

THE JHARKHAND EXCISE AMENDMENT ACT, 2015

An act to amend the Jharkhand Excise Act, 1915 (Jharkhand Act II of 1915) (hereinafter referred to as 'the Act');

Preamble- Be it enacted by the legislature of the State of Jharkhand in the sixty sixth year of the republic of India as follows:

CHAPTER I PRELIMINARY

1. Short title, extent and commencement,

- (1) This Act may be called the Bihar Excise Act, 1915;
- (2) It extends to the whole of the Province of Bihar and Orissa including the Santhal Parganas and the district of Angul; and
- (3) It shall come into force on such date as the State Government may, by notification, direct.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

- (1) "beer" includes ale, stout, porter and all other fermented liquor made from malt;
- (2) "Board" means the Board of Revenue ;
- (3) "to bottle" means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not, and includes re-bottling;
- (4) * * * *
- (5) (a) "denaturant" means any substance prescribed by rule made in this behalf under Clause (3) of Section 90, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever;
- (b) "to denature" means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under Clause (3) of Section 90, and "denatured Spirit" means spirit so mixed;
- (6) "excisable article" means -
 - (a) any alcoholic liquor for human consumption; or
 - (b) any intoxicating drug;

- (6a) "excise duty" and "countervailing duty" mean any such excise duty or countervailing duty, as the case may be; as it is mentioned in Entry 51 of List II in the seventh Schedule of the Constitution".
- (7) "Excise Commissioner" means the officer appointed under Section 7, Clause (a);
- (8) "Excise Officer" means the Collector or any officer or other person appointed or invested with powers under Section 7;
- (9) "Excise Revenue" means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) on confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs
- (10) "export" means to take out of the State otherwise than across a customs frontier as defined by the Central Government;
- (11) 'hemp plant' means the plant cannabis sativa;
- (12) "import" exception the phrase "import into India" means to bring into the State otherwise than across a customs frontier as defined by the Central Government;
- (12a) 'intoxicant means-
- (i) any liquor, or
 - (ii) any substance from which liquor may be distilled and which is declared by the State Government by notification in the official Gazette to be an intoxicant for the purpose of this Act, or
 - (iii) intoxicating drug, or
 - (iv) medicinal preparation as defined under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- (13) "intoxicating drug" means -
- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (Cannabis Sativa L.), including all forms known as Bhang, Siddhi or Ganja;
 - (ii) charas, that is, the resin obtained from the hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;
 - (iii) any mixture with or without neutral materials of any of the above forms of intoxicating drugs, or any drink prepared therefrom, and

- (iv) any other intoxicating drug 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 1 of the Dangerous Drugs Act, 11 of 1930;
- (14) "Liquor" includes all liquids consisting of or containing alcohol, such as spirits of wine, spirit, wine, fermented *tari*, pachwai and beer, and also unfermented *tari* and also any other substance which the may, by notification, declare to be liquor for the purposes of this Act;
- (15) "manufacture" includes -
- (i) every process whether natural or artificial, by which any intoxicant is produced or prepared (including the tapping of *tari* producing trees and the drawing of *tari* from the trees);
 - (ii) redistillation, and
 - (iii) every process for the rectification, flavouring, blending or colouring of liquor, or for the reduction of liquor for sale;
- (16) "pachwai" means fermented rice, millet, or other grain whether mixed with any liquor or not, and any liquid obtained therefrom, whether diluted or undiluted; but does not include beer;
- (17) "place" includes building, house shop, booth, vessel, raft, vehicle or tent;
- (18) expressions referring to "sale" include any transfer otherwise than by way of gift;
- (19) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not;
- (20) "*tari*" means fermented or unfermented juice, drawn from any coconut, palmyra, date, or other kind of palm tree; and
- (21) "transport" means to remove from one place to another within the State of Bihar and Orissa.

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4. Powers to Declare what shall be deemed to be "country Liquor" and "foreign liquor" respectively

The State Government, may, be notification declare what, for the purposes of this Act or any portion thereof, shall be deemed to be "country liquor" and "foreign liquor" respectively.

5. Definition of "retail" and "wholesale"

- (1) The Board may, by notification, declare, with respect either to the whole of the State or to any specified local area, and as regards purchasers generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any intoxicant shall, for the purposes, of this Act, be the limit of a retail sale.
- (2) The sale of any intoxicant in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a wholesale sale.

6. Saving of Certain Acts

Nothing contained in this Act shall affect the provisions of -

- (a) the Sea Customs Act, 1879 (18 of 1878), or
- (b) the Indian *Tariff* Act, 1894 (8 of 1894) except Sec. 6 thereof, or
- (c) the Cantonment Act, 1910 (15 OF 1910)

1. *Subs. by Act 6 of 1985*
2. *Omitted by Dangerous Drugs Act, 1930--S. 40 & Sch. II.*
3. *Ins. by Act 6 of 1985.*
4. *Subs. by Act 6 of 1985.*

CHAPTER II

Establishment, Control, Appeal and Revision

7. Establishment and delegations, and withdrawal of powers

- (1) The administration of Excise Department and the Collection of the Excise-revenue within a district shall ordinarily be under the charge of the Collector.
- (2) The State Government may, by notification applicable to the whole of the State or to any specified local area:
 - (a) appoint any officer who shall, subject to such control as the State Government may direct, have the control of the administration of the Excise Department and the collection of the Excise-revenue;
 - (b) appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed on a Collector by or under the Act, subject to such control as the State Government may direct;
 - (c) appoint officers of the Excise Department, of such classes, and with such designations, powers and duties as the State Government may think fit;
 - (d) order that all or any of the powers assigned by or under this Act to any officer appointed under Clause (c) of this Section shall be exercised or performed by any Government Officer or any person;
 - (e) delegate to the Board, the Commissioner of a division, or the Excise Commissioner or the Collector of a district all or any of the powers conferred upon the State Government by or under this Act, except the powers conferred by Section 89 to make rules;
 - (f) withdraw from any officer or person all or any of the powers or duties conferred or imposed upon him by or under this Act; and
 - (g) permit the delegation by the Board, the Commissioner of a division, the Excise Commissioner or the Collector, to any persons or classes of persons specified in such notification, of any powers conferred or duties imposed upon it or him by or under this Act.

8. Control, appeal and revision

- (1) The Collector shall, in all proceedings under this Act, be subject to the control of the Excise Commissioner and shall, in such matters as the State Government may direct, be subject also to the control of the Commissioner of the division.
- (2) Orders passed under this Act or any rule made hereunder shall be applicable in such cases, to such authorities and under such procedure as may be prescribed by rule under Section 89, Clause (c).
- (3) The Board may revise any order passed by a Collector, the Excise Commissioner or the Commissioner of a division.

CHAPTER III
IMPORT, EXPORT AND TRANSPORT

9. Restrictions on import

- (1) No intoxicant shall be imported unless -
- (a) the State Government has given permission, either general or special, for its import;
 - (b) such conditions (if any) as the State Government may impose have been satisfied; and
 - (c) the duty (if any) payable under Chapter V has been paid or a bond has been executed for the payment thereof.
- (2) Sub-section (1) shall not apply to any article imported into India and was liable, on such importation, to duty under the Indian *Tariff Act*, 1894 (8 of 1894) or the *Sea Customs Act* 1878, (8 of 1878) if
- (i) the duty as aforesaid has been paid, or
 - (ii) a bond has been executed for the payment of such duty.
- (3) Clauses (a) and (b) of Sub-section (1) shall not apply to liquor manufactured in India and declared under Section 4 to be foreign liquor.

10. Restrictions on export or transport

No intoxicant shall be exported or transported unless.

- (a) duty (if any) payable under Chapter V;

has been paid, or a bond has been executed for the payment thereof;

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

11. Power to prohibit, import, export or transport

The State Government may, by notification:

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

12. Passes for import, export or transport

- (1) No intoxicant exceeding such quantity as the State Government may prescribe by notification, either generally or for any specified local area, shall be imported, exported or transported, except under a pass;

Provided that in the case of duty-paid foreign liquor other than denatured spirit, such passes shall be dispensed with unless the State Government, by notification, otherwise directs with respect to any local area.

- (2) The passes required by Sub-section (1) may be granted by the Collector.
- (3) Such passes may be either general for definite periods and particular kinds of intoxicants or special for specified occasions and particular consignments only.

CHAPTER IV

MANUFACTURE, POSSESSION AND SALE

13. License required for manufacture

- (a) No intoxicant shall be manufactured.
- (b) no hemp plant shall be cultivated;
- (c) no portion of the hemp plant from which an intoxicating drug can be manufactured or produced shall be collected.
- (d) no liquor shall be bottled for sale;
- (e) no distillery or brewery shall be worked; and
- (f) no person shall use, keep or have in this 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 condition of a licence granted in that behalf by collector.

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

- (i) for the purpose of being used in the manufacture of *gur* or molasses; or
- (ii) for the purposes of being used solely for the preparation of food for a domestic consumption and not
 - (a) as an intoxicant; or
 - (b) for the preparation of any intoxicating article; or
 - (c) for the preparation of any article of sale; or
- (iii) up to a limit of four seers, for the domestic consumption of the said person.

14. Drawing of *tari* in notified areas

- (1) Notwithstanding anything contained in the proviso to Sec. 14:
 - (a) no *tari* producing tree shall be tapped, and
 - (b) no *tari* shall be drawn from any tree,
in any local area specified in this behalf by the State Government by notification except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector:

Provided that, when any exclusive privilege of manufacturing *tari* has been granted under Sec. 22, the State Government may declare that the written permission given by the grantee to draw *tari* shall have the same force and effect as a licence granted by the Collector under Sub-section (1) of this Section;

Provided also that, in any local area specified by notification under Sub-section (1), the State Government may, by notification, declare that Sub-section (1) shall not apply to trees tapped or *tari* drawn under such special conditions as the Board may prescribe.

15. Establishment of distilleries, breweries, or warehouses

- (1) The Excise Commissioner may
 - (a) subject to any restriction imposed by the State Government establish, or authorise the establishment of distilleries or breweries, in which liquor may be manufactured under a licence granted under Sec. 13;
 - (b) discontinue any such distillery or brewery;
 - (c) establish or authorise the establishment of warehouses, wherein any intoxicant may be deposited and kept without payment of duty; and
 - (d) discontinue any such warehouse.
- (2) No distillery, brewery or warehouse as aforesaid shall be established except by or under the authority of the Excise Commissioner.

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

No person shall, except under the authority and subject to terms and conditions of licence granted in that behalf by the Collector, deposit or keep any intoxicant in any warehouse or other place of storage established, authorised or continued under the Act.

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

No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorised or continued 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.

18. Possession of intoxicant not obtained from a licensed vendor

- (1) No person shall have in his possession any intoxicant which has not been obtained from a licensed vendor of the same.
- (2) Sub-section (I) shall not apply to -
 - (a) any intoxicant lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorised or continued under this Act, or
 - (b) any intoxicant lawfully in the possession of a licensed vendor of the same, or
 - (c) any intoxicant in the possession of a person who has lawfully imported it or who is authorised by the Collector to possess it, or
 - (d) any foreign liquor in the possession of any common carrier or warehouseman as such, or purchased at a sale authorised by Clause (a) of proviso (4) to Section 20, or
 - (e) *tari* intended to be used in the manufacture of *gur* or molasses, or
 - (f) *tari* intended to be used solely for the preparation of food for domestic consumption, and not -
 - (i) as an intoxicant, or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for Sale, or
 - (g) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or
 - (h) *tari*, upto a limit of four seers, when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or
 - (i) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which such drugs were produced, when such possession is in accordance with the conditions of his licence.

19. Possession and consumption of intoxicant generally

- (1) No person not being licensed to manufacture, cultivate, collect or sell any intoxicant shall have in his possession any quantity of any intoxicant in excess of such quantity as the Board has, under Section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

- (2) Sub-section (1) shall not apply to -
- (a) any foreign liquor (other than denatured spirit) which is in the possession of any common carrier or warehouseman as such; or
 - (b) any foreign liquor which has been purchased by any person for his bonafide private consumption and not for sale or for use in the manufacture of any article for sale, or
 - (c) *tari* intended to be used in the manufacture of *gur* or molasses,
 - (d) *tari* intended to be used solely for the preparation of food for domestic consumption and not-
 - (i) as an intoxicant, or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale.
- (3) A licensed vendor shall not have in his possession at any place other than that authorised by his licence any quantity of any intoxicant in excess of such quantity as the Board has, under Section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.
- (4) Notwithstanding any thing contained in this Act and the Dangerous Drugs Act (Act II of 1930), the State Government may, by notification, prohibit the possession by any person or class of persons or subject to such exceptions, if any, as may be specified in the notification, by all persons either in the State of Bihar or in any specified local area, of any intoxicant either absolutely, or subject to such conditions as it may prescribe.

Notification

S.O 941 dated 29th July 1978 (Published in Bihar Gazette Extra-ordinary dated the 29th July, 1978)- The Governor of Bihar, in exercise of powers conferred by sub-section (4) of section 19 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) is pleased to make the following orders:-

- 1 (a) No person while being in a public place shall possess and consume any intoxicant in a public place not licenced for consumption of the same. For this purpose a “public place” shall mean “any place intended for use by or accessible to the public and shall include any public conveyance.”

- (b) Alcoholic beverages shall not be served in hotels, restaurants, clubs and at public receptions unless specially permitted:

Provided that-

- (i) There will be no restriction on serving on liquor in the precincts of foreign embassies. Foreign embassies may also be allowed to serve liquor in hall/s launges of hotels and clubs provided such halls/ launges are exclusively reserved or taken on hire by them to entertain a select number of invitees:
 - (ii) The exemption referred to in (i) above may also be extended to parties hosted by others in honour of foreigners subject to the condition that the member of invitees does not exceed 100, and those hosting such parties obtain permits from the Deputy Commissioners / District Magistrate concerned.
 - (iii) Service of liquor of foreigners in bars or special rooms earmarked for the purpose in hotels and restaurants approved by the Ministry of Tourism and Civil Aviation may be permitted.
 - (iv) Serving of alcoholic beverages in Defense Establishment may be permitted only in bars or specifically reserved rooms for private parties as are located in the messes, clubs of such establishments.
2. No scheduled drugs contained opium or its derivatives of psychotropic substances shall be sold except on the prescription of a registered medical practitioner.

Note- “Scheduled Drug” means which has been notified under the Drugs (Control) Act.

S.O 566 dated the 27th March 1979 – In exercise of the powers conferred by sub-section (4) of section 19 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to prohibit throughout the states of Bihar the possession and or consumption of any intoxicant other than hang and *tari* by any person except a person specially authorised in this behalf or a holder of a license, pass or permit duly granted in this behalf.

Provided that no person shall consume any intoxicant in public place not licenced for consumption of the same, even when such intoxicant is lawfully possessed by him. For this purpose a “public place” shall mean “any place intended for use by or accessible to the public and shall include any public conveyance:

Provided further that any member of the scheduled tribes may manufacture and possess pachwai without a licence or permit for domestic consumption or on religious and social occasions, but such self-brewed pachwai shall not be sold under any circumstances.

2. This notification shall come into force with effect from 1st April 1979 and shall supersede Government notification S.O 941 dated the 29th July 1978 and paragraph XVI (1) of Government notification no. 470 F dated the 15th January 1919.

S.O 936 the 19th September 1980- In exercise of the powers conferred by sub-section (4) of section 19 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to make the following orders:-

- (a) No person shall possess and consume any intoxicant in a public place not licensed for consumption of the same. For this purpose a “public place” shall mean “any place intended for use by or accessible to the public and shall include any public conveyance”:
- (b) Alcoholic beverages shall not be served in hotels, restaurants, clubs and at public receptions:

Provided that:

- (i) any member of the scheduled Tribes may manufacture and possess pachwai without a licence or permit for domestic consumption or on religious and social occasions, but such self brewed pachwai shall not be sold under any circumstances.
 - (ii) Serving of alcoholic beverages in Defence Establishment may be permitted only in bars or specifically reserved rooms for private parties as are located in the messes, clubs of such establishments.
2. The notification shall come into force with immediate effect and shall supersede Government notification no. S.O 56 dated the 27th March 1979

S.O 477 the 15th April 1981- In exercise of the powers conferred by sub-section (4) of section 19 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to make the following amendments in notification no. SO 936 dated the 19th September 1980

1. The following proviso may be added after proviso II in para 1 of the orders--- III
 - (a) The foreigners and the Indian Tourists may be permitted to be served all kinds of foreign liquor in pegs in their rooms in the hotels approved by the Ministry of Tourism and Civil Aviation, Government of India;
 - (b) Beer only may be served near swimming pool and gardens in the campus of such hotels.
 - (c) Only foreigners may be served with all kinds of foreign liquor in bars or rooms specially earmarked for this purpose in such hotels. In such places beer only may be served to the Indians.
 - (d) In dining halls of such hotels foreigners may be served with beer and wine (excepting foreign liquor distilled spirit) but India may be served with beer only.
2. This notification shall come into force with immediate effect.

S.O 175 dated 2nd February 1982- In exercise of the powers conferred by sub-section (4) of section 19 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to make the following amendment in notification No. S.O 936 dated 19th September 1980 as subsequently amended in notification No. S.O 477 dated 15th April 1981

AMENDMENT

The existing proviso III (a) of paragraph 1 of the order may be substituted by the following

1. III (a) the foreigners and the Indian Tourists may be permitted to be served all kinds of foreign liquor in pegs in their rooms in the hotel approved the Ministry of Tourism and Civil Aviation, Government of India, and in Tourist Bungalows and Hotels and Motels (situated beyond 150 yards of National Highways) managed by Bihar State Tourist Development Corporation.
2. This notifications shall come into force with immediate effect.

S.O 1313 the 25th October 1983 - In exercise of the powers conferred by sub-section (4) of section 19 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to make the following amendment in notification no. S.O 936 dated the 19th September, 1980 as subsequently amended in notification no. S.O 477 dated the 15th April 1981 and S.O 175 dated the 2nd February 1982.

AMENDMENT

The existing proviso III (a) of paragraph 1 of the order may be substituted by the following:-

1. III (a) the foreigners and the Indian Tourists may be permitted to be served all kinds of foreign liquor in pegs in their rooms in the hotel approved the Ministry of Tourism and Civil Aviation, Government of India, and in Tourist Bungalows and Hotels and Motels (situated beyond 150 yards of National Highways) managed by Bihar State Tourist Development Corporation or approved by the Development of Tourism, Government of Bihar”.
2. This notification shall come into force with immediate effect.

Notif. No. 5/Tek- 10012/96 dated 23-02-1998 - - In exercise of the powers conferred by sub-section (4) of section 19 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to make the following amendments in notification no. S.O 936 dated the 19th September 1980 as subsequently amended in notification no. S.O 477 dated the 15th April 1981, S.O 175 dated the 2nd February, 1982 and S.O 1313, dated the 25th October 1983:-

AMENDMENT

The existing proviso III (a) of a paragraph I of the order may be substituted by the following :-

- “1. III (a) Hotel, restaurant, or motel licences, permitting the retail sale of all kinds of foreign liquor for consumption on the premises may be granted for hotels, restaurants and motels, conforming to such norms as are required for approval by the Department of Tourism Government of Bihar.
- (b) A bar licence may be granted to the holder of a hotel or restaurant or motel license for the retail vend of foreign liquor, to be sold in pegs only, and to served and drunk within the said premises.
2. Before the grant of licenses to the proprietor of hotel, restaurant, motels the excise authorities shall make such enquiries as they deem fit to ascertain that the establishment conform to the norms required for approval by the Department of Tourism, Government of Bihar.
3. This notification shall come into force with immediate effect and shall supersede notification No. 936 dated 19th April 1980 and subsequently amendment in notification No. S.O 477 dated 15th April 1981 S.O 175 dated the 2nd February 1982 and S.O 1313 dated the 25th October 1983.

20. Licence required for sale

No intoxicant and no portion of the hemp plant from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of licence granted in that behalf by the Collector.

Provided as follows:-

- (1) a licence for sale in more than one district shall be granted only by the Excise Commissioner or by a Collector specially authorised in that behalf by the Excise Commissioner.
- (2) a licence for sale granted under Excise Law in force in any other State may, on such conditions as may be determined by the Excise Commissioner, be deemed to be a licence granted under this Act.
- (3) a cultivator or owner of any hemp plant may sell, without a licence, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person

licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorise to purchase or receive the same.

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

21. Manufacture and sale of liquor in or near cantonments

Within the limits of any military cantonment and within such distance from those limits as the Central Government may in any case prescribe, no licence for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding officer.

22. Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs or denatured spirit or any other intoxicant

- (1) The state Government may grant to any person, on such conditions and for such periods as it may think fit, the exclusive privilege
- (a)
 - (i) of manufacturing or supplying wholesale, or
 - (ii) of manufacturing and supplying wholesale, or
 - (iii) of selling wholesale or retail or
 - (iv) of manufacturing or supplying wholesale and selling retail or

- (v) of manufacturing and supplying wholesale and selling retail; any country liquor or intoxicating drug with any specified local or
- (b) of manufacturing, storing using, possessing, exporting, importing including wholesale or retail sale of liquor, which after manufacture is denatured to render it unfit of human consumption and is thereby termed as denatured spirit and any other intoxicant.

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

- (2) No grantee of any privilege under sub-section (i) shall exercise the same unless or until he has received a license in that behalf from the collector of the Excise Commissioner

S.O 319 dated 18-03-1983 - In exercise of the powers conferred by the provisions to fix of section 29 of the Bihar and Orissa Excise Act 1915, the Governor of Bihar is pleased to fix exclusive privilege levy on various kinds of excise licences granted under the provisions of section 22 of the Act as per schedule below, in additional to any other fee or duty that is being imposed and realised from before.

SCHEDULE

A. Manufacture of intoxicant

	For each licence
(a) Industrial spirits (Form 28A, Form 25)	Rs. 2000 per month
(b) Potable spirits (Form 28, 29, 18, 19, 20) (Country spirit and foreign liquor)	Rs. 5000 per month
(c) Industrial and potable spirits	Rs. 7000 per month
(d) Bhang (Form 40)	Rs. 1000 per month

B. Wholesale sale of intoxicants

(a) Country spirits (Form 27)	Rs. 8000 per month
(b) Foreign liquor	
Bond (manufacture with wholesale) Form 1, 1A)	Rs. 4000 per month
Bond (Non – manufacture with wholesale) (Form 1, 1A)	Rs. 2000 per month
Wholesale without bond (Form 1)	Rs. 500 per month
(c) Denatured spirits (Form 22)	Rs. 200 per month

- (d) Use and storage licenses (Form 24)
- | | |
|---|--------------------|
| (a) For large undertaking and Industries based on alcohol | Rs. 5000 per month |
| (b) For small scale industries based on alcohol | Rs. 500 per month |
| (c) For hospitals, educational institutions laboratories and others | Rs. 100 per month |
| (d) For charitable institutions | Nil |

C. Retail sale of intoxicants

Municipal or Industrial areas (with two km. radius of any industrial Irrigation or other development projects or townships) other areas

	(Monthly)	(Monthly)
(a) Country spirit	Rs. 1000	Rs 200
(b) Foreign liquor	Rs. 500	Rs. 200
(c) Denatured spirits	Rs. 50	Nil
(d) Pachwai (manufacture and retail sale)	Rs. 100	Rs. 50
(e) <i>Tari</i> (fermented)	Rs. 30	Rs. 20
(f) Bhang	Rs. 50	Rs. 25

2. The aforementioned levy shall be payable in advance in the following manner:-

- | | | |
|--|---|--------------------|
| (a) At the time of engaging the license | - | Three month's levy |
| (b) In the beginning of each quarter subsequently- | | Three month's levy |
- by the 7th of the opening month of quarter

3. The above order shall come into effect from 1st April 1983.

22A. The fixation of cost price of country liquor, by the State Government :-

- (1) The State Government while granting exclusive privilege of manufacturing supplying wholesale or of selling wholesale or retail of country liquor may fix the cost price which include the price of the spirit, the transportation charges, warehouses maintenance charges, taxes, if any, and other charges, such as bottling packing etc and dividend.
- (2) Any person to whom the State Government has granted exclusive privilege of manufacturing, supplying wholesale or selling or retail country liquor during the year 1990 wherein the cost price of the country liquor was fixed by the State Government taking different components into account including warehouses maintenance charges at the rate of 70 paise per L.P Litre shall be deemed to have been fixed under this section.

22B. Validating of cost price of country liquor and realisation of warehouse maintenance charges

- (1) Notwithstanding any judgment, decree or order of any court Tribunal or Authority the price of country spirit, including the warehouse maintenance charges at the rate of 70 paise per L.P Litre fixed during the year 1990 shall be deemed to have been fixed under this Act and any amount collected from the retailer as a cost price of country liquor per L.P Litre shall be paid to or payable to the contractor (Distiller) / Supplier after deducting at the rate of 70 paise per L.P Litre as the maintenance charges of the warehouses and the said amount shall not be payable to the Contractor (Distiller)/ Supplier.
- (2) The amount so collected shall be deemed to have been collected under the provision of his Act and the said amount of warehouse maintenance charges shall not be refundable and no court Tribunal or, Authority shall order for refund of such amount.

Provided that where the amount collected from the retailer has been paid to the Contractor (Distiller)/ Supplier, the State Government shall realise such amount from the Contractor (Distiller)/ Supplier and the contractor shall be required to refund the said amount to the State Government.

Provided further, that the State Government may adjust the said amount from any amount due or payable to the Contractor by the Government.

Provided also that the said amount shall be spend by order of the Excise Commissioner under administrative instructions issued for the maintenance of warehouse.

Provided further also, that any amount realised on account of warehouse maintenance charges but refunded to the supplier, under the order of any Court, Tribunal or Authority shall be refunded by the Supplier and the State Government shall recover the same from the Contractor (Distiller)/ Supplier as arrears of revenue.

22C. Overriding effect of Act-

Notwithstanding anything to the contrary contained in any judgment, decree or order passed by any Court and in any other law for the time being in force, the provisions of this Act shall have the effect.

22D. Grant of exclusive/ special privilege for bottling /Sacheting and wholesale supply of country liquor -

1. The state Government may grant to any person/ persons on such conditions and for such terms and conditions and for such period as it may think fit the exclusive/ special privilege for supplying country liquor, on wholesale basis, after sacheting/ bottling it. These may be more than one grantee in a zone of supply.
2. No Grantee of any privilege under sub-section (1) shall exercise the same unless he has received a license in that behalf from the Board of Revenue/ Excise Commissioner/ Collector.
3. A license fee shall be paid in advance in one lump sum by each licensee of the zone determined by the member, board of Revenue/ Excise Commissioner at the rate of Rupee 1 per L.P litre calculated on the basis of the annual M.G.Q Additional license fee shall be paid by each licensee of the zone if the total wholesale supply of the country liquor in the zone exceeds the annual M.G.Q which would also be calculated at the rate of Rupee 1 per L.P litre on the excess quantity.
4. The conditional regarding payment of advance licence fee and additional licence fee as per sub section (3) could be deemed to be included in the tender notice dated 3rd June 1995 issued by the Excise and Prohibition Department for wholesale supply of country liquor during the period of 1st July 1995 to 31st March 1999 and would also be deemed to be included in all the licences issued in pursuance thereof and any expression, term or condition to the contrary contained in the tender notice and licences would be deemed to be deleted and substituted accordingly.

22E. Validating of licence Fee-

- (1) Notwithstanding any thing contrary contained in a judgment/ decree or order of any court, Tribunal or Authority, advance licence fee in the lump sum on each licence for wholesale supply of country liquor after sacheting/ bottling granted pursuant to tender notice dated 3rd June 1995 issued by the Bihar Excise and Prohibition Department shall be deemed to have been imposed on every licence at the rate of Rupee 1 per L.P Litre calculated on the annual M.G.Q and an additional licence fee at the same rate on excess supply shall also be deemed to have been imposed on every license of the zone where the total wholesale supply in the zone exceeds the annual M.G.Q.
- (2) The amount of licence fee collected from the various licensees at the above rate shall be deemed to have been validly collected, irrespective of any term or condition contained in

the tender notice dated 3rd June 1995 and the licence issued in pursuance thereof and the licence fee so collected shall not be refundable and no court, Tribunal or Authority shall order for refund of such licence fee:

Provided that if any licensee has not paid licence fee as specified in sub-section (3) of section, 22 -D under the order of any Court, Tribunal or Authority the State Government shall realise the same as arrears of revenue.

22F. Overriding effect of the ordinance-

"Notwithstanding anything to the contrary contained in any judgment, decree or order passed by any court and in any law for the time being enforce, the provision of this Ordinance shall prevail and have effect.

22G. Grant of exclusive/ special privilege of manufacture and/or wholesale supply of spiced country liquor -

- (1) The state Government may grant to any person/ persons, on such conditions and for such period as it may think fit, the exclusive/ special privilege of manufacturing and/ or supplying wholesale any spiced country liquor within any specified local area. There may be more than one grantee in an area of supply.
- (2) No grantee of any exclusive/ special privilege under sub-section (I) shall exercise the same unless or until he has received a licence in that behalf from the collector or Excise Commissioner.
- (3) The fees for licence for the manufacture and / or wholesale supply of spiced country liquor shall be respectively at such rates as may be prescribed by the Board from time to time.

23. Transfer of exclusive privilege

- (1) A grantee of an exclusive privilege under Section 22 shall not let or assign the same or any portion thereof unless he is expressly authorised, by a condition made under that Section, to do so.
- (2) Such letting or assignment shall be made only to a person approved by the Collector or (if the letter or assignment extends to more than one District) the Excise Commissioner.
- (3) The lessee or assignee shall not exercise any rights as such unless and until the Collector has, upon his application, granted him a licence to do so.

24. Maintenance and use of measures, weights and instruments by licensed manufacturers and vendors

Every person who manufactures or sells any intoxicant under a licence granted under the Act -

- (a) Shall supply himself with such measures, weights and instruments as the Excise Commissioner may prescribe and shall keep the same in good condition; and
- (b) When such measures, weights and instruments have been so prescribed, shall, on the requisition of any Excise Officer duly empowered by the Collector in this behalf, measure, weigh or test any intoxicant in his possession, at such time and in such manner as such officer may require.

25. Employment of persons under the age of [twenty one] years or women by licensed vendors.

- (1) No person who is licensed to sell foreign liquor 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 person under the age of [twenty one] years in any part of such premises in which such liquor is consumed by the public.
- (1a) No person who is licensed to sell country spirit or any intoxicating drug shall employ or permit to be employed, either with or without remuneration, any person under the age of [twenty one] years, in any part of the premises in which such spirit or drug is sold, during the hours in which such premises are kept open for business.
- (2) No person who is licensed to sell foreign liquor for consumption on his premises shall, without the previous written permission of the Board; during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman; in any part of such premises in which such liquor is consumed by the public.
- (3) The State Government may, by notification, declare that Subsection (2) shall apply also, in any specified area, to persons licensed to sell country spirit for consumption on their premises.
- (4) Every permission granted under Sub-section (2) shall be endorsed on the licence, and may be modified or withdrawn.

26. Power to close shops temporarily

- (1) The District Magistrate or a Sub-divisional Magistrate, may, by notice in writing to the licensee, 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 any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any intoxicant is sold, any Magistrate or any police officer above the rank of constable, who is present, may require such shop to be kept closed for such period as he may think necessary.
- (3) When a direction is made by a Magistrate under Sub-section (1), or sub-section (2), or by a police officer under sub-section (2) such Magistrate or Police Officer shall forthwith inform the Collector of his action and of his reasons there for.

1. *Subs. by Act 6 of 1985.*
2. *Subs. by Act 17 of 1982.*
3. *Ins by Act 9 of 1995*
4. *Ins by Act 6 of 1998*
5. *Section "22G" ins. by Act 3 of 1999*
6. *Subs. for "eighteen" by Act 6 of 1985*

CHAPTER V

DUTY

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

- (1) An excise duty or countervailing duty, as the case may be at such rate or rates as the State Government may direct, may be imposed either generally or for any specified local area, on:
- (a) any excisable article imported; or
 - (b) any excisable article exported; or
 - (c) any excisable article transported; or
 - (d) any excisable article (other than *tari*) manufactured under any licence granted in respect of Clause (a) of Sec. 13; or
 - (e) any hemp plant cultivated, or any portion of such plant collected, under any licence granted in respect of Clause (b) or Clause (c) of Sec. 13; or
 - (f) any excisable article manufactured in any distillery or brewery licensed, established, authorised or continued under this Act.

Explanation - Duty may be imposed on any article under this Sub-section at different rates according to the places to which such article is to be removed for consumption, or according to the varying strengths and quality of such article.

- (2) An excise duty or countervailing duty, as the case may be, at such rate or rates as the State Government may direct, may be imposed, either generally or for any specified local area, on any *tari* drawn under any licence granted under Sec. 14, Sub-section(1).
- (3) Notwithstanding anything contained in Sub-sec. 1:
- (i) duty shall not be imposed thereunder on any article which has been imported into India and was liable, on such importation, to duty under the Indian *Tariff Act*, 1894 (8 of 1894), or the *Sea Customs Act*, 1878 (8 of 1878) if:
 - (a) the duty as aforesaid has been already paid; or
 - (b) a bond has been executed for the payment of such duty; and
 - (ii) x x x

Notification

S.O 1317 the 25th October 1983- In exercise of the powers conferred by section 27 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of

Bihar is pleased to direct that in item number (3) (i) and (3) (ii) of Order No. X of the order published under notification no. 470 F- dated the 15th January 1919, as amended by notification no. S.O 79 dated the 17th January 1981 for the words "Troops and Military bodies" the following words shall be substituted with the immediate effect namely:-
"Armed forces of Union, Central Reserve Police, Border security force, Bihar Military Police (excluding officers), mounted Military Police (excluding officers) and the members of the Armed Forces of the Union on deputation to the National Cadet corps.

28. Way of levying such duty

Subject to any rules made under Sec. 60, Clause (12), any duty imposed under Section 27 may be levied in any of the following ways:

- (a) on any excisable article imported:
 - (i) by payment (upon or before importation) in the State or in the State or territory from which the article is brought, or
 - (ii) by payment upon issue for sale from a warehouse established, authorised or continued under this Act;
- (b) on an excisable article exported -
by payment in the State or in the State or territory to which the article is sent;
- (c) on an excisable article transported -
 - (i) by payment in the district from which the article is sent, or
 - (ii) by payment upon issue for sale from a warehouse established, authorised or continued under this Act;
- (d) on intoxicating drugs manufactured, cultivated or collected -
 - (i) by a rate charged upon the quantity manufactured under a licence granted in respect of the provisions of Sec. 13, Clause (a), or issued for sale from a warehouse established, authorised or continued under this Act, or
 - (ii) by a rate assessed on the area covered by, or on the quantity or out turn of, the crop cultivated or collected under a licence granted in respect of the provisions of Sec. 13 Clause (b) or Clause (c);
- (e) on spirit or beer manufactured in any distillery or brewery licensed, established, authorised or continued under this Act:

- (i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorised or continued under this Act, or
 - (ii) in accordance with such scale of equivalents, calculated on the quantity of materials used, or by the degree of attenuation of the wash or worth, as the case may be, as the State Government may prescribe; and
- (f) on *tari* drawn under a licence granted under Sec. 24, Sub-sec. 1, by a tax on each tree from which the drawing of *tari* is permitted:

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

Provided further that in case of excisable articles imported or transported on payment of duty according to the provisions of sub-clause (i) of clause (a) or clause (c) of this section, the difference of duty resulting from any provision in the rates of duty subsequent to such import shall be realized from, or credited to the account of the importing of transporting licence according to the revised rate of duty which may be higher or lower than the previous rate and the calculation thereof shall be made on the balance stock of excisable article on the date the revised rate of duty comes into effect; Provided also that no tax shall be levied in respect of any tree from which *tari* is drawn only for the manufacture of *gur* or molasses and under such special conditions as the Board may prescribe.

29. Payment for grant of exclusive privilege

Instead of or in addition to, any duty leviable under this Act, the State Government may accept payment of a sum in consideration of the grant of any exclusive privilege under Sec. 22.

29A - Saving for duties being levied at commencement of the Constitution

Until provision to the contrary is made by the Parliament, the State Government may continue to levy and duty to which this Section applies which it was lawfully levying immediately before the commencement of the Constitution, under this Chapter as then in force.

- (2) The duties to which the Section applies are:

- (a) any duty on intoxicants which are not excisable articles within the meaning of this Act;
 - (b) any duty on an excisable article produced outside India and imported into the State 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.

1. *Omitted by A.L.O.*
2. *Ins by Bihar Act 4, 1973*

CHAPTER VI
LICENSES, PERMITS AND PASSES

30. Preparation of list of places for which it is proposed to grant licences for the retail sale of spirit -

Before the expiration of every period for which existing licences for the retail sale of spirit or *tari* are in force, the Collector shall prepare a list, in a form prescribed by the Board, showing what licences it is proposed to grant for the retail sale of spirit or *tari* for consumption on the vendors' premises for the next period of settlement.

31. Publication of such list

- (1) The Collector shall:
 - (a) cause to be conspicuously affixed upon the site of each shop referred to in the said list a notice to the effect that it is proposed to grant a licence for the retail sale of spirit or *tari* thereat, or in the vicinity, for the next period of settlement;
 - (b) if any site referred to in the said list is not at the time used for the retail sale of spirit or *tari*, cause a notice, to the effect that it is proposed to grant a licence for the retail sale of spirit or *tari* thereat, or in the vicinity, for the next period of settlement, to be proclaimed in the locality by the beating of drum;
 - (c) send a copy of the said list to the Chairman of the District Board;
 - (d) send to the Chairman of each municipality [and Mayor of A Corporation] an extract reproducing so much of the said list as relates to shops in the municipality [and municipal Corporation]; and
 - (e) cause the said list, or any portion thereof, to be published in such other methods (if any) as may be prescribed by rule made under Sec. 89, Clause (j).
- (2) When a copy of the said list is sent to the Chairman of the District Board, he shall send to each member of the District Board a copy thereof and to the Chairman of each local Board an extract reproducing so much of the said list as relates to shops within the jurisdiction of the Local Board.
- (3) When an extract is sent to the Chairman of any municipality under Clause (d) of Sub-sec. 1, he shall:
 - (i) cause a copy of the extract to be conspicuously affixed at the central office of the municipality; and

(ii) send to each Municipal Commissioner a copy of the extract.

32. Time for preparation and publication of such list

The list mentioned in Sec. 30 shall be prepared and shall be published under Sec. 31, at such time as may be prescribed by rule made in this behalf under Sec. 89, Clause (j).

33. Submission of objections and opinions to Collector

- (1) Objections to any proposal contained in any list prepared under Section 30 may be received, at any time prior to the date prescribed by rule made in this behalf, under Sec. 89, Clause (j), from:
 - (a) persons paying municipal rates and residing in any municipality, to which such proposal relates, or (if any such municipality [or Corporation] is divided into wards) in the ward to which such proposal relates or in any ward adjoining such ward; or
 - (b) (in the case of shops not situated in any, municipality [or Corporation]) persons owning or occupying land, or residing in the vicinity of the shop to which such proposal relates; or
 - (c) the District Board;
 - (d) the District Magistrate;
- (2) Such objections must be submitted to the Collector, or, in any municipality [or Corporation], either to the Chairman of the municipality [or Mayor of the Corporation or to the Collector.
- (3) Every Chairman of a District Board or Municipality [or Mayor of the Corporation] to whom a copy or an extract has been sent under Sec. 31, Clause (c) or Clause (d), as the case may be, shall send to the Collector, by a date prescribed by rule made in this behalf under Sec. 89, Clause (J):
 - (i) in the case of a municipality [or Mayor as the case may be] all objections (if any) to proposals contained in the extract which may be received by the Chairman, from persons paying municipal rates, before the date; and
 - (ii) in the case of a District Board, all objections (if any) to proposals contained in the list which may be received by the Chairman from members of the District Board, or the Chairman of any Local Board; and

- (iii) any opinion which the Chairman or the member of the District Board or the Municipal Commissioners, [or counselor of a Corporation] as the case may be, may wish to record on the said proposals.

34. Grant of licences by Collector and submission of list, objections and opinions to Excise Commissioner

- (1) After the date prescribed for the receipt of objections and opinions submitted under Sec. 33, the Collector shall consider the same, and shall, if necessary, revise the said list, and shall decide for what places licences for the retail sale of spirit shall be granted, and may, in his discretion, grant licences accordingly.
- (2) The Collector shall then forthwith submit the said list, as so revised, and the said objections and opinions and his own opinion to the Excise Commissioner

35. Finality of decision of Excise Commissioner or Board

The Excise Commissioner shall consider the list, objections and opinions so sent to him and may modify or annul any order passed or licence granted by the Collector; and notwithstanding anything contained in Sec. 8, his order shall be final:

36. Application of Secs. 30 to 35 to licenses for retail sale of intoxicants other than spirit

The provisions of Secs. 30 to 35 as to licences for the retail sale of spirit shall apply also in respect of licences for the retail sale, in any local area specified in any order made by the Board in this behalf, or any other intoxicant specified in such order.

37. Exemption of certain licences from Secs. 30 to 36

Secs. 30 to 36 shall not apply in the case of any licence which it is proposed to grant:

- (a) to any person, for the retail sale of any intoxicant during any period not exceeding six months; or
- (b) to any person, for the retail sale of any denatured spirit; or
- (c) to any person, for the retail sale of any intoxicant in substitution for a licence which has been cancelled or surrendered before the expiration of the period for which it was granted; or
- (d) to any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary, for the retail sale of any intoxicant for medicinal purposes

38. Fees for, terms, conditions, and form of, and duration of, licences permits & passes

- (1) Every licence, permit or pass granted under this Act:

- (a) shall be granted:
 - (i) on payment of such fees (if any), and
 - (ii) subject to such restrictions and on such conditions, and
- (b) shall be in such form and contain such particulars, as the Board may direct.

(2) Every licence, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the State Government under Sec. 89, Clause (e).

39. Power of Board to reduce fees

The Board may, if it thinks fit, at any time during the period for which any licence has been granted, order a reduction of the amount of fees payable in respect thereof during the unexpired portion of the grant.

40. Counterpart agreement by licensees, or exclusive privilege and security or deposit

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

41. Technical defects, irregularities and Omissions

- (1) No licence granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the licence or in any proceedings taken prior to the grant thereof.
- (2) The decision of the Excise Commissioner or as to what is a technical defect, irregularity or omission shall be final.

42. Power to cancel or suspend licence, permit or pass

- (1) Subject, to such restrictions as the State Government may prescribe, the authority who granted any exclusive privilege, licence, 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 thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof, or
 - (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 (2 of 1930) under the Merchandise Marks Act, 1889 (4 of 1889) or under any other section which has been introduced into the Indian Penal Code by section 3 of that Act; or
 - (e) if the holder thereof is punished for any offence referred to in clause (8) of Section 167 of the Sea Customs Act, 1878 (8 of 1878); or
 - (f) where a licence, permit or pass has been granted on the application of the holder of an exclusive privilege granted under Section 22, -on the requisition in writing of such holder; or
 - (g) the condition of the exclusive privilege, licence, permit or pass provide for such cancellation or suspension at will
- (2) When a licence, permit or pass held by any person is cancelled under Clause (a), Clause (b), clause (c), Clause (d) or Clause (e) of sub-section (1), the authority aforesaid may cancel any other licence permit or pass granted to such person by or by the authority of the state Government under this Act, or under any other law for the time being in force relating to Excise, or under the Opium Act, 1878. (1 of 1878)
- (3) When a licence, permit or pass is liable to be cancelled, it may, at the discretion of the authority who granted the same, be suspended for a period of ninety days at a time, provided the authority concerned may extend the period of suspension beyond ninety days under exceptional circumstances, after recording reasons for the same.
- (4) The holder of a licence, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this section, or to the refund of any fee paid or deposit made in respect thereof.

Section 43 - Power to withdraw licences

- (1) Whenever the authority who granted any licence under this Act considers that the licence should be withdrawn for any cause other than those specified in Section 42, it shall remit

a sum equal to the amount of fees payable in respect thereof for fifteen days, and may withdraw the licence either -

- (a) on the expiration of fifteen days' notice in writing of its intention to do so, or
 - (b) forthwith, without notice
- (2) If any licence be withdrawn under Clause (b) of Sub-section (1), the said authority shall, in addition to remitting such sum as aforesaid, pay to the licensee such further sum (if any), by way of compensation, as the Excise Commissioner may direct.
- (3) If any licensee be withdrawn under Clause (a) of Sub-section (1), the Excise Commissioner may, in special circumstances, direct the payment of such compensation as he may consider fit, in addition to the remission of the fee as aforesaid.
- (4) When a licence is withdrawn under sub-section (1), 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
- (5) For the purpose of calculating the amount due to the State Government mentioned in sub-section (4), the amount of fee or consideration money payable on account of the licence or exclusive privilege, as the case may be, for the period during which it was in force shall be taken to be the sum bearing the same proportion to the total fee or consideration money, for the whole period for which the licence or exclusive privilege was settled, as the period during which the licence or exclusive privilege was in force bears to the full period for which the licence was settled.

44. Surrender of Licence

- (1) Any holder of a licence or exclusive privilege granted under this Act to manufacture and sell an intoxicant, may, unless his licence or exclusive privilege is liable to cancellation or suspension under Section 42, surrender the same -
- (a) on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender it; and
 - (b) on payment of the fees payable for the licence or the consideration money due for the exclusive privilege for the whole period for which it would have been current but for such surrender:

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for the surrender of an exclusive privilege or licence, he may remit to the holder thereof the

sum so payable on surrender and any fees paid in advance or any portion of such sum or fees.

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

Explanation - The expression 'holder of a licence' as used in the Section, includes a person whose tender or bid or offer for an exclusive privilege has been accepted although he may not actually have received the licence.

45. Bar of right to renewal and to compensation

No person to whom any licence has been granted under this Act shall have any claim to the renewal of such licence or, save as provided in Section 43, any claim to compensation or the determination thereof.

1. *Ins by Act 6, 1985*

2. *"Or Board" omitted by Act 6 of 1985*

3. *Ins. by Act 6 of 1985 and existing sub-sec. (3) made sub-sec. (4) thereof*

CHAPTER VII

DEPARTMENTAL MANAGEMENT OR TRANSFER

- 46. Power of the Collector to take grants under management, or to transfer them**
- (1) If any holder of licence granted under this Act, or any person to whom an exclusive privilege has been granted under Section 22, contravenes any provision of this Act or any rule made thereunder or makes default in complying with any condition imposed upon him by such licence or privilege, the Collector may (in the case of a licence after the cancellation thereof), and in the case of an exclusive privilege, at any time-
- (a) take the grant under management, at the risk and loss of the person to whom it was made, or
 - (b) transfer the un expired portion of the grant, at the risk and loss of the said person, to any other person.
- (2) If a licence granted to any person under this Act is withdrawn under Section 43, or surrendered under Section 44, the Collector may, after the withdrawal or surrender thereof, take the grant under management, or transfer the unexpired portion of grant to any other person.

CHAPTER VIII
OFFENCES AND PENALTIES

47. Penalty for unlawful import, export, transport, manufacture, possession, sale etc.

If any person, in contravention of this Act, or of any rule, notification or order made, issued or given, or of any licence or permit granted under this Act,-

- (a) imports, exports, transports, manufactures, collects, possesses or sells any intoxicant, or
- (b) cultivates any hemp plant or collects or sells any portion of the hemp plant from which any intoxicating drug can be manufactured, or
- (c) taps or causes to be tapped, or draws or causes to be drawn, *tari* from any *tari* producing tree; or
- (d) bottles any liquor for purposes of sale; or
- (e) works any distillery or brewery; or
- (f) uses, keeps or has in his possession any materials, still, utensil, implement, instrument or apparatus whatsoever for the purpose of manufacturing any intoxicating drug or liquor, other than *tari*, or
- (g) establishes any distillery, brewery or warehouse; or
- (h) removes any intoxicant from any distillery, brewery, warehouse or other place of storage licenced, established, authorized or continued under this Act;

he shall be punished with imprisonment for a term which may extend to three years and shall be liable to fine which may extend to five thousand rupees and in default of payment of fine, he shall be punished with a further imprisonment for a term which may extend to one year;

Provided that this punishment shall be -

- (1) for the first offence he shall be liable for imprisonment for a term which shall not be less than three months and fine of not less than five hundred rupees, and in default of payment of fine, a further imprisonment for a term of fifteen days;
- (2) for the second and subsequent offences he shall be liable for imprisonment for a term which shall not be less than six months and a fine of not less than one thousand rupees, and in default of payment of fine a further imprisonment for a term one month.

48. Presumption as to offence where possession is not satisfactory accounted for

In prosecution under Section 47 it may be presumed, unless and until the contrary is proved, that the accused person has committed an offence punishable under that Section in respect of:

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

49. Penalty for altering or attempting to alter any denatured spirit

If any person alters or attempts to alter any denatured spirit or methyl alcohol, whether manufactured in India or not, or any preparation containing denatured spirit, with the intention that such spirit, alcohol or preparation any be used for human consumption whether as beverage or internally as a medicine or in any other way whatsoever, by any method whatsoever; or

has in his possession any spirit, alcohol or preparation in respect of which he knows or has reasons to believe that any such alteration or attempt has been made; he shall be liable to imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to five thousand rupees and in default of payment of fine, shall be punished with a further imprisonment for a term which may extend to one year:

Provided that this punishment shall be

- (1) for the first offence he shall be liable for imprisonment for a term which shall not be less than three months and a fine of not less than five hundred rupees, and in default of payment of fine, a further imprisonment for a term of fifteen days;
- (2) for the second and subsequent offences, he shall be liable for imprisonment for a term which shall not be less than six months and a fine of not less than one thousand rupees, and in default of payment of fine, a further imprisonment for a term of one month.

50. Presumption as to offence under Sec. 49 in certain cases

In prosecutions under Sec. 49, when the accused person is proved to have been in possession of any spirit which is, or contains or has been derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in Sec. 49 has been

made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person.

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

51. Presumption as to any spirit being, or containing or having been derived from, denatured spirit

In any prosecution under this Act it may be presumed, unless and until the contrary is proved, that any spirit which is proved to contain any quantity of any denaturant is, or contains, or has been derived from, denatured spirit.

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

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

Mixes, or permits to be mixed with any intoxicant manufactured, sold or kept or exposed for sale by him, any noxious drug or any article prohibited by rule made under Sec. 90, Clause (9), Sub-clause (i) and such mixing does not amount to an offence punishable under Sec. 272 of the Indian Penal Code, (45 of 1860);

or has in his possession any intoxicant in respect of which such admixture has been made;

he shall be liable to imprisonment for a term which may be extend to three months, or to fine which may extend to one thousand rupees, or to both.

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

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

- (a) sells, or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, and such sale does not amount to an offence punishable under Section 417 or Section 418 of the Indian Penal Code, 45 of 1860; or
- (b) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or deals with any bottle, case, package or other receptacle containing country liquor;

with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor;
and such marking or dealing does not amount to an offence punishable under Section 482 of the said Indian Penal Code, 45 of 1860;
he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

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

(1) If any licensed vendor, or any person in his employ and acting on his behalf:

- (a) in contravention of Sec. 25, employees or permits to be employed, in any part of his licensed premises referred to in that Section any person under the age of twenty one or any woman; or
- (b) sells any intoxicant to a person who is drunk or intoxicated; or
- (c) sells or delivers any spirit or intoxicating drug to any person apparently under the age of [twenty one years]; whether for consumption by such person or by any other person; and whether for consumption on or off the premises of such vendor; or
- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vendor; or
- (e) permits any persons whom he knows, or has reason to believe, to have been convicted of any non-bailable offence, or who are reputed prostitutes, to meet, or any such person to remain; on the premises of such vendor, whether for the purposes of crime or prostitution or not,

he shall be liable to fine which may extend to five hundred rupees.

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

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

If any person, without lawful authority has in his possession, any intoxicant, knowing or having reason to believe the same to have been unlawfully imported, transported, manufactured, or knowing or having reason to believe that the prescribed duty has not been paid thereon, he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to five thousand rupees and in default of payment of fine, shall be punished with a further imprisonment for a term which may extend to one year:

Provided that, except for such small quantities of intoxicant as may be specified in this behalf, the punishment for the offence shall be-

- (1) for the first offence, he shall be liable for imprisonment for a term which shall not be less than three months and a fine of not less than five hundred rupees, and in default of payment of fine a further imprisonment for a term of fifteen days;
- (2) for the second and subsequent offences imprisonment for a term which shall not be less than six months, and a fine of not less than one thousand rupees and in default of payment of fine, a further imprisonment for a term of one month.

56. Penalty for consumption in chemist's shop, etc.

- (1) If any chemist, druggist apothecary, or keeper of dispensary allows any intoxicant which has not been bonafide medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be liable to imprisonment for a term which may extend to three months or to fine which may extend to one thousand rupees, or to both.
- (2) If any person not employed as aforesaid consumes any such intoxicant on such premises, he shall be liable to fine which may extend to two hundred rupees.

57. Penalty for certain acts by licensee or his servant

If any holder of a licence, permits or pass granted under this Act, or any person in employ and acting on his behalf:

- (a) fails to produce such licence, permit or pass on the demand of any officer empowered by the State Government by notification, to make such demand; or
- (b) in any case not provided for in Section 47, willfully contravenes any rule made under Sec. 89 or Sec. 90; or

(c) wilfully does any act, in breach of any of the conditions of the licence, permit or pass, for which a penalty is not prescribed elsewhere in this Act;

he shall be liable, in case (a), to fine which may extend to two hundred rupees and in case (b) or in case (c), to fine which may extend to five hundred rupees.

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

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

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

59. Criminal liability of licensee for acts of servant

When any offence punishable under Sec. 47, Sec. 52, Sec. 53, Sec. 54, Sec. 55 or Sec. 56 is committed by any person in the employ and acting on behalf of the holder of a licence, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

60. Imprisonment under Sec. 58 or Sec. 59

No person on whose account an intoxicant has been illegally imported, exported, transported, manufactured, sold or held in possession within the meaning of Sec. 58 and no holder of a licence, permit or pass who may be punishable under Sec. 59 shall, on conviction, be punishable with imprisonment, except in default of payment of fine.

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

If any Excise Officer:

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

62. Penalty for offences not otherwise punishable

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

63. Penalty for contempt of Court

Every proceeding under this Act before a Collector, or before any Officer, of such rank as the State Government may, by notification, prescribe, who is exercising powers of a Collector, shall be deemed to be a 'Judicial proceeding' within the meaning of Sec. 228 of the Indian Penal Code, 45 of 1860.

64. Penalty for attempt to commit or abet the commission of the offence-

Whoever attempts to commit or abets the commission of an any offence punishable under this Act shall be liable to the punishment provided for such offence.

65. Enhanced punishment after previous conviction

If any person, after having previously been convicted of any offence punishable under Sec. 47, Sec 49, Sec. 55 or Sec. 56 or under similar provisions in the Bengal Excise Act, 1909 (5 of 1909), or in any previous enactment repealed thereby, subsequently commits and is convicted of an offence punishable under any of those Sections, he shall be liable to twice the punishment which might be imposed on a first conviction under this Act.

Provided that nothing in this Section shall prevent any offence which might otherwise have been tried summarily under Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974) from being so tried.

66. What things are liable to confiscation

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

"(2) Any intoxicant wilfully imported, transported, manufactured, possessed or sold along with, or in addition to, any intoxicant which is liable to confiscation under Sub-section (1);

and the receptacles, packages and coverings in which any such intoxicant as first aforesaid, or any such materials, still, utensil, implement or apparatus as aforesaid, is found;

and the other contents, if any, of such receptacles or packages; and the animals, carts, vessels, rafts or other conveyances used in carrying the same;

shall likewise be liable to confiscation;

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

67. Confiscation by Magistrate or Collector

(1) When, in any case tried by him, the Magistrate decides that anything is liable to confiscation under Sec. 66, he may either order confiscation or give the owner of such thing an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit.

(2) Whenever anything is liable to confiscation under Section 66, and the offender or the person entitled to possession is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation;

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated or without hearing any person who may claim any right thereto and the evidence (if any) which he produces in support of his claim;

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

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

- (1) The Collector or any Excise Officer specially empowered by the State Government in this behalf, not below the rank of Deputy Collector or Superintendent of Excise:
- (a) may, subject to any restrictions imposed by any rules made under Clause (k) of Section 89, accept from any person whose licence, permit or pass is liable to be cancelled or suspended under Clause (a), Clause (b) or Clause (c) of Section 42, or who is reasonably suspected of having committed an offence punishable under any section of this Act other than Sec. 61, payment of a sum of money, not exceeding two hundred rupees, in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be; and
 - (b) in any case in which any property has been seized as being liable to confiscation under Sec. 66, may, at any time before the Magistrate has passed an order under Sec. 67, Sub-section (1), release the property on payment of any sum not exceeding the value thereof as estimated by the Collector or such Excise Officer.
- (2) When the payments referred to in Sub-section (1) have been duly made, the accused person, if in custody, shall be discharged, and the property seized (if any) shall be released, and no further proceedings shall be taken against such person or property.

1. Subs. by Act 6 of 1985.
2. Ins. by Act 6 of 1985
3. Subs. for "eighteen" by Act 6 of 1985
4. Subs. by Bihar Act 3 of 1974

CHAPTER IX

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES, AND PROCEDURE.

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

Any of the following officers, namely:

- (a) the Excise Commissioner; or
- (b) a Collector; or
- (c) any Excise Officer not below such rank as the State Government may, by notification, prescribe;

may, subject to any restriction prescribed by the State Government by rule made under Sec. 89:

- (i) enter and inspect, at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of or stores any intoxicant; and
- (ii) enter and inspect, at any time during which the same may be open, any place in which any intoxicant is kept for sale as aforesaid; and
- (iii) examine the accounts and registers maintained in any such place as aforesaid; and
- (iv) examine, test measure or weigh any materials, stills, utensils, implements, or intoxicant found in any such place as aforesaid; and
- (v) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false.

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

Any of the following persons, namely -

- (a) any officer of the Excise, Police, Salt, Customs or Land Revenue Department; or
- (b) any person empowered by the State Government in this behalf, by notification; may, subject to any restrictions prescribed by the State Government by rule made under Sec. 89;
 - (i) arrest without warrant any person found committing an offence punishable under Section 47, Section 49, Section 55 or Section 56; and
 - (ii) seize and detain any article which he has reason to believe to be liable to confiscation, under this Act or any other law for the time being in force relating to the excise revenue; and

- (iii) detain 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.

71. Power of Collector to issue warrant of arrest

The Collector or any Magistrate empowered to try offences punishable under this Act, may issue a warrant for the arrest of any person whom he has reason to believe to have committed or abetted any offence punishable under Section 47, Section 49, Section 55 or Section 56.

72. Power to Issue search warrant

If any Collector or any Magistrate empowered to try offence punishable under this Act, upon information received, and after such enquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under Section 47, Section 49, Section 55 or Section 56 has been, or is likely to be, committed or abetted, he may issue a warrant to search for any intoxicant, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been, or is likely to be committed, or any document which throws or is likely to throw any light on the alleged offence.

73. Power of Collector or Magistrate to arrest or search without issue of warrant

The Collector or any Sub divisional Magistrate or Magistrate of the First class, may, at any time,-

- (a) Arrest, or direct the arrest in his presence of, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant under Section 71, or
- (b) Search, or direct a search to be made in his presence of, any place for the search of which he is Competent to issue a search warrant under Section 72.

74. Power to search without a warrant

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 Section 47, Section 49, Section 55 or Section 56 has been, is being, or is likely to be, committed or abetted, and that a search warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence.

he may, after recording the grounds of his belief, at any time by day or night enter and search any place, and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and may detain and search, and if he thinks proper, arrest any person found in such place whom he has reason to believe to have committed or abetted any such offence as aforesaid.

75. Information and aid to Excise Officers

- (1) Every officer of the Police, Salt, Customs and Land-Revenue Departments shall be bound, subject to any rule made under Section 89, Clause (1), to give immediate information to an Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge.
- (2) Every officer referred to in sub-section (1), and every village Chaukidar and Dafadar. shall be bound, subject to any rules made under Section 89, Clause (1), to give reasonable aid to any Excise Officer in carrying out the provisions of this Act, or of any rule, notification, or order made, issued or given under this Act, upon request made by such officer.

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

Whenever any intoxicant is manufactured on any land or premises, or any hemp plant is cultivated, or any portion of the hemp plant from which an intoxicating drug can be manufactured or produced is collected, on any land, in contravention of this Act, all owners and occupiers of such land or premises, and their agents, and all panchayats, village headmen, patwaris, sarbarakars, choukidars, and dafadars of the village, shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or an officer of the Excise, Police or Land-Revenue Department, as soon as the fact comes to their knowledge.

77. What Excise Officers may investigate Offences

- (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's Jurisdiction would have power to inquire into or try under the provisions

of Chapter XIII of the Code of Criminal Procedure, 1973 2 of 1974, relating to the place of inquiry or trial.

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

78. Powers and duties of Excise Officers investigating offences

- (1) The Collector, or any Excise Officer empowered under sub-section (2) of Section 77, may after recording in writing his reason for suspecting the commission of an offence under this Act which he is empowered to investigate, exercise -
 - (a) any of the powers conferred upon Police Officer making an investigation, or upon an Officer-in-charge of a Police-Station by Sections 160 to 171 of the Code of Criminal Procedure, 1973, (2 of 1974), and
 - (b) as regards offences punishable under section 47, section 49, section 55 or section 56 of this Act, any of the powers conferred upon Police Officers in respect of cognizable offences by clauses first of sub-section (1) of section 41 and by section 55 of the said code.
and the said portions of the said code shall apply accordingly, subject to any restrictions or modifications prescribed by the State Government by the rural made under section 89, clause (o)
- (2) Subject to any restrictions prescribed by State Government, a Collector or an Excise Officer empowered under Section 77, Sub-section (2) may, without reference to a Magistrate, and for the reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.
- (3) For the purpose of Section 156 of the Code of Criminal Procedure, [1973 (2 of 1974)], the area to which an Excise Officer empowered under Section 77, Sub-section (2), is appointed shall be deemed to be a police-Station, and such officer shall be deemed to be the Officer-in-charge of such station.

- (4) As soon as an investigation by a Collector or by an Excise Officer empowered under Section 7, Sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the investigating officer, unless he proceeds under Section (2) of this Section or under Section 68 of this Act, shall submit a report (which shall, for the purposes of Section 190 of the Code of Criminal Procedure, [1973, 2 of 1974] be deemed to be a police report) to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports.

79. Security and bail;

- (1) Wherever a collector or Magistrate issues a warrant under this Act for the arrest of any person, he shall direct, by endorsement on the warrant, that, if such person executes a bond with sufficient sureties for his attendance before the collector or before and Excise Officer empowered under section 77, sub section (2) to investigate the case, at a specified time and thereafter until otherwise directed by the collector or an Excise Officer empowered as aforesaid, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.
- (2) The endorsements shall state
- (a) the number of sureties;
 - (b) the amount in which they, and the person for whose arrest the warrant is issued, are respectively to be bound and,
 - (c) the time at which such person is to attend as aforesaid
- (3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the collector or an Excise officer empowered as aforesaid
- (4) Whenever any person is arrested for any offence punishable under any section of this Act, other than section 47, sec 49, sec 55 or sec 56 of the Act otherwise than under a warrant, and is prepared to give bail he shall be released on bail, or, at the discretion of the officer releasing him on his own bond. The offences punishable under section 47, sec 49, sec 55 or sec 56 shall be non bailable and the provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974) in this regard shall apply to such offences.
- (5) Any Excise officer not below such rank as the State Government may, be notification, prescribe may release on bail or on their own bonds.

- (6) Bonds taken under this section from persons arrested otherwise than under warrant shall bind such persons to appear before the Collector or an Excise Officer empowered under section 77, sub section (2) to investigate the case.
- (7) The provision of section 440, 445, 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.

80. Production of articles seized and persons arrested

- (1) Article seized under the warrant of the Collector and, unless security for their appearance before the Collector be taken, persons arrested under such a warrant, shall be produced before the Collector.
- (2) Article seized under Section 69, Section 70 or Section 72 and persons arrested under the Act, by persons or officers not having authority to release arrested persons on bail or on their own bond, shall be produced before or forwarded to -
 - (a) the Collector or an Excise Officer empowered under Section 77, Subsection (2), to investigate the case, or
 - (b) the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond, or
 - (c) the officer in charge of the nearest police-station, whoever is nearer
- (3) When a person arrested is produced before an Excise Officer who has authority to release arrested persons on bail or on their own bond, or before an officer-in-charge of a police station, such officer shall forward such person to, or take security for his appearance before the Collector or the Excise Officer empowered under Section 77, Sub-section (3), to investigate the case.
- (4) When any articles seized cannot conveniently be conveyed before an officer referred to in Sub-section (1) or Sub-section (2), as the case may be, the person making the seizure shall dispose of them in some place of safety and forthwith report the seizure to such an officer.

81. Custody by police of articles seized

- (1) All Officers-in-charge of police stations shall take charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector, or of an Excise Officer empowered under Section 77, Sub-section (2), to investigate the case, all articles seized

under this Act which may be delivered to them and shall allow any Excise Officer who may accompany such articles to the police-station or who may be deputed for the purpose by an official superior, to affix his seal to such articles and to take samples of and from them.

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

82. Reports of arrests, seizures and searches

When an Excise Officer below the rank of Collector, or any Officer-in-charge of a police-station makes, or receives information of any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a report of all particulars of the arrest, seizure or search, or of the information received, to the Collector, and to the Excise Officer (if any) empowered under Section 77, Sub-section (2), within the local limits of whose jurisdiction the arrest, seizure or search was made.

83. Executing of Collector's warrant

Any warrant issued by a Collector may be executed by any officer selected by the Collector for the purpose.

84. Maximum period of detention

- (1) Any person arrested for an offence under this act shall be informed, as soon as soon as may be the grounds for such arrest and shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate; and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.]
- (2) A Magistrate to whom an accused person is forwarded under section 167 of the Code of Criminal Procedure, 1973 (Act 2 1974) by a Collector or an Excise Officer empowered under Section 77, Sub-section (2), may exercise the powers conferred upon a Magistrate by the said Section 167.

85. Application of certain provisions of Code of Criminal Procedure, 1973

- (1) Save in this act otherwise expressly provided in this Act, the provisions of the Code of the Criminal Procedure, 1973 (2 of 1974) relating to arrests, detention in custody, searches, summons, warrants of arrest, search warrants, the production of persons arrested, enquiry and trial of offences shall apply, so far as may be, to arrests, detention in

custody, searches, summons, warrants of arrest, search warrants, the production of persons arrested, enquiry and trial of offences under this Act.]

- (2) For the purpose of the said provisions of the said Code, a Collector shall be deemed to be a Court.
- (3) Officer to whom a Collector's warrant is directed or endorsed, and officers (other than Collectors) making arrests, searches or seizures under this Act, shall for the purpose of the said provisions of the said Code, be deemed to be Police Officers.

86. Magistrate having jurisdiction to try offences-

No Magistrate other than-

- (a) a Magistrate whose powers are not less than those of a Magistrate of the second class, or
 - (b) a Magistrate of the third class specially empowered by the District Magistrate in this behalf
- shall try any offence punishable under this Act.

86A. Scales of punishment from the date of publication of this Act -

Any person found guilty of any offence against the provisions of Bihar and Orissa Excise Act from the date of publication of this Act, shall be punished according to the existing scales of punishment as provided under the Act.

87. Initiation of certain prosecution- No Magistrate shall take cognizance of an offence referred to-

- (a) in section 47, sec 49, sec 55 or sec 56 except on his own knowledge or suspicion or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the State Government, or
- (b) in section 57, sec 61, clause (d) or clause (e), or section 62, except on the complaint or report of the collector or an Excise Officer authorized by this Collector in this behalf.

88. Bar to transfer of trial on application of accused-

The provision of section 191 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) shall not apply in any case in which if Magistrate (not being the collector) takes cognizance of an offence under this Act on the report of any officer referred to in clause (a) or clause (b) of section 87.

CHAPTER X

Miscellaneous

89. Power of State Government to make rules

- (1) The State Government may make rules to carry out the objects of this Act or any other law for the time being in force relating to the Excise-revenues.
- (2) In particular, and without prejudice to the generality of foregoing provisions, the State Government may make rules-
 - (a) for prescribing the powers and duties of Officers of the Excise Department;
 - (b) for regulating the delegations of any powers by the Board, the Commissioner of a Division, the Excise Commissioner or Collectors under Section 7, clause (g);
 - (c) for declaring in what cases or classes of cases or to what authorities appeal shall lie from orders, whether original or appellate, passed under this Act or under any rule made hereunder, and for prescribing the time and manner for presenting and the procedure for dealing with appeals;
 - (d) for regulating the import, export or transport of any intoxicant;
 - (e) for regulating the periods for which licences for the wholesale or retail vend of any intoxicant may be granted, and the number of such licences which may be granted for any local area;
 - (f) for prohibiting the grant of licence for the retail sale of any intoxicant at any place or within any local area described in the rules or for defining the places in the vicinity of which shops for the retail sale of any intoxicant shall not ordinarily be licensed.
 - (g) for prohibiting the grant to specified classes of persons of licences for the retail sale of any intoxicant
 - (h) for declaring, either generally or in respect of areas described in the rules, the persons or classes of persons to whom any intoxicant may or may not be sold;
 - (i) for regulating the procedure to be followed and prescribing the matters to be ascertained before any licence for the wholesale or retail vend of any intoxicant is granted for any locality;
 - (j) for restricting the exercise of any of the powers conferred by Clause (a) of Sub-section (1) of Section 68 and by Sections 69 and 70;

- (k) for declaring the Excise Officers to whom and the manner in which information or aid should be given under Section 75.
 - (l) for the grant of expenses to witnesses;
 - (m) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with the offences punishable under this Act and subsequently acquitted; and
 - (n) for prescribing restrictions or modifications in the application to Excise Officers of the provisions of the Code of Criminal Procedure, V of 1898, relating to powers of Police Officers which are referred to in Section 78, Sub-section (1) of this Act:
- (3) The powers conferred by this Section for making rules are subject to the conditions that the rules be made after previous publication.

Provided that any such rules may be made without previous publication if the State Government considers that they should be brought into force at once.

90. Power of the Board to make rules

The Board may make rules;-

- (1) For regulating the manufacture, supply or storage of any intoxicant, and in particular, and without prejudice to the generality of this provision, may make rules for regulating -
 - (a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any intoxicant, and the provision for maintenance of fittings, implements and apparatus therein;
 - (b) the bottling of the hemp plant;
 - (c) the cultivation of the hemp plant;
 - (d) the Collection of portions of the hemp plant from which intoxicating drugs can be manufactured or produced, and the manufacture or production of intoxicating drugs there from;
 - (e) for tapping of *tari* - producing trees and the drawing of *tari* from trees;
 - (f) the marking of *tari*-producing trees in areas notified under Section 14, Sub-section (1), and the maintenance of such marks.

- (2) for fixing the strength, price or quantity in excess of or below which any intoxicant shall not be supplied or sold, and the quantity in excess of which denatured spirit shall not be possessed, and for prescribing a standard of quality for any intoxicant
- (3) For declaring how spirit manufactured in India shall be denatured;
- (4) for causing spirit so manufactured to be denatured through the agency or under the supervision of Government officers;
- (5) for ascertaining whether any spirit so manufactured has been denatured.
- (6) For regulating the deposit of any intoxicant in a warehouse, established, authorised or continued under this Act, and the removal of any intoxicant from any such warehouse or from any distillery or brewery;
- (7) for prescribing the scale of fees or the manner of fixing the fees payable in respect of any licence, permit or pass granted under this Act, or in respect of the storing of any intoxicant
- (8) for regulating the time, place and manner of payment of such fees;
- (9) for prescribing the restrictions under which or the conditions on which any licence, permit or pass may be granted, and in particular, and without prejudice to the generality of this provision, may make rules for-
 - (i) Prohibiting the admixture with any intoxicant of any article deemed to be noxious or objectionable.
 - (ii) regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength.
 - (iii) Prescribing the nature and regulating the arrangement of the premises in which any intoxicant may be sold, and prescribing the notice to be exposed at such premises.
 - (iv) Prohibiting or regulating the employment by the licences of any person or class of persons to assist him in his business.
 - (v) Prohibiting the sale of any intoxicant except for cash.
 - (vi) Prescribing the days and hours during which any licensed premises may or may not be kept open, and providing for closing of such premises on special occasions.
 - (vii) Prescribing the accounts to be maintained and the returns to be submitted by the licensees, and

- (viii) regulating the transfer of licenses
- (10) For prescribing the particulars to be contained in licences, permits or passes granted under this Act.
- (11) for the payment of compensation to licensees whose premises are closed under Section 26 or under any rule made under sub-Clause (vi) of clause (a) of this Section;
- (12) for prescribing the time, place and manner of levying duty on intoxicants;
- (13) For providing for the destruction or other disposal of any intoxicant deemed to be unfit for use; and
- (14) For regulating the disposal of things confiscated under this Act.

Explanation - Fees may be prescribed under Clause (7) of this Section at different rates for different classes of exclusive privileges, licences, permits, passes or storage, and for different areas.

91. Power of Board exercisable from time to time

Any power conferred by this Act on the Board may be exercised from time to time as occasion requires.

92. Publication and effect of rules and notifications

All rules made, and notification issued under this Act shall be published in the Official Gazette, and on such publication shall have effects as if enacted in this Act.

Rate of duty on I.M.F.L where no notification in this regard has been published in the Gazette of India, the Government decision is to increase of rate of Excise Duty to be levied on IMFL will not be applicable to stocks already in hand with a licensee on the date of Government Decision. The High Court did not find it necessary for the present to go into the question of competence of the State Government to order increase in the rate of excise duty in absence of publication of Notification in the Official Gazette, Ambuj Kumar Shaw Vs State of Bihar, 1995 (1) PLJR 823

93. Recovery of dues

- (1) The following moneys, namely,-
 - (a) all excise revenue
 - (b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under Section 46, and

- (c) all amounts due to the State Government by any person on account of any contract relating to the Excise revenue, may be recovered from the person primarily liable to pay the same, or from his surety, (if any), by distress and sale of his movable property, or by the process prescribed for the recovery of arrears of land revenue.
- (2) When a grant has been taken under management by the Collector, or has been transferred by him, under Section 46, the Collector may recover, in any manner authorised by Sub-section (1), any money due to the grantee by any lessee or assignee.
- (3) When any money is due, in respect of an exclusive privilege to a grantee referred to in Section 23, from any person holding under him,
Such grantee may apply to the Collector, and the Collector may recover such money on his behalf in either of the ways provided by Sub-section (1):
Provided that nothing in this Sub-section shall affect the right of any such grants to recover any such money by civil suit.

94. Power of the State Government to exempt intoxicants from provisions of the Act

The State Government may, by notification, either wholly or partially, and subject to such conditions, (if any), as it may think fit to prescribe, exempt any intoxicant from all or any of the provisions of the Act, either throughout the State of Bihar and Orissa or in any specified local area, or for any specified period or occasion, or as regards any specified class of persons.

Notifications

S.O 988 the 26th November 1971- In exercise of the powers conferred by section 94 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to exempt the intoxication 'Rum' provisioned and moved for consumption by the Armed Forces of India from (i) payment of excise duty, and (ii) provisions of the rules published under notification no. 471-F, dated the 15th January 1919 relating to its import, export and transport.

2. This notification shall come into force with immediate effect and shall remain valid until further orders.

S.O 1003 dated the 30th July 1973 - In exercise of the powers conferred by section 94 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of

Bihar is pleased to withdraw with effect from the 1st August 1973, the exemption granted under notification no. S.O 988 dated the 26th November 1971 with regards to Rum provision and moved for consumption by the Armed Forces of India.

S.O 1315 the 25th October 1983 - In exercise of the powers conferred by section 94 of Bihar and Orissa Excise Act 1915 (Bihar and Orissa Act II of 1915) the Governor of Bihar is pleased to direct that the following categories of Armed Forces of Union and Police Force of the State will be partially exempted from the provisions of section 27 of the Act throughout the State of Bihar from payment of duty on India made Foreign Liquor to the extent of difference between the rates of duty imposed on various kinds of I.M.F.L and the rates imposed as such categories of personnel under section 27 of Act:- "Armed forces of Union, Central Reserve Police, Border security force, Bihar Military Police (excluding officers), mounted Military Police (excluding officers) and the members of the Armed Forces of the Union on deputation to the National Cadet corps.

2. This will come into force with effect from the date of issue of this notification.

95. Bar of Certain Suits

No suit shall lie in any Civil Court against the Government or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the Excise revenue.

96. Limitation of suits and prosecutions

No Civil Court shall try any suit against the Government in respect of anything done, or alleged to have been done, in pursuance of this Act, and, except with the previous sanction of the State Government no magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the Excise revenue, or made against any other person under this Act, unless the suit or prosecution is instituted within six months after the date of the Act complained of.

97. Bar to application of Section 261 of the Bengal Municipal Act, 1884

Section 261 of the Bengal Municipal Act, III of 1884 shall not apply to -

- (a) any distillery, brewery, warehouse or other place of storage licensed, established, authorised or continued under this Act; or

- (b) the premises used for the manufacture or sale of any intoxicant by the holder of a licence granted under this Act for such manufacture or sale.

98. Bengal Act, V of 1909 to cease to be in force, but orders, rules etc. made and licences etc. granted there under to continue

- (1) On and from the commencement of this Act, the Bengal Excise Act, 1909 (5 of 1909] shall cease to be in [the State of Bihar and Orissa and for the purposes of Section 25 of the Bengal General Clauses Act, 1899, shall be deemed to have been repealed in the said State and to be re-enacted by this Act.
- (2) Every licence, permit or pass which was granted under any Section of the Bengal Excise Act of 1909, (Ben Act 5 of 1909) and is in force at the commencement of this Act, shall be deemed to have been granted under the corresponding Section of this Act, and shall (unless previously cancelled, suspended, withdrawn, or surrendered under Chapter VI of this Act) remain in force for the period for which it was granted.

1. *Subs. by Act 6 of 1985.*

ANNEUXRE A
EXTRACTS OF AMENDING ACTS,
BIHAR EXCISE (AMENDMENT) ACT, 1973 (EXTRA ACTS)
(BIHAR ACT 4 OF 1973)

An Act to amend the Bihar & Orissa Excise Act, 1915

Be it enacted by the legislature of the State of Bihar in the twenty fourth year of the Republic of India as follows:-

- 1. Short title:-** This Act may be called the Bihar Excise (Amendment) Act, 1973.
- 2. Amendment of Section 28-** (Incorporated in the text of Act)
- 3. Repeal and saving** -(1) Bihar Excise (Third Amendment) Ordinance, 1972 (Bihar Ordinance No. 121 of 1972) is hereby repealed.
(2) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of power conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken.

BIHAR EXCISE (AMENDMENT & VALIDATING) ACT, 1981 (EXTRA ACTS)
(BIHAR ACT 17 OF 1982)

An Act to amend the Bihar and Orissa Excise Act, 1915.

Be it enacted by the legislature of the State of Bihar in the Thirty second year of the Republic of India as follows:-

1. **Short title:-** This Act may be called the Bihar Excise (Amendment) Act, 1981.
(2) It shall come into force at once.
2. **Substitution of new section for section 22 of B. & O Act II of 1915-** Incorporated in the text of the Act.
3. **Validation of levy of certain fees.** - Notwithstanding anything to the contrary contained in any decree, judgment or order of any court., the fee fixed; levied and realised under sub-section (7) of section 98 of the Act read with section 22 of the Bihar and Orissa Excise Act, 1915, (Bihar and Orissa Act II of 1915), shall be deemed to have been validly fixed, levied and realised as if this Ordinance were in force on the day on which such fee was fixed, levied and realised or purported to be fixed levied and realised and shall not be called in question merely on the ground that such fee was excessive or disproportionate or unrelated to services rendered, and all licences granted therefore shall be deemed to be exclusive privilege within the meaning of section 22 of the said Act.
4. **Repeal and Saving** – The Bihar Excise (Amendment and Validation) Third Ordinance, 1981 (Bihar Ordinance No. 141 of 1981) is hereby repealed.
(2) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said ordinance shall be deemed to have been done or taken in the exercise of power conferred by or under this Act as if this was in force on the day on which such thing or action was done or taken.

BIHAR & ORISSA EXCISE (AMENDMENT) ACT, 1985 (EXTRACTS)

(Bihar Act 6 of 1985)

An Act to amend the Bihar and Orissa Excise Act, 1915.

Be it enacted by the Legislature of the State of Bihar in the Thirty-sixth year of the Republic of India, as follows;-

- 1. Short, title and commencement** – (1) This Act may be called the Bihar And Orissa Excise (Amendment) Act, 1985
(2) It shall come into force at once.
- 2. to 23.** Incorporated in the text of the Act at proper places.
- 24. Repeal and Saving** -(1) The Bihar and Orissa Excise (Amendment) Second Ordinance, 1985 (Bihar Ordinance no. 20, 1985) is hereby repealed.
(2) Notwithstanding such repeal, anything done or any action taken in exercise of the powers conferred by or under, the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken

THE BIHAR EXCISE (AMENDING AND VALIDATING) ACT, 1995
(BIHAR ACT, 9 OF 1995)

An Act to amend the Bihar Excise Act, 1915

Preamble- WHEREAS it is necessary in public interest that out of the cost price of the country spirit the amount of money earmarked for the maintenance of warehouse be regulated.

AND, WHEREAS, the price of the country spirit to be supplied to the retailer by the contractor (wholesale supplier) from the warehouse belonging to the contractor or the state or another person, is fixed by the Government of Bihar, on the basis of negotiation between the Contractor and the Government and such price being known as the cost price of country spirit payable by the retailer at the time of taking or issue of country liquor from the warehouse concerned.

AND, WHEREAS, as a regulatory measure the maintenance of warehouse is the responsibility of the contractor;

AND, WHEREAS in the year 1989 in C.W.J.C No. 4722 of 1989 and other similar cases a situation arose whereby and whereunder the Patna High Court ordered that till contract is settled and till further order from the Court, the supply of country liquor shall be made to the retailer directly by the State through its officers;

AND, WHEREAS, in pursuance to the said direction the country liquor had to be supplied from different warehouses situated in the state, by the State Government through its officers;

AND WHEREAS, after the Final order of the High Court in the above writs in the year 1996 the situation emerged that in certain areas of the State the supply of country liquor to the retailers continued to be made by the State Government through its officers due to non functioning of the concerned Contractors;

AND, WHEREAS, during this period the warehouses were required to be maintained by the State;

AND, WHEREAS, in fixing the price of country liquor to be supplied by the Contractor, holding exclusive privilege licence the State Government had taken into account the cost of spirit, the cost of transportation of such spirit, the cost of maintenance of warehouse, sales tax and dividend;

AND, WHEREAS, while fixing the price of country liquor to be supplied to the retailer, the following components of cost were included in the cost price:-

	Rs
Cost of spirit	1.72
Transit/ working wastages	0.08
Warehouse maintenance charges	0.70
Transportation charges	0.45
Sales Tax	0.27
Dividend	<u>0.20</u>
	<u>3.42</u>

AND, WHEREAS, in February 1990 the Government had decided that country spirit would be supplied at the rate of Rs. 3.42 per L.P Litre which includes Rs. 0.70 per L.P Litre as maintenance charge of wharehouses;

AND, WHEREAS, the amount deposited by the retailers as price of the country spirit was to be deposited in Treasury through Bank Draft and thereafter the Distillers (Suppliers) were to be paid the amount after deduction and thereafter the Distillers (Suppliers) were to be paid the amount after deduction of the component of price meant for maintenance of warehouse, that is $Rs. 3.42 - 0.70 = 2.72$

AND, WHEREAS, in some cases by mistake the entire amount of Rs. 3.42 was paid to the Distillers (Suppliers)

AND, WHEREAS, in C.W.J.C no. 6868/90 and in other similar writ petitions the court held that in the absence of Rules the State Government in not authorised to fix the price of country spirit and to make deductions of maintenance of warehouse charges therefrom;

AND, WHEREAS, it has become necessary to levy and validate the deduction/realisation of warehouse maintenance charges from the cost price of the country spirit fixed by the State in year 1990.

BE it enacted by the Legislature of the State of Bihar in the forty sixth year of the Republic of India as follows:-

1. Short, title and extent and commencement- (1) This Act may be, called the Bihar Excise (Amending and Validating) Act, 1990.

(2) It shall extend to the whole of State of Bihar,

(3) It shall be deemed to have come into force with effects from the 20th February 1990.

2. Insertion of new sections after sections 22 of Bihar Act II, 1915 – In the Bihar Excise Act, 1915 (Bihar Act II, 1915) (hereinafter referred to as the said Act) after Section 22, the following new sections shall be inserted, namely;

(2) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action taken.

THE BIHAR EXCISE (AMENDMENT AND VALIDATING)

Act, 1998 (6 of 1998)

An Act to Amend The Bihar Excise Act, 1915

OBJECTS AND REASONS

In the State of Bihar, the grant of exclusive privilege of wholesale supply of country liquor is governed under section 22 of the Bihar Excise Act, 1915.

- (2) As, per provisions, as contained in clause 2 (Kha) of the tender notice, effective from 1st July 1995, each of the contractors in a particular zone, shall pay in advance in one lump sum. Proportionate licence fee at the rate of Re. 1 Per L.P Litre on the minimum guaranteed quoto specified for the zone. If, during any financial year, the supply of country liquor exceeds, the minimum guaranteed quoto additional licence fee shall be payable to that extent.
- (3) Whereas, the two grantees have challenged the realisation of licence fee before the Ranchi Bench, of the Hon'ble Patna High Court. Their contention was that within the same zone each of the grantees cannot be compelled to pay the whole amount of licence fee, as his liability is confident to payment of licence fee in equal proportion, that is to say, the total amount of licence fee has to be paid by the grantees in equal proportions. The Hon'ble High Court accepted this contention was allowed the writ petitions. Thereafter, the State of Bihar preferred an appeal through S.L.P before the Hon'ble Supreme Court. The Hon'ble Supreme Court affirmed the judgment of the Hon'ble Patna High Court, Ranchi Bench.
- (4) Under the above circumstances the existing system of realisation of licence fee at the rate of Re. 1 per L.P litre from each grantees of a specified zone and to legitimate the realised licence fee, it has become necessary to validate the said provisions of the Act. Therefore, necessary provisions have been made in the Act, enactment of which is the object of this Act.
- Preamble:- WHEREAS, the cabinet had approved the proposal of the Excise & Prohibition Department for imposing licence fee on every licence of the zone at the rate of Rupee 1 per L.P Litre on the M.G.Q of the zone and the tender notice was to be issued accordingly.

AND, WHEREAS, the tender notice was issued for the period of 1st July 1995 to 31st March 1999 and the period of supply of country liquor during the first year being only 9 months the Excise & Prohibition Department intended to grant a proportionate reduction of licence fee for the shorter period and with this intention had used the expression, on “Samanupatik” in the tender notice and licence.

AND, WHEREAS, at the time of negotiations of rates and its determination all the tenderers were fully aware of the number of tenderers in each zone and the rate was fixed and agreed upon after including Rs. 2 per L.P Litre for covering the licence fee burden which was intended to be passed on to the retailer/ consumer.

AND, WHEREAS, The tenderers had accepted the rate fixed in writing and 13 count of 15 tenderers paid the licence fee at the rate of Rupee 1 per L.P litre on M.G.Q for the years 1995-96, 1996-97 and 1997-98 and did not challenge the imposition of the said licence fee;

AND WHEREAS, only two tenderers filed writ petitions in the Patna High Court, after depositing licence fee at the above rate for the period 1995-96 and all the tenderers supplied monthly liquor at the fixed agreed rate and passed on the licence fee burden to the retailer/ consumer.

AND WHEREAS, the Hon’ble Supreme Court and the High Court held that the expression “samanpatik”, in the context, meant that the total licence fee for the zone was to be paid by the licensees of the zone in equal proportion.

AND WHEREAS, the Hon’ble Supreme Court had held that the State will not be able to charge from each contractor in a zone the full licence fee unless it is so provided clearly in the tender condition and the conditions of licence:

AND WHEREAS, it had become necessary to validate and impose licence fee in accordance with the intended of the policy approved by the Cabinet on 13th June 1995, by rectifying the unintended error in the tender notice dated 3rd June 1995 and the licences issued in pursuance thereof, and also to validate the collection of license fee already made from each licensee:

Be it enacted by the Legislature of the State of Bihar in the forty-ninth year of the Republic of India, as follows:

- 1. Short, Title, Extent and Commencement:-** (1) This Act may be called the Bihar Excise (Amendment and Validating) Act, 1998.
 - (2) It shall extend to the whole of Bihar,
 - (3) It shall be deemed to come into force with effect from 1st June 1995.
- 2. Inserted at proper place in the text.**
- 3. Repeal and Savings-** (1) The Bihar Excise (Amending and Validating) Ordinance, 1998 (Bihar Ordinance no. 6, 1998) is hereby repealed.
 - (2) Notwithstanding such repeal, any thing done or any action taken in exercise of any power conferred by, or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act were enforce on the day on which such thing was done or action taken.

1. *Published in Bihar Gazette (ex..ord.) dated 8.4.1973*
2. *Published in Bihar Gazette (ex..ord.) dated 23.1.1982*
3. *Published in Bihar Gazette (ex..ord.) dated 8.8.1985*
4. *Published in Bihar Gazette (ex..ord.) dated 19.7.1995*

ANNEXURE B

THE BIHAR PROHIBITION OF INTOXICANTS ORIDNANCE, 1979

(The Bihar Ordinance no. 110 of 1979)

[Bihar Gazette (ex. ord) dated 15-06-1979]

An ordinance to provide for prohibition of consumption and possession of intoxicants in the State of Bihar

- Preamble** - WHEREAS, the Legislature of the State of Bihar is not in session;
AND WHEREAS, it is expedient to provide for prohibition of consumption and possession of intoxicants in the State of Bihar and to give effect to the Directive Principle contained in Article 47 of the Constitution of India.
AND, WHEREAS, the Governor of Bihar is satisfied that circumstances exist which render it necessary for him to take immediate action to carry out the said policy;
NOW THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor is pleased to promulgate following ordinance:-
1. **Short, title, extent and commencement** -(1) This Ordinance may be called the Bihar Prohibition of intoxicants Ordinance, 1979
 - (2) It extends to the whole of State of Bihar
 - (3) It shall be deemed to have come into force on the 1st day of April, 1979.
 2. **Definition**- In this Ordinance, unless there is anything repugnant in the subject or context:-
 - (a) “foreign liquor” means-
 - (i) beer and spirit, wines and liquors which have been imported into India and were liable, on such importation, to duty under the India *Tariff* Act, 1934 or the Sea customs Act, 1978.
 - (ii) beer which has been brewed in India, or imported into India in a condensed form and afterwards converted into potable beer and on which excise duty has been imposed at the rate fixed by the State Government under section 27 of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915)

- (iii) spirit which has been made in India and has been sophisticated or compound so as to resemble in colour and flavour whisky brandy, gin or rum;
- (iv) wines and liquors which have been made in India and on which excise duty has been imposed at the rate fixed by the State Government under section 27 of the Bihar and Orissa Excise Act, 1915 (Bihar & Orissa Act, II of 1915)
- (b) “public place” for the purposes of this Ordinance means any place intended for use by, or accessible to the public and shall include any public conveyance;
- (c) “intoxicant” shall have the same meaning in the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915) but shall not include Bhang and *Tari*; and
- (d) expressions used in this Ordinance but not defined herein shall have the same meaning as are respectively assigned to them in the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915) or the rules made thereunder.

3. Prohibition of consumption or possession of intoxicants- Save as provided in this Ordinance no person shall possess or consume any intoxicant in the State of Bihar

4. Exceptions -(1) Nothing in section 3 shall apply to –

- (i) consumption or possession of –
 - (a) foreign liquor by members of Defence Services within the premises of defence establishment.
 - (b) foreign liquor by foreign nationals holding passport and holding permits issued by the Excise Commissioner or any other officer empowered by him in this behalf.
 - (c) foreign liquor by persons holding permits issued on grounds of health by the Excise Commissioner or any other officer empowered by him in this behalf.
 - (d) home-brewed pachwai by members of the scheduled tribes for domestic consumption.

Provided that no such person shall possess or consume such pachwai in a public place except on social or religious occasions.

- (e) any intoxicants for industrial, scientific, educational medicinal or religious purposes.

Provided that when any intoxicant is required in that form for medicinal or religious purposes by any person other than a licensee the limit of possession of such intoxicant shall be as may be prescribed by the Board of Revenue:

- (f) denatured spirit of non potable domestic use other than human consumed upto such limits as may be prescribed under the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915)

(ii) Possession of –

- (a) any intoxicant by travellers travelling through or staying in transit in any area of the State for not more than forty-eight hours;
- (b) any intoxicant by any person holding a license, pass or permit under the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915) or any other law for the time being in force and
- (c) any intoxicant in transit consigned by rail, road, air or water from to or through Bihar under permits issued by the Excise Commissioner or any officer authorized by him in this behalf.

(2) Notwithstanding anything contained in sub-clause (a), (b) and (c) of clause (i) of sub-section (1) no person shall drink any intoxicant lawfully possessed by him in a public place.

(3) Possession of intoxicants under sub-clause (a), (b) and (c) of clause (i) and sub-clause (a) of clause (ii) of sub-section (1) shall be subject of such limits as may be prescribed by the Board of Revenue.

5. Grant of exclusive privilege- For the purpose of section 4, of the State Government may grant to any person exclusive privilege of import, export, transport, manufacture, possession and sale of intoxicants in the manner laid down in section 22 of the Bihar and Orissa Excise Act (Bihar and Orissa Excise Act II of 1915)

6. Licences under the Bihar and Orissa Act II of 1915- All export, imports, transport, manufacture, sale and possession of intoxicants not prohibited under this Ordinance shall

be in accordance with the provisions of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915) the rules made and the notifications issued thereunder.

7. Seizure and surrender of intoxicants lawfully held on 31st of March, 1979- (1) All stocks of intoxicants lawfully held on 31st March 1979 and seized or sealed in pursuance of the Excise Department Notification No. S.O 566 dated the 27th March 1979 shall be disposed of in the manner specified in section 8.

(2) All other stocks of intoxicants lawfully held on the March 1979 but not already seized or sealed in pursuance of the notification No. S.O 566 dated 27th March 1979 and the possessions of which has been prohibited under this Ordinance March, 1979 and the possession of which has been prohibited under this Ordinance shall be surrendered to the Collector of the district within such time as may be notified by the State Government, failing which it shall be liable to be confiscated without payment of any amount.

8. Disposal of seized and surrendered stocks of intoxicants and payment for residual stocks -

(1) The Excised Commissioner may, on an application made to him in this behalf, within such period as may be fixed by the State Government, order disposal of stocks of intoxicants seized, sealed or surrendered under section 7 in any manner not prohibited under this Ordinance.

(2) On the expiry of this period fixed under sub-section (1) stock of intoxicants and disposed of shall vest in the State free from all encumbrances and there shall be paid to the lawfully owners thereof a sum equal to the aggregate of the paid to the lawfully owners thereof a sum equal to the aggregate of the

- (a) duty paid, if any
 - (b) transportation charges incurred, if any,
 - (c) cost of acquisition
- in respect of such stocks

9. Authorities to carry out the provisions of this Ordinance- The authorities responsible for administration of Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915) shall be the authorities responsible for the administration of this Ordinance and all provisions of the said Act, the rules made not notifications issued thereunder relating

inter-alia to search seizure confiscation, disposal, prosecution and appeal shall, mutatis, mutandis, apply in respect of this Ordinance.

- 10. Penalty-** Whoever contravenes any of the provisions of this Ordinance shall be liable to imprisonment for a term which may extend to one year or a fine which may extend to two thousand rupees or both:

Provided that no person shall be punished for contravention of any provision of this Ordinance between 1st April, 1979 and the date of publication of this Ordinance in the Official Gazette.

- 11. Validation of action taken-** Notwithstanding anything to the contrary contained in any decree, judgment or order of any court, all action taken in pursuance of Excise Department notification, No. S.O 566 dated 27 March 1979 shall be deemed to be valid and to have been taken under this Ordinance as if this Ordinance were in force on the day on which such action was taken.

- 12. Over-riding effect of the Ordinance-** The provisions of this Ordinance shall effect notwithstanding anything contrary thereto in the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act II of 1915)

- 13. Power to remove difficulties-** If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, by order notified in the Official Gazette do anything which appears to be necessary for the purpose of removing the difficulty within two years from the date of commencement of this Ordinance, as occasion may required.