviction. The same principle might be applied also in an appeal filed by the State against acquittal. Held also that in view of the fact that the case under appeal was not sufficiently serious it was not necessary to order a retrial and it would sufficiently serve the purpose if erroneous view of the lower Court was corrected.

**217. Exemption from personal appearance.** - The provision of Section 342 Cr.P.C. Code appear to be intended to apply only to an accused in person and even when the personal attendance of the accused person has been dispensed with generally under Section 205, he must at any rate attend in person after the close of the prosecution evidence for the purpose of answering the questions which the Court bound to put to him at that stage. The mandatory provisions of Section 342, over-ride the discretionary powers given to a Court under Section 205. Section 342, apart from giving the Court the power to put any question at any time to the accused, imposes on it a duty to question the accused fully at the close of a prosecution case, and if this had not been intended to apply in the case of an accused whose personal attendance had been dispensed with either under Section 205 or Section 240 - A, it is hard to see why the exception was not specifically embodied in the section by way of a proviso.

**218. Case of denial - Nature of examination under Section 342 Cr.P.C.** - Where the Magistrate knows even before the framing of the charge and the commencing of the regular trial that the defence of the accused is one of the total denial it becomes unnecessary when questioning them against under Section 342 to put each material fact against them spoken to by the prosecution witnesses and get their explanation. It is sufficient if he gives an opportunity to the accused person to state what they have got to say against the prosecution evidence. When such an opportunity is given to the accused in the questions put under Section 342 and their explanation again is that they have not committed any offence the omission to put all the points in the evidence of the prosecution witnesses appearing against the accused does not result in any prejudice or injustice to them.

**219. Licensed vendor punishable under Section 77 can be tried with his agent.** - A licensed vendor, who is punishable by implication under Section 77 of the Punjab Excise Act, may be tried together with his agent who commits the offence, for the case is one of

abetment by implication. Section 239 Cr.P.C. clearly allows an abettor to be tried in the same trials as the principal.

**220. Joint trial.** - The acts of manufacturing the excisable article brought into Court, bottling, and possessing the same, and of selling from time to time various other and similar articles not before the Court, and of attempting to render denatured spirit fit for human consumption, do not constitute the same transaction and joint trial in respect of all such acts is bad for misjoinder under Section 233 of the Code.

**221. Several persons cannot be tried for being collectively responsible.** - Several persons in a restaurant were found sitting round two tables lying side by side on four chairs and a cot lying near the table. They had their hands or elbows on the table on which there were four tumblers containing small quantities of liquor and a bottle containing liquor of the same variety. The Magistrate convicted the accused along with his six companions on the ground of their being collectively responsible for the possession of liquor on the table. It was held that the Magistrate could not enforce collective responsibility without trying to find out whether the accused was in individual possession of any tumbler containing any liquor. .

**222. Whether offence under Section 61 compoundable and bailable.** - The offence is not compoundable (Sec. 80) but bailable (Sec. 72) except offence of possession of a working still for the manufacture of any intoxicant under Section 61.

Recovery of illicit liquor - Only empty containers produced in court not the liquor - Contention of Police that there was leakage - No entry in roznamcha made or this fact brought to notice of Court - Though trial may not be vitiated, but it has to be seen ultimately if any prejudice was caused to accused or not - If prejudice was caused, benefit would go accused - In instant case accused acquitted as liquor not produced in Court. 1984(1) RCR (Crl.) 429 relied. 1982 Cr. LJ. 1374 distinguished.

**61A. Appeal.** - Any person aggrieved by the order of the Collector under clause (aaa) of sub-section (1) of section 61 may, within a period of one month from the date of the order, file an appeal to the Excise Commissioner, whose decision shall be final.

[Section 61 A and 61 B added by Haryana Act No.4 of 200 1 & omitted by Haryana Act No. 19 of 2002.]

### **Section 61-A for Punjab**

[61-A Penalty for offences not triable by a Court. - (1) Whosoever, in contravention of any provision of this Act, the rules framed thereunder, any notification issued or any order made or any license, permit or pass granted under this Act, imports, exports, transports or possesses any intoxicants other than those, specified in clause (aa) of sub-section (1) of Section 61 (hereinafter referred to as 'such intoxicants') shall, alongwith such intoxicants and means of transport, except the passenger buses, owned by the Central Government or the State Government or any of their undertaking, be detained by an Excise Officer, who shall make a report to the Assistant Excise and Taxation Commissioner in-charge of the district, within a period of twenty-four hours of such detention. The Excise Officer shall

forward such intoxicants and the means of transport along with the necessary documents to the Assistant Excise and Taxation Commissioner in-charge of the district".

(2) On the receipt of the report to in sub-section (1), the Assistant Excise and Taxation Commissioner in-charge of the district, shall record the statements of the offender and the officers, concerned with the case, and release the offender.

(3) The Assistant Excise and Taxation Commissioner in-charge of the district, may by an order impose the following penalties after providing the offender a reasonable opportunity of being heard in case, such intoxicants detained are licit, on which the excise duty and other levies have been paid in the State of Punjab, namely :

(a) rupees five thousand in case, the detection of such intoxicants, does not exceed two cases i.e. 18 bulk litres; and

(b) rupees ten thousand in case, the detection of such intoxicants, exceeds two cases i.e. 18 bulk litres.

(4) The Assistant Excise and Taxation Commissioner in-charge of the district, may confiscate such intoxicants and may also by an order impose the following penalties after providing the offender a reasonable opportunity of being heard in case such intoxicants detained are illicit, on which the excise duty and other levies have not been paid in the State of Punjab, namely :

(a) rupees twenty-five thousand in case the detection of such intoxicants, does not exceed five cases i.e. 45 bulk litres;

(b) rupees fifty thousand in case the detection of such intoxicants exceeds five cases i.e. 45 bulk litres, but does not exceed 450 bulk litres; and

(c) rupees one lac in case the detection of such intoxicants exceeds fifty cases i.e. 450 bulk litres.

(5) If the penalty referred to in sub-section (4), is not paid within a period of one week from the date of the order, the Assistant Excise and Taxation Commissioner in-charge of the district, shall pass a speaking order for confiscation of the means of transport and the liquor after giving an opportunity of being heard to the offender and the owner of the means of transport. In case, the owners of such intoxicants and the means of transport are not available, then the order for confiscation may be passed by the Assistant Excise and Taxation Commissioner in-charge of the district by affording an opportunity of being heard to the offender, who has been caught with the goods. The confiscated such intoxicants shall thereafter, be destroyed under the supervision of the Assistant Excise and Taxation Commissioner in-charge of the district and an authenticated copy of the said order shall be supplied to the affected person free of cost.

(6) The Assistant Excise and Taxation Commissioner in-charge of the district shall put to

auction the confiscated means of transport within a period of thirty days from the date of order of confiscation passed under sub-section (5). The amount received from auction after deducting the expenditure incurred on it, shall be adjusted towards the payment of penalty by the owner. The unrecovered amount of penalty, if any, shall be recoverable as arrears of land revenue.

**62. Penalty for unlawful selling to person under twenty five or employing them or women.** - If any licensed vendor, or any person in his employ or acting on his behalf:

- (a) in contravention of Section 29 sells or delivers any liquor or intoxicating drug to any person apparently under the age of twenty five years, or
- (b) in contravention of Section 30 employs or permits to be employed, on any part of his licensed premises referred to in that section any man under the age of twenty five years or women, or,
- (c) sells any intoxicant to a person who is drunk or intoxicated; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the licensed premises of such licensed vendor; or
- (e) permits any person whom he know or has reason to believe to have been convicted of any non-bailable offence or any reputed prostitute to frequent his licensed premises whether, for the purposes of crime or prostitution or not.

he shall in addition to any other penalty to which he may be liable be punishable with a fine which may extend to five hundred rupees.

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

### ***Section 62 for Haryana***

**62. Penalty for unlawful selling to person under twenty five or employing them or women.** - If any licensed vendor, or any person in his employ or acting on his behalf:-

- (a) in contravention of Section 29 sells or delivers any liquor or intoxicating drug to any person apparently under the age of twenty five years, or
- (b) in contravention of Section 30 employs or permits to be employed, on any part of his licensed premises referred to in that section any man under the age of twenty five years or women, or,
- (c) sells any intoxicant to a person who is drunk or intoxicated; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the licensed premises of such licensed vendor; or
- (e) permits any person whom he know or has reason to believe to have been convicted of

any non-bailable offence or any reputed prostitute to frequent his licensed premises whether, for the purposes of crime or prostitution or not.

he shall in addition to any other penalty to which he may be liable be punishable with a fine which may extend to [five thousand] rupees.

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

## **NOTES**

**1. Knows and Knowledge.** - The word knows denotes a state of mind when an offence is committed. A subsequent act cannot be taken into consideration for determining the question of the knowledge. Knowledge represents the state of mind entertained by person with regard to existing facts which he himself has observed.

**2. Reasons to believe.** - This term has been defined in Section 26 of the Indian Penal Code and according to this section as under :

Person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise.

The expression 'reason to believe' is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith; it cannot be merely a presence. When an officer of the Enforcement Department proposes to act under Section 37 of the Foreign Exchange Regulation Act for ordering search, undoubtedly, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, may be obtained through intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the officer to disclose this material on the mere allegation that there was no material on which his reason to believe can be grounded.

Whether there was such reason to believe and whether the Officer empowered acted in a bona fide manner, depends upon the facts and circumstances of the case and will have a bearing in appreciation of the evidence.

**3. Liability of an offence committed under Section 62.** - Section 77 of the Punjab Excise Act makes the holder of a license, permit or pass also liable to punishment for any offence punishable under Section 65 committed by any person in his employ or on his behalf as if he has himself committed the same, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence. A licensee under Excise Act is responsible for the default committed by his employees. Thus where the servants of the license permitted drunkards in the shop without his knowledge he may also be held responsible. A licensee is responsible for the default committed by the servants.

**63. Penalty for rendering or attempting to render denatured spirit fit for human consumption.** - Whoever renders or attempts render fit for human consumption any spirit, whether manufactured in India or not, which has been denatured, or has in his possession any spirit rendered fit for human consumption in respect of which he knows or has reason to believe that any such attempt has been made, shall be punishable with imprisonment for a term which may extend to one year [and with fine which may extend to one thousand rupees.]

**Section 63 for Haryana**

**63. Penalty for rendering or attempting to render denatured spirit fit for human consumption.** - Whoever renders or attempts to render fit for human consumption any spirit whether manufactured in India or not which has been denatured or has in his possession any spirit rendered fit for human consumption in respect of which he knows or has reasons to believe that any such attempt has been made, shall be punishable with imprisonment for a term which shall not be less than six months and more than three years and with a minimum fine of five thousand rupees and a maximum fine upto ten thousand rupees.

**NOTES**

**1. Attempt.** - What constitutes an "attempt" is a mixed question of law and fact, depending largely on the circumstances of the particular case. "Attempt" defies a precise and exact definition. In sum, a person commits the offence of 'attempt to commit a particular offence' when (i) he *intends* to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. An attempt to be criminal need not be the penultimate act. Where a person attempts to do a particular thing which is prohibited he may be held responsible for it. Where the attempt has gone so far that the crime would have been committed but for certain factors which frustrated the person, the liability would be deemed to have been incurred.

**2. Possession of denatured spirit.** - Possession of a denatured spirit is covered by Section 61 and not by Section 63. Where 8 drums full of denatured spirit were found in possession of accused it was held that the accused were rightly been convicted under Section 61(1)(a). The denatured spirit being a liquid containing alcohol is liquor and therefore intoxicant possession of which falls within the mischief of Section 61 of the Act.

**63.A. Penalty for possession of unused and printed labels, corks etc. in contravention of Section 24-A.** - Whoever in contravention of the provisions of Section 24-A has in his possession any unused and printed label, cork, capsule or seal or an imitation thereof, shall be punishable with imprisonment for a term which may extend to six months and with fine.

**64. Penalty for fraud by licensed manufacturer or vendor or his servant.** If any licensed manufacturer or licensed vendor or any person in his employ or acting on his behalf;

- (a) sells, or keeps or exposes for sale, as foreign liquor any liquor which he knows or has reason to believe to have been manufactured from rectified spirit or country liquor; or
- (b) marks any bottle, case, package or other receptacle containing liquor so manufactured from rectified spirit or country liquor, or the cork of any such bottle or deals with any bottles, case package or other receptacle containing such liquor with the intention of causing it to be believed that such bottle, case, package, or other receptacle contains foreign liquor;

he shall be punishable with imprisonment for a term which may extend to three months, [and with fine which may extend to five hundred rupees.]

### ***Section 64 for Haryana***

**64-A. Penalty for fraud by licensed manufacturer or vendor or his servant.** - If any licensed manufacturer or licensed vendor or any person in his employ or acting on his behalf;

- (a) sells, or keeps or exposes for sale, as foreign liquor any liquor which he knows or has reason to believe to have been manufactured from rectified spirit or country liquor; or
- (b) marks any bottle, case, package or other receptacle containing liquor so manufactured from rectified spirit or country liquor, or the cork of any such bottle or deals with any bottles, case package or other receptacle containing such liquor with the intention of causing it to be believed that such bottle, case, package, or other receptacle contains foreign liquor;

he shall be punishable with imprisonment for a term which may extend to three months, [and with fine which may extend to [five thousand] rupees.]

## **NOTES**

**1. Cancellation of license for offence under Section 64.** - Where the authorities come to the conclusion that a person is making a sale in contravention of the provisions of the Act and the rules then the authorities can cancel the license. The court of revision should not interfere with the discretion so exercised.

**2. Liability for offence under Section 64.** - There would be basically no difference between the case of a servant and a case of a partner! The two partners would stand to one another in the same relation as master and a servant.

The licensee was convicted on the ground that sale was made by his son, of adulterated liquor. It was held that he could be convicted in the absence of proof that he took steps which may fall within the term all due and reasonable precautions.

**65. Penalty for certain acts by license or his servant.** - Whoever being the holder of a license, permit or pass granted under this Act or being in the employ of such holder or acting on his behalf:

- (a) fails wailfully to produce such license, permit or pass on the demand of any excise

officer or of any other officer duly empowered to make such demand; or

(b) in any case not provided for in Section 61 wilfully contravenes any rule made under Section 58 or Section 59; or

(c) wilfully does or omits to do anything in breach of any of the conditions of the license, permit or pass not otherwise provided for in this Act:

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

### ***Section 65 for Haryana***

**65. Penalty for certain acts by license or his servant.** - Whoever being the holder of a license, permit or pass granted under this Act or being in the employ of such holder or acting on his behalf:

(a) fails wilfully to produce such license, permit or pass on the demand of any excise officer or of any other officer duly empowered to make such demand; or

(b) in any case not provided for in Section 61 wilfully contravenes any rule made under Section 58 or Section 59; or

(c) wilfully does or omits to do anything in breach of any of the conditions of the license, permit or pass not otherwise provided for in this Act:

shall be punishable [with imprisonment which may extend to six months and with a fine of not less than two thousand rupees and not more than ten thousand rupees] .

### **NOTES**

**1. Willfully.** - An act is said to be wilful if it is intentional, conscious and deliberate.

The meaning to be attached to the word 'wilful' or 'wilfully' has to be ascertained on a close examination of the scheme and nature of the legislation in which the words appear and the context in which they are used.

A comparison of the different offences under Chapter X of the Post Office Act shows that the legislature took a more serious view of the offence of wilful detention of a postal article (Section 53) than of many other offences in this Chapter. The comparatively heavy punishment of 2 years' imprisonment shows that the word 'wilful' was used by the legislature to mean only such detention which was deliberate and for some purpose.

So where the purpose of detaining the object is not clearly established the detention was not deliberate and on purpose, but as a result of either inadvertence or carelessness or negligence. So the appellant cannot be said to have detained or delayed the article 'willfully'.

'Willfully' as used in Section 477-A means 'intentionally' or 'deliberately'. 'Intent to defraud' contains two elements viz., deceit and injury. A person is said to deceive another when by practising 'suggestio falsi' or 'suppressio veri' or both he intentionally induces another to believe a thing to be true, which he knows to be false or does not believe to be true. 'Injury' has been defined in Section 44 of the Code as denoting 'any harm whatever illegally caused

to any person, in body, mind, reputation or property."

**2. Liability of the financier.** - The conditions of the license was that the licensee shall not sell, transfer or sublet his rights of sale of country spirit. The question arose as to whether obtaining the assistance of a third person who was to act as financier would amount to the breach of the conditions stipulated above. It was held that the person named in the license could not take a plea that another person had acquired the right of sale through him or other agent.

**3. Selling liquor from unauthorised place.** - Accused granted license to sell liquor. Accused, however, selling liquor from an unapproved site in contravention of Haryana Liquor License Rules, 1970. FIR under Section 61 of Excise Act. According to accused no offence was made out under Sections 61 and 65 of Excise Act. No ground to quash the FIR. As to whether the possession and sale of Liquor by Licensee at an unauthorised point makes the possession and sale of liquor an offence under Section 61 of Punjab Excise Act or it is a contravention of the terms of license and is not so punishable can be urged before trial court. 1991(3) R.C.R. (Criminal) 383 (SC).

**4. Liability of master and servant.** - Under the Act of 1896 every person who was guilty of contravention of any condition of the license granted under the Act was liable to a penalty. It is not necessary for the purpose of convicting the accused thereunder that he should have been himself guilty of the contravention. If the servant acted within the scope of authority of the master then the master would be equally liable. The position under Section 77 of the present Act of 1914 is the same.

Bottles of foreign liquor were found in the luggage which was in exclusive control of the servant. There was no proof of knowledge on the part of the owner. It was held that the owner is not guilty.

A master would be liable if the servants acted within the scope of his employment and where it is proved that he was acting for the benefit of his master.

Where the servants are responsible for permitting drunkenness in the premises of a licensee without his knowledge then the licensee may also be held responsible. Where the licensee was not authorised to sell liquor to be taken on the premises and where open bottles were kept on the counter, it was held that the servant is guilty for abetting breach of the license.

The servant was selling the intoxicants after the prohibited time. The sale was however being affected not in the shop but in a palm grove. It was held that the master is not liable in such case.

Where the servant or the son of the licensee sold adulterated liquor, it was held that the conviction of the owner was proper.

**5. Delivery to the customer at his house - Nonviolation of conditions of license.** - The licensed vendor of country liquor was prohibited by his conditions of license. He took out some liquor and bottled it and delivered it to his servants in the shop premises which was delivered

by the servants to the customers in their houses. The price was recovered. It was held that the servant of the accused was in the position of a bailee for the purpose of transmission to the purchaser. The sale could be said to have completed within the licensed premises and only the price was paid at the house of the customer. This was immaterial and there was no violation of the conditions of the license.

**6. Possession and sale in contravention of license.** - Accused granted license to sell liquor - Accused, however, selling liquor from an unapproved site in contravention of Haryana Liquor License Rules, 1970 - FIR under Section 61 of Excise Act - According to accused no offence was made out under Sections 61 and 65 of Excise Act - No ground to quash the FIR - As to whether the possession and sale of Liquor by Licensee at an unauthorised point makes the possession and sale of liquor an offence under Section 61 of Punjab Excise Act or it is a contravention of the terms of license and is not so punishable can be urged before trial court. 1991(3) R.C.R. (Criminal) 383 (SC).M/s Goyal and Co. v. State of Haryana 1997(2) Re-centCR 585(P&H)

**66. Penalty for consumption in chemists shops etc.** (1) If any chemist, druggist, apothecary or keeper of a dispensary allows any intoxicant which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be punishable with imprisonment for a term which may extend to three months [and with fine which may extend to one thousand rupees.]

(2) If any person not employed as aforesaid consumes any such intoxicant on such premises, he shall be punishable with fine which may extend of two hundred rupees.

**67. Manufacture, sale or possession by one person on account of another.** - (1) When any intoxicant has been manufactured or sold or is person and such other person known or has reason to believe that such manufacture or sale was, or that such possession is, on his account, the article, shall for the purpose of this Act be deemed to have been manufactured or sold by or to be in the possession of such other person.

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

## **NOTES**

**1. Scope.** - This section punishes' (1) the person who manufactures or sells or is possessed of any intoxicant on account of any other person, as well as (2) such other person also in case he knows or has reason to believe shall be deemed to have been manufactured or sold by or to be in possession of such other person.

**2. Possession on behalf of someone else is no offence.** - Possession on behalf of someone else is not an offence. Where a person is in possession of liquor under a valid

permit issued on behalf of another person it cannot be said that the person was in possession without authority of law.

**68. Penalty for offences not otherwise provided for.** - Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act; or of any rule, notification or order made, issued or given, thereunder and not otherwise provided for in this Act, shall be punishable for every such act or omission with a fine may extend to [five thousand rupees.]

***Section 68 for Haryana***

**68. Penalty for offences not otherwise provided for.** - Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act; or of any rule, notification or order made, issued or given, thereunder and not otherwise provided for in this Act, shall be punishable for every such act or omission with a fine may extend to [ten thousand] rupees.

**68-A. Enhanced punishment for certain offences after previous conviction.-** Whoever having been convicted for an offence punishable under sub-section (I) of Section 61 of this Act, is again convicted of an offence punishable under the said sub-section shall ;

- (a) for a second offence be punished with not less than twice the punishment awarded to him on his first conviction; and
- (b) for a third or subsequent offence be punished with not less than twice the punishment awarded to him on his second conviction or immediate last conviction:

Provided that the enhanced punishment does not exceed the imprisonment of three years and a fine of two thousand rupees:

Provided further that if on a previous conviction the sentence awarded was that of fine only, a sentence of imprisonment for a term which may extend to three years shall also be awarded on subsequent conviction and such sentence of imprisonment shall be in addition to the enhanced penalty of fine:

Provided further that the enhanced punishment would not in any way affect the minimum sentence prescribed for the offence of possession of a working still for the manufacture of any intoxicant.]

***Section 68-A & 68-B for Haryana***

**68-A. Enhanced punishment for certain offences after previous conviction.** - Whoever having been convicted for an offence punishable under sub-section (1) of section 61 and section 63 of this Act is again convicted of an offence punishable under the said sections shall,

- (a) for a second offence be punished with not less than twice the punishment awarded to him on his first conviction; and
- (b) for a third or subsequent offence be punished with not less than twice the punishment

awarded to him on his second conviction or immediate last conviction:

Provided that the enhanced punishment shall not exceed the imprisonment of six years and a fine of twenty thousand rupees.]

**68B. Enhanced penalty for previous offender.** - Notwithstanding anything contained in any provision of this Act, whoever, having been penalised for an offence under clause (aaa) of sub-section (1) of section 61 of this Act, is again detained for an offence under the same provision, shall, for a second and subsequent offence, be liable for penalty which may not be less than twice the amount of penalty imposed upon him for the first offence.

**69. Attempt to commit offences punishable under the Act.** - Whoever attempts to commit or abets any offence punishable under this Act shall be liable to the punishment provided for the offence.

## NOTES

**1. Attempt.** - What constitutes an "attempt" is a mixed question of law and fact, depending largely on the circumstances of the particular case. "Attempt" defies a precise and exact definition. In sum, a person commits the offence of 'attempt to commit a particular offence' when

(i) he *intends* to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. Attempt is an act done in part with a view to execute a criminal design. It is more than preparation but falls short of actual commission. The dividing line between preparation and attempt is real though fine. So long as the offender is at the stage of preparation, he is not held punishable as it is still open to him to change his mind. The test, therefore, is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in the progress, the act already done would be completely harmless. But where the thing done is such as, if not prevented by any extraneous cause, would fructify into commission of the offence it would amount to an attempt to commit an offence: In case of offence of transport the least movement from one terminus to another must constitute an attempt.

Where the accused placed an order for certain excisable articles with a foreign firm and in compliance with this order articles were despatched. The goods arrived for delivery to him but were intercepted by the customs authorities, it was held that he was guilty of an offence of attempt to commit an offence.

In an other case the petitioner was in possession of a bill of lading, and an invoice for certain items imported into India by another person. The petitioner was held to be guilty of making an attempt to import.

**2. "Reasonable precautions."** - This phrase carries a meaning that all reasonable or practical and due and necessary precautions which a prudent, sensible and reasonable person

would take in his genuine efforts to prevent violation of the crime or the conditions and objects of the license. Thus the liability of the master for the acts of the servant would depend upon the facts of each case. A licensee had employed two servants to transact his business with a view to have check on each other. He would visit the place of sale each day. But he fell ill. During his illness when the booth was raided it was found that adulterated intoxicants were being stored. In a similar check when he was not ill the intoxicants were found to be of pure quality. It was held that the licensee could not be fastened with the liability,

**69-A. Security for abstaining from commission of certain offences.** - (1) Whenever any person is convicted of an offence punishable under Sections 61,63 and 69 and the court convicting him is of the opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under these sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

[ (2) The bond shall be in the form contained in Schedule II and the provisions of the Code of Criminal Procedure, 1973, shall, in so far as they are applicable, apply to all matters connected with such bond, as if it were a bond to *keep* the peace ordered to be executed under Chapter VIII of the said Code.]

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

(4) An order under this section may also be made by an appellate court, or by the High Court, when exercising its powers of revision.

#### ***Section 69-A for Haryana***

**69-A. Security for abstaining from commission of certain offences.** - (1) Whenever any person is convicted of an offence punishable under Sections 61, 63 and 69 and the court convicting him is of the opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under these sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

(2) The bond shall be in the form contained in Schedule II and the provisions of the Code of Criminal Procedure, 1898 shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under Section 106 of the said code.

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

(4) An order under this section may also be made by an appellate court, or by the High Court, when exercising its powers of revision.

70. Penalty for excise officer making vexatious, search, etc. - If an excise officer

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

he shall be liable to imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

## **NOTES**

**1. Reason to believe.** - The expression "reason to believe" is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith; it cannot be merely a pretense. When an officer of the Enforcement Department proposes to act under Section 37 of the Foreign Exchange Regulation Act for ordering search, undoubtedly, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, may be obtained through intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the officer to disclose this material on the mere allegation that there was no material on which his reason to believe can be grounded.

Whether there was such reason to believe and whether the Officer empowered acted in a bona fide manner, depends upon that facts and circumstances of the case and will have a bearing in appreciation of the evidence.

**2. Reasonable and probable cause.** - Means an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed.

There must be first an honest belief of the accuser in the guilt of accused; secondly such belief must be based on an honest conviction of the existence of the circumstances which lead the accuser to that conclusion; thirdly such secondly mentioned belief must be based upon reasonable grounds, that is such ground, as would lead any fairly cautious man in the

defendant's situation so to believe; fourthly the circumstances so believed and relied on by the accuser must be such as amount to a reasonable ground for belief in the guilt of the accused.

**3. Every Police Officer is an Excise Officer.** - Every police officer is an Excise Officer. A report made by the police officer who is also vested with the power of Excise Officers under Section 71 of the Punjab Act can be considered as falling within the purview of Section 75 of the Act. A magistrate can take cognizance of an offence under Section 61 of the Act on the report of the police officer. The Magistrate can take cognizance even on the report of a Sub-Inspector of police who is an Excise Officer also. It may be mentioned that even a Sub-Inspector of police is an Excise Officer.

**4. Vexatiously.** - The term implies that the accusation is one that ought not to have been made and is intended to harass or annoy the accused. It contains an element of falsehood in the charge. A false accusation would certainly be vexatious. The term frivolous or vexatious covers deliberately false case. A vexatious charge may be partly true but the idea conveyed by the word is that the object of the person making the accusation should be primarily to harm the person accused.

It should be proved that the main intention was to cause annoyance to the accused and to further ends of justice.

**71. Report by investigation officer for institution of proceedings.** - If on an investigation by an excise officer, empowered under Section 46 sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer unless he submits the case for the orders of the Collector under Section 80, shall submit a report [(which shall deem to be a Police report under Code of Criminal Procedure, 1973)] to a Magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police reports.

### ***Section 71 for Haryana***

**71. Report by investigating officer for institution of proceedings.** - If on investigation by an officer, empowered under sub-section (1) of section 46, it appears that the offender is not disclosing his true and correct identity or is incapable of furnishing adequate surety security or incapable of paying penalty or for any other reasons to be recorded in writing and there is sufficient evidence to justify the prosecution of the accused, the investigating officer shall report the case for the orders of the Collector under section 61 or section 80, as the case may be. In case Collector deems fit that the relevant case is required to be sent to magistrate, he may direct investigating officer to submit a report, which shall, for the purpose of section 190 of the Code of Criminal Procedure, 1973 (Act 2 of 1974), be deemed to be a police report, to a magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police reports.

## NOTES

Report to the Magistrate. - Every police officer is an Excise Officer. The section does not debar a police officer from being designated as an excise officer. Under the provisions of Punjab Excise, Powers and Appeal order every police officer of the rank of head constable or above can make report to the Magistrate and the Magistrate shall be competent to take cognizance.

**72. Offences to be bailable.** - All offences, punishable under this Act shall be bailable within the meaning of the Code of Criminal procedure, 1973 .

[Provided that the offences punishable under clause (i), (ii), (iv) and (v)] and of possession of country of liquor in a quantity exceeding ten bottles of 750 millilitres capacity each, punishable under clause (iii) of the proviso to sub-section (1) of Section 61 shall be non- bailable. ]

### ***Section 72 for Haryana***

**72. Offences to be bailable.** - All offences, punishable under this Act shall be bailable within the meaning of the Code of Criminal Procedure, 1973 :

Provided that the offence of possession of a working still for the manufacture of any intoxicant under section 61 (1) and Section 63 shall be non-bailable.

## NOTES

**1. Bail in non-bailable offence - Circumstances which should be considered for grant of bail.** - The court before granting bail in cases involving non- bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused a reasonable possibility of the presence of the accused no being secured at the trial, reasonable apprehension of witness being tempered with the larger interests of the public or the State of similar other consideration.

**2. Non-bailable offence - Grant of bail- Principles stated.** - The general policy of the law is to allow bail rather than refuse it and bail should not be withheld as a measure of punishment, or for the purpose of putting obstacles in the way of defence.

**73. Security for appearance in case of arrest without warrant.** - The State Government may empower any excise officer to grant bail notwithstanding that such officer is not empowered under Section 46.

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

- (a) the nearest Excise Officer empowered to grant bail; or
- (b) the nearest officer-in-charge of a police station whoever is nearer.

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

(4) The provisions of [Section 441 to 446 and 449 of the Code of Criminal Procedure, 1973], shall apply so far as may be, in every case in which bail is accepted or a bond taken under this section.

### ***Section 73 for Haryana***

**73. Security for appearance in case of arrest without warrant.** – The State Government may empower any excise officer to grant bail notwithstanding that such officer is not empowered under Section 46.

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

- (a) the nearest Excise Officer empowered to grant bail; or
- (b) the nearest officer-in-charge of a police station whoever is nearer.

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

(4) The provisions of sections 441 to 446 and 449 of the Code of Criminal Procedure, 1973 (Act 2 of 1974), shall apply so far as may be, in every case in which bail is accepted or a bond taken under this section.

### **74. Repealed.**

**75. Cognizance of offences.** -(1) [Judicial Magistrate] shall take cognizance of an offence punishable.

(a) under Section 61 or Section 66 except on his own knowledge or suspicion or on the complaint or report of an excise officer; or

(b) under Section 62, Section 63, Section 64, Section 65, Section 68, or Section 70, except on the complaint or report of the Collector or a excise officer authorized by him in that behalf.

(2) Except with the special sanction of the State Government no [Judicial Magistrate] shall take cognizance of any offence punishable under this Act unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.

### **Section 75 for Haryana**

**75. Cognizance of offences.** -(1) No Judicial Magistrate shall take cognizance of an offence punishable.

(a) under Section 61 or Section 66 except on his own knowledge or suspicion or on the complaint or report of an excise officer; or

(b) under Section 62, Section 63, Section 63-A, Section 64, Section 65, Section 68, or Section 70, except on the complaint or report of the Collector or an excise officer authorized by him in that behalf.

[Provided that no police officer or constable discharging the function of an excise officer, shall file a complaint or make the report, set out in clause (a) in regard to the offences of collection, possession and sale of liquor, committed on the premises of a licensed vend, unless authorised to do so, by the Financial Commissioner.]

(2) Except with, the special sanction of the State Government no shall take cognizance of any offence punishable under this Act unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.

### **NOTES**

**1. Limitation.** - Offence involving punishment with fine only - Cognizance of such an offence beyond six months is barred.

Period for taking cognizance - Extension of time without any application - Vague explanation - Extension of time for cognizance of the offence held illegal. The prosecution has to be initiated within one year. Where challan is filed in the court after expiry of one year the proceedings have to be quashed.

Period for filing challan in the court - Challan filed after the expiry of one year – Proceeding before Trial Court quashed.

**2. Special sanction - Meaning.** - Held, that the special sanction envisaged in sub-section (2) of Section 75 of the Excise Act is a sanction for permitting prosecution beyond the period of limitation envisaged by the said sub-section. That is a kind of sanction that is needed not for launching the prosecution which could be do without any prior consent for sanction of the Government, but for permitting the launching of prosecution after expiry of the period of limitation envisaged in the statute in question.

**76. Presumption as to commission of offence in certain cases.** – When ever any person is found in possession of :

(a) any still utensil, implement or apparatus what so ever or any part or thereof such as are ordinarily used for the manufacture of any intoxicant other than tari.

(b) any materials which have under gone any process towards the manufacture of an intoxicant or from which an intoxicant has been manufactured;

it shall be presumed until the contrary is proved, that his possession was in contravention of the provisions of this Act.

## **NOTES**

**1. Presumption, can be raised only if possession is established.** - In order to raise presumption of guilt against an accused it must be established that he was in possession of an intoxicant. A person in the occupation of a house cannot be presumed to be in possession of everything found in the house. Whether such a presumption should be raised in any particular case must depend on the facts and circumstances of each case. Where a person who was of a different caste and had no relationship with the occupants of the house where the intoxicants were found to be concealed, it was possible that, person might have brought the intoxicants in the house and concealed them without the occupants knowing about it.

**2. Liability of the head of joint family.** - Fermented liquor and materials for manufacturing liquor were found in the house of a person who was head of the family. He had the control and could stop anything being done in the house. It was held that he was in the possession and could be burdened with criminal intention.

**76-A. Presumption as to commission of offence in prosecution under Section 63 of the Act.** - In prosecution under Section 63, 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 which has been or attempted to be rendered fit for human consumption.

**77. Liability of employer for offence committed by employee or Agent.** - The holder of a license, permit or pass under this Act as well as the actual offender, shall be liable to punishment, of any offence punishable under Section 61, Section 62, Section 63, Section 64 or Section 65, committed by any person in his employ or acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

### ***Section 77 for Haryana***

**77. Liability of employer for offence committed by employee or Agent.**- The holder of a license, permit or pass under this Act as well as the actual offender, shall be liable to punishment, of any offence punishable under Section 61, Section 62, [Section 63, Section 63-A] Section 64 or Section 65, committed by any person in his employ or acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

Provided that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine.

## NOTES

**1. "Master" "servant", "independent contractor".** - It is not always easy to determine whether the relation between two parties, is that of servants to a master or of independent contractors who have undertaken to do particular job for their employer. The question has generally arisen in connection with the determination of vicarious liability of an employer in respect of acts done by his agent (using a neutral word which includes an independent contractor as also a servant). The distinction between a servant and an independent contractor has been the subject-matter of a large volume of case-law from which the text-book writers on torts have attempted to lay down some general tests. For example, in Pollock's Law on Torts, the distinction has thus been brought out. "A master is one who not only prescribes to the workman the end of his work, but directs or at any moment may direct the means also, or, as it has been put, 'retains the power of controlling the work', a servant is a person subject to the command of his master as to the manner in which he shall do his work.

An independent contractor is one who undertake to produce a given result but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand.

**2. Responsibility of a partner.** - There would be basically no difference between the case of a servant and a case of a partner. The two partners would stand to one another in the same relation as master and a servant. Where a certain transaction is committed in the presence of the partner then the partner would also be liable.

**3. Offence by partnership from.** - In case of an offence by a partnership firm, all the partners are not liable. There is no vicarious liability in criminal offence unless statutes makes such a provision.

**78. Confiscation of article in respect of which offence committed.** - (1) Whenever an offence punishable under this Act has been committed;

(a) every intoxicant or excise bottle in respect of which such offence has been committed together with the contents of such bottle, if any;

(b) every still, utensil, implement or apparatus and all material in respect of or by means of which such, offence has been committed;

(c) every intoxicant or excise bottle lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any intoxicant or excise bottle liable to confiscation under clause (a);

(d) every *receptacle*, package and covering in *which any intoxicant for excise bottle, materials, still*, utensil, implement or apparatus as afore said is or are found together with the other contents (if any) of such receptacle or package; and

(e) every animal, cart, vessel, raft or other conveyance used in carrying such, receptacle, or

package, covering or articles as aforesaid;

shall be liable to confiscation:

Provided that when it is proved that the receptacles, animals or other articles specified in clauses (d) and ( e) are not the property of offenders, they shall not be liable to confiscation if the owner thereof established that he had no reason to believe that such offence was being or was likely to be committed.

**(2) When confiscation may be orderd.** - When in the trial of any offence punishable under this Act the Magistrate decides that anything is liable to confiscation under sub-section (1), he may order confiscation;

Provided that in lieu of ordering confiscation he may give the owner of the thing liable to be confiscated an option to pay such fine as the Magistrate thinks fit.

### ***Section 78 for Haryana***

**78. Confiscation of article in respect of which offence committed.** - (1) Whenever an offence punishable under this Act has been committed;

(a) every intoxicant or excise bottle in respect of which such offence has been committed together with the contents of such bottle, if any;

(b) every still, utensil, implement or apparatus and all material in respect of or by means of which such, offence has been committed;

(c) every intoxicant or excise bottle lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any intoxicant or excise bottle liable to confiscation under clause (a);

(d) every receptacle, package and covering in which any intoxicant for excise bottle, materials, still, utensil, implement or apparatus as aforesaid is or are found together with the other contents (if any) of such receptacle or package; and

(e) every animal, [cart, vehicle, vessel, raft or other conveyance except public undertaking vehicles used] in carrying such, receptacle, or package, covering or articles as aforesaid;

shall be liable to confiscation:

[Provided that when it is proved that the receptacles, vehicles, animals or other articles specified in clauses (d) and (e) except public undertaking vehicles are not the property of offenders, they shall not be liable to confiscation if the owner thereof establishes that he exercised diligence to make sure that such offence was not committed.

*Explanation.* - "Public undertaking vehicles" means any vehicle owned/run by

(i) the Central Government or a State Government:

(ii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments,

for the purposes of providing transport and goods services.

**(2) When confiscation may be ordered.** - When in the trial of any offence punishable under this Act the Magistrate decides that anything is liable to confiscation under sub-section (1), he may order confiscation;

Provided that in lieu of ordering confiscation he may give the owner of the thing liable to be confiscated an option to pay such fine as the Magistrate thinks fit.

(3) when an offence under Clause (aaa) of sub-section (1) of section 61 is committed under this Act and the Collector decides that anything is liable to confiscation under sub-section (1), he may not confiscation:

Provided that in lieu of ordering confiscation under clause (e) of sub-section (1) the Collector may give the owner of the thing liable to be confiscated and option to pay such penalty as the Collector imposes under section 61 of this Act.]

## **NOTES**

**Scope.** - Section 78 provides for confiscation of articles. It, however, is not applicable if a case falls under the proviso i.e. where it is not brought on the record that the persons who was committing the offence was also the owner of the goods. In such a case mensera on the part of the owner has to be established. Thus if an accused is not the owner of the car then the same cannot be confiscated, if the owner establishes that he had no reason to believe that an offence was be or likely to be committed.

**79. Further provisions for confiscation.** - When there is reason to believe that an offence under this Act has been committed, but the offenders is not known or cannot be found and when any thing or animal liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily *accounted for the case shall be* enquired into and determined by the collector, who may order confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing or animal in question or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he produces in support of the claim:

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

**80. Power of excise officers to compound offences.** - (1) The collector may accept from any person who is reasonably suspected of having committed an offence punishable under Section 62, Section 65 or Section 68 of this Act a sum of money by way of composition for such offence; and on the payment of such sum of money to the collector the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence.

(2) The cancellation or suspension of any license, permit or pass under Section 36(a), (b), or (c) of this Act maybe foregone or revoked by and at the sole discretion of the authority having power to cancel or suspend it on payment by the holder of such license, permit or pass of such penalty as such authority may fix.

(3) Where any intoxicant has been seized under the provisions of this Act, the Collector may in his discretion, at any time before a magistrate has passed an order under Section 78, sub-section (2), release it on receiving payment of the value thereof.

### ***Section 80 for Haryana***

**80. Power of excise officers to compound offences.** - (1) The collector may accept from any person who is reasonably suspected of having committed an offence punishable under Section 62, Section 65 or Section 68 of this Act a sum of money by way of composition for such offence; and on the payment of such sum of money to the collector the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence.

(2) The cancellation or suspension of any license, permit or pass under Section 36(a), (b), or (c) of this Act maybe foregone or revoked by and at the sole discretion of the authority having power to cancel or suspend it on payment by the holder of such license, permit or pass of such penalty as such authority may fix.

(3) Where any intoxicant has been seized under the provisions of this Act, the Collector may in his discretion, at any time before a magistrate has passed an order under Section 78, sub-section (2), release it on receiving payment of the value thereof.

[Section 80-A and 80-B omitted by Haryana Act No. 19 of 2002.]

### ***Section 80-A for Punjab Only***

**80-A. Imposition of penalty.** - If any violation of any of the provisions of this Act, except sections 61, 61-A, 62, 65 and 68 of this Act or the rules made thereunder, is brought to the notice of the [Assistant Excise and Taxation Commissioner in-charge of the district] , he may, in lieu of criminal proceedings against the offender, pass an order, imposing a penalty, not exceeding the maximum amount of fine as provided for such an offence in the relevant provisions of this Act and also confiscate the liquor and other connected or related goods after giving him a reasonable opportunity of being heard. On payment of [such penalty, the offender, if in custody or on bail, shall be discharged and no further criminal proceedings

shall be taken against him in respect of such offence.]

***Section 80-AA for Punjab Only***

**80-AA. Penalty for sale of liquor 011 prohibited days.** - Whosoever opens a liquor vend on any day on which the sale of liquor is prohibited under this Act, or any rules framed, notification issued or order made thereunder shall be liable to be imposed a minimum penalty of fifty thousand rupees.]

***Section 80-B for Punjab Only***

**80-B. Appeal.** - Any person aggrieved by the order of the Assistant Excise and Taxation Commissioner in-charge of the district, under section 80-A and 80-AA, may file an appeal to the Excise and Taxation Commissioner, Punjab, within a period of one month from the date of passing of the order.]

***Section 81 for Haryana***

**[81. Summary trial.** - All offences punishable under this Act upto a maximum period of two years, shall be tried summarily, under the Code of Criminal Procedure, 1973.]