

Chapter X

OFFENCES AND PENALTIES

- 60. Penalty for unlawful import, export, transport manufacture, possession, sale etc
- 60-A [Penalty for use of place for commission of an offence respecting cocaine] Omitted
- 60-B. [Security for abstaining from cocaine offence] Omitted
- 61. Penalty for unlawful selling to persons under twenty-one or employing persons under twenty-one or women
- 62. Penalty for rendering denatured spirit fit for human consumption
- 63. Penalty for possession of intoxicant unlawfully imported etc.
- 64. Penalty of certain acts by licensee or his servant
- 64-A Penalty for adulteration etc. by licenced vendor or manufacturer
- 65. Penalty for consumption in chemists shop, etc
- 66. Penalty for excise officer refusing to do duty
- 67. Penalty for excise officer making vexatious search etc.
- 68. Penalty for offences not otherwise provided for
- 69. Enhanced punishment after previous conviction
- 69-A. Demand for security for abstaining from commission of certain offences
- 69-B. Penalty for abetment
- 69-C. Offence by Companies
- 70. Cognizance of offences
- 71. Presumption as to commission of offence in certain cases
- 71- A. Provisions regarding pardon , etc. to apply to offences punishable under the Act.
- 72. What things are liable to confiscation
- 73. Further provisions for confiscation
- 73-A. Order for destroying confiscated intoxicant
- 74. Compounding of offences
- 74-A. Imposition of penalty

[60. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.- (1) Whoever, in contravention of this Act or of any rule or provision made thereunder, or of any licence, permit or pass obtained thereunder:-

- (a) imports, exports, transports or possess any intoxicant other than charas; or
- (b) cultivated any hemp plant (cannabis sativa); or
- (c) collects or sells any portion of the hemp plant (cannabis sativa); or
- (d) collects or sells any portion of the hemp plant (cannabis sativa) from which any intoxication drug can be manufactured; or
- (e) constructs or works any distillery, brewery or vintnery; or
- (f) uses, keep or has in his-possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than tari; or
- (g) removes any intoxicant from and distillery, brewery, vintnery or warehouse licensed, established or continued under this Act ; or
- (h) bottles any liquor for the purposes of sale; or
- (i) sell any intoxicant, save in the case provided for by Section 61; or
- (j) taps, or draws tari from any tari-producing tree in the areas notified under Section 42;

shall be punished with imprisonment which may extend to two years and with fine which shall, in the case of an offence under clauses(i) not be less than ten times the amount of duty which would have been leviable if such intoxicant had been dealt with in accordance with this Act and the rules and orders made thereunder or in accordance with any

licence, permit or pass obtained there under, and in any other case, not be less than ten times the amount of such duty, or five hundred rupees whichever is greater.

(2) Whoever in contravention of this Act or any rule or order made thereunder or of any licence, permit or pass, obtained under this Act, manufactures any intoxicant or imports, exports, transports or possesses any charas, shall be punished with imprisonment which shall not be less than six months and which may extend to three years and also with fine which shall not be less than two thousand rupees and which may extend to five thousand rupees.]

¹[(3) Whoever, in contravention of this Act, or any rule or order made there under, consumes any intoxicant, shall be punished with fine which shall not be less than five hundred rupees and which may extend to one thousand rupees.]

60- A .[Penalty for use of place for commission of an offence respecting Cocaine.]

60- B [Security for abstaining from Cocaine offences.]

[61. Penalty for unlawful selling to persons under twenty-one of employing persons under twenty one or women- If any licensed vendor, or any person in his employ and acting on his behalf-

(a) in contravention of section 22 sells or delivers any liquor or intoxicating drug to any person apparently under the age of [Twenty one years]² ; or

(b) in contravention of section 23 employees or permits to be employed on any part of his licensed premises referred to in that section, any person under the age of [Twenty-one year]² or any woman;

he shall be punished with in which may extend to one thousand rupees.]¹

³**[62. Penalty for rendering denatured spirit fit for human consumption-** Whoever renders or attempts to render fit for human consumption any spirit, whether manufactured in India or not, which has been denatured, or has in his possession any denatured spirit which has been rendered fit for human consumption or in respect of which any attempt has been made to render it so fit shall be punished with imprisonment for a term which shall not be less than six months and which may extend to three years, and shall also be liable to fine which may extend to five thousand rupees.

Explanation- For the purposes of this section, it shall be presumed that any spirit which is proved to contain any quantity of any denaturant is, or contains or has been derived from denatured spirit.]

63. Penalty for possession of intoxicant unlawfully imported, etc.- Whoever, without lawful authority, has in his possession any quantity of any [intoxicant]⁴ knowing them same to have been unlawfully imported, transported or manufactured or knowing the prescribed duty not to have been paid thereon, shall be punished with imprisonment for a term which may extend to [One year]⁵ or with fine which may extend to [Five thousand]⁵ rupees, or with both.

[64. Penalty for certain acts by licensee or his servant – Whoever, being the holder of a licence, permit or pass granted under this Act, or being in the employ of such holder and acting on his behalf –

(a) fails to produce such licence, permit or pass on the demand of any Excise Officer or of any other person duly empowered to make such demand; or

(b) wilfully does or omits to do, anything in breach of any of the conditions of the licence, permit or pass not otherwise provided for in this Act ; or

(c) save in a case provided for by Section 60, wilfully contravenes any rule made under Section 40,

shall for each such offence, be punished with fine which may extend to two thousand rupees.]¹

[64-A. Penalty for adulteration etc. licenced vendor or manufacture-(1) Whoever, being the holder of a licence for the sale or manufacture of any intoxicant under this Act or a person in the employ of such holder, mixes or permits to be mixed with the intoxicant sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under this Act, when such mixture does not amount to an offence of adulteration under Section 272 of the Indian Penal Code, shall be punished with imprisonment for a term which shall not be less than six month sand which may extend to three years and also with fine which shall not be less than one thousand rupees and which may extend to two thousand rupees.

(2) Whoever, being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or a person in the employ of such holder sells or keeps or exposes for sale, as foreign liquor, liquor which he knows or has reason to believe to be country liquor, shall be punished with imprisonment for a term which may extend to three years and with fine which may extend to two thousand rupees;

Provided that the punishment shall not be less than-

(i) imprisonment for three months and fine of two hundred rupees for the first offence, and
(ii) imprisonment for six months and fine of five hundred rupees for each of the second and subsequent offences.]²

[65. Penalty for consumption in chemists 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 punished with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both.

(2) If any person not employed as aforesaid consumes any such intoxicant on such premises, he shall be punished with fine which may extend to five hundred rupees].

66. Penalty for excise officer refusing to do duty – Any excise officer who without lawful excuse shall cease or refuse to perform, or shall withdraw himself from the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner, or unless he shall have given to his superior officer two months notice in writing of his intention to do so, shall be punished with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

67. Penalty for excise officer making vexatious searches, etc. – If any excise officer.

(a) without reasonable grounds of suspicion enters, inspects or searches, or causes to be entered, inspected or searched, any place; 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;

he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

[68. Penalty for offences not otherwise provided for - Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act and not otherwise provided for in this Act, shall be punished for each such act or omission with fine which may extend to five hundred rupees].

[69. Enhanced punishment after previous conviction - If any person, after having been previously convicted of an offence punishable under Section 60, Section 62, Section 63 or Section 65 or under the provisions of those sections as they stood from time to time subsequently commits and is convicted of an offence punishable under any of these sections, he shall be liable to twice the punishment which may be imposed on a first conviction under this Act;

Provided that in the case of conviction for a second or subsequent offence under sub-section (1) of Section 60, Section 63 or Section 65 a sentence of imprisonment for a term of not less than three months, with fine, and in the case of conviction for a second or subsequent offence under sub-section (2) of Section 60 and Section 62 a sentence of imprisonment for a term of not less than one year with fine, shall be passed;

Provided further that nothing in this section shall prevent any offence that might otherwise have been tried summarily under Chapter XXI of the Code of Criminal Procedure, 1973. from being so tried.]

[69- A Demand for security for abstaining from commission of certain offences - (1) Whenever any person is convicted of an offence punishable under the provisions of ²[Clause (b), Clause (d), Clause (e) or Clause (g) of sub-sec.(1) or of sub-sec (2) of sec. 60 or of Sec. 62] the court convicting such person may, at the time of passing the sentence on such person order him to execute a bond for a sum proportionate to his means, with or without sureties, to abstain from the commission of any offence punishable under the said provisions during such period not exceeding three years as it may direct.

(2) The provisions of the Code of Criminal Procedure, ³[1973] (Act V of 1989) shall mutandis apply to all matter connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of the said Code.

69-B Penalty for abetment - Whoever abets an offence punishable under this Act shall, whether such offence be or be not committed in consequence of such abetment and notwithstanding anything contained in section 116 of the Indian Penal Code, (Act XLV of 1860) be punished on conviction for such abetment with the same punishment as is provided for the principal offence.

69-C Offence by companies - (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of its business, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

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

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

Explanation – For purposes of this section –
(a) ‘company’ means and body corporate and includes a firm or other association of individuals;
and
(b) ‘director’ in relation to a firm, means a partner in the firm.]¹

[70-(1) Cognizance of offence- No magistrate shall take cognizance-
(a) of an offence punishable under section 60, ³[section 63, section 64-A] or section 65, except on his own knowledge or suspicion or on the complaint or report of an Excise Officer, or

(b) of an offence punishable under section 64, section 66, section 67 or section 68 except on the complaint or report of the Collector or an Excise Officer authorised by him by a general or special order in the behalf.]²

(2) Except with the special sanction of the ⁴[State Government] no Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed-

71. Presumption as to commission of offence in certain cases- In every prosecution under section 60 it shall be presumed, until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of –

(a) any ⁵ [intoxicant]; or
(b) any still, utensil, implement or apparatus whatsoever for the manufacture of my ⁵ [intoxicant] or from than Tari; or

(c) any materials which have undergone and process towards the manufacture of an ⁵ [intoxicant] or from which and [intoxicant]⁵ has been manufactured: for the possession of which he is unable to account satisfactory;

1. Section 69A, 69-B and 69-C added by sec. 11 of U.P. Act No. 23 of 1970.

2. Subs. by Sec. 12 of U.P. Act No. 23 of 1970.

3. Subs. by Sec. 20 of U.P. Act 9 of 1978 (w.e.f. 25-4-1978)

4. Subs. by the A.O. 1950 for (Provl. Govt.) Which has been subs. by the A.O. 1937 for (L.G.)

5. Subs. for (excisable article) by the A.O. 1937.

and the holder of a licence, permit of pass under this Act, shall be liable to punishment, as well as the actual offender, for any offence section 60, section 62, section 63 or section 64 committed by any person in the employ and acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence :

Provide that no person other than the actual offender shall be punished with imprisonment except in default of fine.

[71-A Provisions regarding pardon etc. to apply to offences punishable under the Act – The provisions of Section 306 of the Code of Criminal Procedure, 1973 (Act V of 1898) shall apply in relation to offences punishable under this Act as they apply in relation to offences mentioned in Section 306 of the said Code.]

72. What things are liable to confiscation – (1) Whenever an offence punishable under this Act has been committed-

(a) every [intoxicant]² in respect of which such offence has been committed ;

(b) every still, utensil, implement or apparatus and all materials by means of which such offence has been committed ;

(c) every [intoxicant]² lawfully imported, transported, manufactured, held in possession or sold along with or in addition to any [intoxicant]² liable to confiscation under clause (a) ;

(d) every receptacle, package and covering in which any [intoxicant]² as aforesaid or any materials, still, utensil, implement or apparatus is or are found, together with the other contents (if any) of such receptacle or package ; and

(e) every animal, cart, vessel or other conveyance used in carrying such receptacle or package ; shall be liable to confiscation.

³(2) Where anything or animal is seized under any provision of this Act and the Collector is satisfied for reasons to be recorded that an offence has been committed due to which such thing or animal has become liable to confiscation under sub-section (1), he may order confiscation of such thing or animal whether or not a prosecution for such offence has been instituted :

Provided that in the case of anything (except an intoxicant) or animal referred to in sub-section (1), the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate not exceeding its market value on the date of its seizure.

(3) Where the Collector on receiving report of seizure or on inspection of the seized thing, including any animal, cart, vessel or other conveyance, is of the opinion that any such thing or animal is subject to speedy wear and tear or natural decay or it is otherwise expedient in the public interest so to do, he may order such thing (except an intoxicant) or animal to be sold at the market price by auction or otherwise.

(4) Where any such thing or animal is sold as aforesaid, and –

(a) no order of confiscation is ultimately passed or maintained by the Collector under sub-section (2) or on review under sub-section (6) ; or

(b) an order passed on appeal under sub-section (7) so requires ; or

(c) in the case of a prosecution being instituted for the offence in respect of which the thing or the animal seized, the order of the Court so requires ;
the sale proceeds after deducting the expenses of the sale shall be paid to the person found entitled thereto ;

(5) (a) No order of confiscation under this section shall be made unless the owner thereof or the person from whom it is seized is given –

- I. a notice in writing informing him of the grounds on which such confiscation is proposed ;
- II. an opportunity of making a representation in writing within such reasonable time as may be specified in the notice ; and
- III. a reasonable opportunity of being heard in the matter.

(b) Without prejudice to the provisions of clause (a), no order confiscating any animal, cart, vessel, or other conveyance shall be made if the owner thereof proves to the satisfaction of the Collector that it was used in carrying the contraband goods without the knowledge or connivance of the owner, his agent, if any, and the person-in-charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(6) Where on an application in that behalf being made to Collector within one month from any order of confiscation made under sub-section (2), or as the case may be, after issuing notice on his own motion within one month from the order under that sub-section refusing confiscation to the owner of the thing or animal seized or to the person from whose possession it was seized, to show cause why the order should not be reviewed, and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the order suffers from a mistake apparent on the face of the record including any mistake of law, he may pass such order on review as he thinks fit.

(7) Any person aggrieved by an order of confiscation under sub-section(2) or sub-section (6) may, within one month from the date of the communication to him of such order, appeal to judicial authority as the State Government may appoint in this behalf and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(8) Where a prosecution is instituted for the offence in relation to which such confiscation was ordered the thing or animal shall, subject to the provisions of sub-section (4), be disposed of in accordance with the order of the Court.

(9) No order of confiscation made by the Collector under this section shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act.]

73. Further provisions for confiscation – When anything mentioned in clauses (a) and (b) of section 72, sub-section (1) is found in circumstances which afford reason for believing that an offence punishable under this Act has been committed in respect or by means thereof, or when such an offence has been committed and the offender is not known or cannot be found, the Collector may order confiscation of such thing and of any other thing or animal found or used therewith which is liable to confiscation as provided by section 72, sub-section (1).

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing or animal in question or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he produces in support of 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 the sale of the thing or animal in question would be for the benefit of its owner, the Collector may at any time direct it to be sold ; and provisions of this section shall, so far as may be, apply to the net proceeds of such sale.

[73-A. Order for destroying confiscated intoxicant – Where any intoxicant is confiscated under section 72 or section 73, the Collector may, subject to any order passed in that behalf by any court, if in his opinion it is expedient to do so, order the intoxicant to be destroyed anything to the contrary in this Act, notwithstanding :

Provided that the intoxicant shall not be destroyed except after expiration of three months from the date of confiscation or where an application for review or an appeal against the order of confiscation is pending except in accordance with the order passed in such review or appeal in this regard :

Provided further that adequate sample of the intoxicant shall be preserved to meet the evidentiary requirements.]

[74. Compounding of offences- (1) Any Excise Officer specially empowered by the State Government in that behalf may accept from any person whose licence, permit or pass is liable to be cancelled or suspended under Section 34 or who is reasonably suspected of having committed an offence punishable under Section 64 or section 68, a sum of money not exceeding five thousand rupees in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be, and in all cases in which any property has been seized as liable to confiscation under this Act, may release the same on payment of the value thereof (as estimated by such officer).]

3[(1-A) Any officer specially empowered by the State Government in that behalf may subject to any general or special order of the State Government compound, whether before or after the institution of the prosecution any offence punishable under clause (a) of sub-section (1) of section 60,section 63, where the quantity of the intoxicant

involved does not exceed the quantity notified by the State Government in that behalf, or any offence punishable under sub-section (3) of section 60, on payment of such sum of money as composition fee as he thinks fit, which shall not be less than fifty rupees and which may extend to three hundred rupees where any such offence is committed by a person for the first time.]

2[(2) On the payment by such person of such sum of money or such value or both, as the case may be, such person, if in custody, shall be set at liberty, and all the property seized may be released and no proceeding shall be instituted or continued against such person in any criminal court. The acceptance of such sum of money by way of composition shall be deemed to amount to an acquittal and in no case shall any further proceedings be taken against such person or property with reference to the same act.]

[74-A Imposition of penalty- (1) If a holder of licence, permit or pass granted under this Act or an employee of such holder contravenes any of the conditions of the licence, permit or pass or any rule made under this Act, any Excise Officer authorized by the State Government in this behalf may impose a penalty not exceeding five thousand rupees.

(2) No order imposing a penalty shall be made under sub-section

(1) unless the holder of the licence, permit or pass or the employee concerned is given-

(2)

(a) a notice in writing informing him of the grounds on which it is proposed to proceed under this section ;

(b) a reasonable opportunity of making a representation in writing within such time as may be specified in the notice, against such grounds ; and

(c) a reasonable opportunity of being heard in the matter.

(3) No person on whom a penalty is imposed under sub-section (1) shall be liable to prosecution in respect of any offence under this Act on the same facts.]