

BOMBAY
ACT No.xvm
OF 1929.1

[THE BOMBAY
BORSTAL SCHOOLS
ACT, 1929.]*



BOMBAY ACT No. XVIII OF 1929.¹

[THE BOMBAY BORSTAL SCHOOLS ACT, 1929.]*

[25th November 1929]

Amended by Bom. 10 of 1932.

" " " 3 of 1934.

" " " 18 of 1935.

" " " 2 of 1936.

Adapted and modified by the Adaptation of Indian Laws Order in Council.

Amended by Bom. 39 of 1948.

Adapted and modified by the Adaptation of Laws Order, 1950.

Amended by Bom. 23 of 1951.

Adapted and modified by the Bombay Adaptation of Laws (State and Concurrent Subjects) Order, 1956.

Adapted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

Amended by Mah. 21 of 1960, (1-1-1961)

" " " 57 of 1975 (19-12-1975)†

An Act to provide for the establishment of Borstal Schools in the

*[State of Maharashtra].

WHEREAS it is expedient to provide for the establishment of Borstal schools in the *[State of Maharashtra]; * * * *

* It is hereby enacted as follows :—

1. This Act may be called the Bombay Borstal Schools Act, 1929.

Short title.

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

Extent and commencement.

(2) It shall come into operation *[in the pre-Reorganisation State of Bombay] on such date as the *[State] Government] may, by notification in the *[Official Gazette], appoint *[in this behalf; and in the Vidarbha and Hyderabad areas of the State of Maharashtra, it shall come into operation on the commencement of the Bombay Borstal Schools (Extension and Amendment) Act, 1960.]

Mah.
XXI
of
1960.

1 For Statement of Objects and Reasons: see *Bombay Government Gazette*, 1929, Part V, p. 1291 for Report of the Select Committee, see *ibid.*, 1929, Part V, p. 143, and for Proceedings in Council see *Bombay Legislative Council Debates*, 1929, Vols. XXVI and XXVII.

2 These words were substituted for the words "Presidency of Bombay" by Mah. 21 of 1960, ss. 3 and 4.

3 The portion beginning with "and whereas" and ending with "passing of this Act" was deleted, *ibid.*, s. 4 (2).

4 Sub-section (1) was substituted for the original, *ibid.*, s. 5 (1).

5 These words were inserted, *ibid.*, s. 5 (2).

6 The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

7 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

8 The words "Official Gazette" were substituted for the words "Bombay Government Gazette" by the Adaptation of Indian Laws Order in Council.

9 This portion was substituted for the words "in this behalf" by Mah. 21 of 1960, s. 5 (2).

* This Act was extended to, and shall, by virtue of such extension, be in force in that part of the State of Maharashtra to which, immediately before the commencement of Mah. 21 of 1960, it did not extend (*vide* Mah. 21 of 1960, s. 2).

† This indicates the date of commencement of Act.

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Borstal school" means a place in which young offenders, whilst detained in pursuance of this Act, are given such industrial training and other instruction and are subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime;

(b) "Inspector-General" means the Inspector-General of Prisons and includes¹ [a Deputy Inspector-General of Prisons to whom the Inspector-General may delegate all or any of his duties under this Act, with the prior approval of the State Government; and also] any officer appointed by the² [State] Government to perform all or any of the duties imposed by this Act on the Inspector-General;

(c) "Prescribed" means prescribed by rules made under this Act.

Establishment of Borstal schools. 4. (1) For the purposes of this Act the³ [State] Government may establish one or more Borstal schools.

⁴ [(1A) For every Borstal school, there shall be a Principal and such other officers and servants as the State Government thinks necessary.]

(2) For every Borstal school, a visiting committee shall be appointed in such manner as may be prescribed.

Application of the Prisons Act, 1894, and the Prisoners Act, 1900. 5. Subject to any alterations, adaptations, and exceptions made by this Act and the rules framed under it, the⁵ Prisons Act, 1894, and the⁶ Prisoners Act, 1900 IX of 1894, and the rules framed thereunder shall apply in the case of every Borstal school III of 1900, established under this Act as if it were a prison [the inmates, prisoners and the Principal Superintendent.]

Court may pass order for detention in a Borstal school. 6. When an offender is found guilty of an offence for which he is liable to be sentenced to transportation or imprisonment, or is liable to imprisonment for failure to furnish security under Chapter VIII of the Code of Criminal Procedure V of 1898, 1898, *whether any previous conviction is proved against him or not, and it appears to the Court—

(a) that the offender is not less than sixteen or, in any district or place in which⁷ [the Bombay Children Act, 1928, the Central Provinces and Berar Children Act, 1928 or the Hyderabad Children Act, 1951], is not in operation less than fifteen, nor more than twenty-one years of age, and Bom. LXXI of 1928, C. P. and Berar X of 1928, Hyd XXXII of 1951.

(b) that by reason of his criminal habits or tendencies or association with persons of bad character it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation,

it shall be lawful for the Court, if empowered in this behalf, to pass, in lieu of a sentence of transportation or imprisonment or of an order of imprisonment under section 123 of the Code of Criminal Procedure, 1898, *an order for the detention of V of 1898.

1 This portion was inserted by Mah. 21 of 1960, s. 6.

2 The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

3 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

4 Sub-section (1A) was inserted by Mah. 21 of 1960, s. 7.

5 See Central Acts.

6 These words were substituted for the words "and the inmates prisoners" by Mah. 21 of 1960, s. 8.

7 This portion was substituted for the words and figures "the Bombay Children Act, 1924", *ibid*,

s. 9.

* See now the Code of Criminal Procedure, 1973 (2 of 1974).

the offender in a Borstal school ¹[established under this Act or subject to the provisions of section 13A, in a Borstal school in any other ²[State] in ³* India] for such term, not being less than ⁴[three] years nor more than five years, as the Court subject to rules made under this Act, thinks fit :

Provided that before passing such an order the Court shall give an opportunity to the parents or guardians of the said offender to be heard and shall consider any report or representation which may be made to it as to the suitability of the case for treatment in ⁵[such Borstal school], and shall be satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case, are such that the offender is likely to profit by such instruction and discipline as aforesaid.

7. The ⁶[⁷[State] Government] may, by rules made under this Act, direct that any class or classes of persons specified in such rules shall not be ordered to be detained in a Borstal school. Power of ⁷[State] Government to exer. pt.

8. The powers conferred on Courts by this Act shall be exercised only by the High Court, a Court of Session, ⁸* a salaried Presidency Magistrate, or a Magistrate of the first class and may be exercised by such Courts whether the case comes before them originally, or on appeal or in revision. Courts empowered to pass order for detention.

9. (1) When any Magistrate not empowered to pass an order for detention under this Act is of the opinion that an offender who has been found guilty by him or who has failed to furnish the security which the Magistrate has ordered him to furnish under Chapter VIII of the Code of Criminal Procedure 1898, ⁹* is a proper person to be detained in a Borstal school, he may, without passing any order, record such opinion and submit his proceedings and forward the offender to the ¹⁰[Magistrate of the first class] or the Chief Presidency Magistrate, as the case may be, to whom he is subordinate. Procedure when Magistrate is not empowered to pass an order under this Act.

(2) The ¹¹[Magistrate of the first class] or Chief Presidency Magistrate to whom the proceedings are so submitted may transfer the proceedings to any Magistrate subordinate to him competent to pass an order under this Act, or, as the case may be, to a salaried Presidency Magistrate.

(3) The ¹²[Magistrate of the first class] or Chief Presidency Magistrate to whom the proceedings are so submitted or any Magistrate to whom the proceedings are so transferred may make such further enquiry (if any) as he may think fit and may pass such order for the detention of the offender in a Borstal school, or such other sentence or order, as he might have passed if such offender had originally been brought before or tried by him.

10. Any offender detained in a Borstal school for failure to furnish security when ordered to do so under section 106 or section 118 of the Code of Criminal Procedure 1898, ¹³* shall be released on furnishing such security or on the passing of an order under section 124 of the said Code. Limitation on powers conferred by section 6.

1 These words, figures and letter were inserted by Bom. 2 of 1936, s. 2 (1).

2 This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.

3 The word "British" was omitted by the Adaptation of Laws Order, 1950.

4 The word "three" was substituted for the word "two" by Bom. 17 of 1935, s. 2.

5 The words "such Borstal school" were substituted for the words "a Borstal school" by Bom. 2 of 1936, s. 2 (2).

6 The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

7 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

8 The words "a District Magistrate, a sub-divisional Magistrate" were deleted by Bom. 23 of 1951 s. 2, Schedule—Part III.

9 These words were substituted for the words "District Magistrate", *ibid*.

* See now the Code of Criminal Procedure, 1973. (2 of 1974).

Transfer
from prison
to Borstal
school (or
vice-versa)

¹[II. (1) If the Inspector-General is satisfied that a person undergoing transportation or imprisonment in consequence of a sentence ²[passed under any law or undergoing imprisonment under an order made under section 123 of the Code of Criminal Procedure, 1898*, for failure to give security] being within the limits of V of 1898, age within which persons may be ordered to be detained in a Borstal school, by reason of his criminal habits or tendencies, or association with persons of bad character, might with advantage be detained in a Borstal school, the Inspector-General may by order in writing direct such person to be transferred from prison to a Borstal school ³[established under this Act or subject to the provisions of section 13A, to a Borstal school in any other ⁴[State] in ⁵* India] and to be detained in such school, in lieu of the unexpired residue of his sentence, ⁶[or of the period of imprisonment which he is liable to undergo for failure to give security, as the case may be,] for such period as together with the period of transportation or imprisonment already undergone will not exceed the maximum period for which such person could have been ordered to be detained by a Court under section 6 :

Provided that the Inspector-General shall not, without the previous sanction of ⁷[the ⁸[State] Government], direct such person to be detained in a Borstal school for a period which including the period of imprisonment or transportation undergone exceeds the period of imprisonment or transportation to which such person has been sentenced ⁹[or the period of imprisonment which he is liable to undergo for failure to give security, as the case may be.]

(2) A person transferred to Borstal school under sub-section (1) shall upon transfer to such school be deemed to be an offender ordered to be detained by a Court under the provisions of section 6 and the provisions of the Act shall apply to such person accordingly.]

¹⁰[(3) Where a person transferred to a Borstal school under this section is at any time found unsuitable for training in the school, the Inspector General may, on the recommendation of the Visiting Committee, commute the unexpired residue of the term of detention to such term of imprisonment as he may determine but in no case exceeding ¹¹[the term of imprisonment in consequence of which such person was transferred to the Borstal school reduced by the period of imprisonment already undergone and of the period of detention in the Borstal school] and issue a warrant for confinement of the offender in a prison and thereupon the provisions of sub-section (2) of section 12 shall apply to such offender as if he had been so ordered to be confined in the prison by warrant under the hand of a Secretary to the State Government.]

¹²[(4) Where any person after he has been detained in a Borstal school has been found guilty of an offence committed before his detention therein and sentenced to imprisonment mentioned in sub-section (1) by a court of law, then the Inspector General may by order in writing commute the period of such imprisonment to that of detention in a Borstal school, and notwithstanding anything contained in this Act direct that such person be detained in the Borstal school beyond the normal period

1 This section was substituted for the original by Bom. 3 of 1934 s. 2.

2 These words were substituted for the original by Bom. 39 of 1948, s. 2 (i).

3 These words, figures and letter were inserted by Bom. 2 of 1936, s. 1.

4 This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.

5 The word "British" was omitted by the Adaptation of Laws Order, 1950.

6 These words were inserted by Bom. 39 of 1948 s. 2 (ii).

7 The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

8 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

9 These words were inserted by Bom. 39 of 1948, s. 2 (iii).

10 Sub-section (3) was added by Mah. 21 of 1960, s. 10 (1).

11 These words were substituted for the words, brackets and figures "the shorter of the two periods referred to in sub-section (1) of section 12" by Mah. 57 of 1975, s. 2 (1).

12 Sub-section (4) was added, *ibid* s. 2 (2).

13 These words were added by Mah. 21 of 1960, s. 10 (2).

* See now the Code of Criminal Procedure, 1973 (2 of 1974).

of detention therein for such period as together with the period of imprisonment already undergone will not exceed the maximum period for which such person could have been ordered to be detained by a Court under section 6 :

Provided that, no such person shall be detained in the Borstal school after he has attained the age of twenty-five years.]

12. (1) Where an offender detained ¹[by a Court] in a Borstal school escapes, or is reported to the ²[State] Government by the Inspector-General to be incorrigible or to exercise ³[or to be likely to exercise] a bad influence on the other inmates of the school, ⁴[or to be more than twenty years of age], ⁵[⁶ or is, in

Transfer of incorrigibles, etc., to prison.

the opinion of the ²[State] Government, otherwise unsuitable for training in a Borstal school], the ²[State] Government may commute the unexpired residue of the term of detention to such term of imprisonment of either description as the ²[State] Government may determine, but in no case exceeding the shorter of the following two periods :—

(a) the unexpired residue of the term of detention, or

(b) the maximum period of imprisonment provided by law for the offence of which the offender was found guilty or the failure to give security, as the case may be, in consequence of which the offender was ordered to be detained in a Borstal school ⁷.

(2) Such offender may be confined in any prison within the ⁸[State of Maharashtra] by warrant under the hand of a Secretary to ⁹[the ²[State] Government] and effect shall be given to such warrant and the sentence of imprisonment passed upon such offender shall be executed in the same manner as if such person had been sentenced by a competent court of criminal jurisdiction.

13. (1) Every offender ordered to be detained in a Borstal school shall be ¹⁰[State] Government to determine the Borstal School in which a person shall be detained and may order removal.

detained in such Borstal school as the ²[State] Government may, by general or special order, or in the prescribed manner, appoint for the reception of persons so ordered to be detained :

Provided that, if accommodation in a Borstal school is not immediately available for such offender, he may be detained in a special ward, or such other suitable part of a prison as the ²[State] Government may direct until he can be sent to a Borstal school. The period of detention so undergone shall be treated as detention in a Borstal school.

1. These words were inserted by Mah. 21 of 1960, s. 11 (1).

2. The words "Provincial Government" were substituted for the words "Governor in council" by the Adaptation of Indian Laws Order in Council.

3. This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

4. These words were inserted by Bom. 39 of 1948, s. 3, (1).

5. The words "or to be more than twenty years of age" were inserted by Bom. 10 of 1932, s. 2.

6. This portion was inserted by Bom. 39 of 1948, s. 3 (ii).

7. The words "or where a licence granted under section 14 is revoked by the State Government under clause (b) of the proviso to sub-section (1) of section 15" were deleted by Mah. 21 of 1960, s. 11 (2).

8. The words "or ordered to be transferred to and detained in such school by the Inspector-General" were deleted, *ibid.*, s. 11 (3).

9. These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

10. The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

(2) The ¹[Inspector General] may order the removal of any offender from any one Borstal school to any other Borstal school ²[established under this Act or to a Borstal school in any other ³[State] in ⁴* India] ⁵*, provided that the whole period of his detention in a Borstal school shall not be increased by such removal.

Power to order detention in, or removal of offenders to, a Borstal school in another ³[State]. ⁶[13A. (1) No order for the detention in or transfer or removal to a Borstal school in any other ³[State] in ⁴* India] ⁵*, shall be passed except with the previous concurrence of the officer in charge of such Borstal school and unless the ⁷[³[State] Government] of the said ³[State] ⁸*, under any law in force therein or by general or special order, has consented, or is empowered, to receive such offender for detention in such Borstal school.]

Power to accept transfers of offenders from another ³[State] to a Borstal school in the Presidency. (2) The officer in charge of a Borstal school established under this Act may, subject to the rules made in this behalf, give effect to any order for the detention therein of any person passed by any authority under any enactment in force in any other ³[State] in ⁴* India] ⁵*. A person detained in such Borstal school under this provision shall be deemed to be an offender ordered to be detained under the provisions of section 6 and the provisions of this Act shall apply to such person accordingly.]

Removal of person detained to civil hospital in ³[State] for medical treatment. ¹⁰[13B. (1) If an offender detained in a Borstal school] is suffering from any illness and the Inspector-General is satisfied that it is not possible to render to him proper medical care or treatment in the school, the Inspector-General may provide for the removal of such offender to any civil hospital in the ³[State] for the purpose of undergoing medical treatment and for his return to the school after such treatment is undergone.

(2) The period during which an offender is absent from a Borstal school under sub-section (1) shall, for the purposes of computing his term of detention in the school, be deemed to be part of that detention.]

Power to release on licence. 14. (1) Subject to the prescribed conditions, the Inspector-General may, on the recommendation of the Visiting Committee, at any time after the expiration of six months from the commencement of the detention of an offender in a Borstal school, if he is satisfied that there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life, discharge him from the Borstal school and grant him a written licence in the prescribed form and on the prescribed conditions permitting him to live under the supervision and authority of such—

(a) ¹¹[Government officer],

(b) secular institution.

1 These words were substituted for the words "State Government" by Mah. 57 of 1975, s. 3.

2 These words were inserted by Bom. 2 of 1936, s. 4.

3 This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.

4 The word "British" was omitted, *ibid.*

5 The words "or in an Acceding State" were omitted, *ibid.*

6 Section 13A was inserted by Bom. 2 of 1936, s. 5.

7 The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

8 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

9 The words "or the Government of the said Acceding State" were omitted by the Adaptation of Laws Order, 1950.

10 This section was inserted by Bom. 39 of 1948, s. 6.

11 These words were substituted for the words "servant of the Crown" by the Adaptation of Laws Order, 1950.

(c) religious society, or

(d) responsible person,

as may be approved by the Inspector-General and willing to take charge of the offender.

¹[(14) The Inspector-General may, subject to the prescribed conditions, discharge any offender who had been previously granted a licence but whose licence was subsequently revoked under section 15 and grant him a fresh written licence and in such case the provisions of this Act shall apply as if such fresh licence had been granted under sub-section (1).]

(2) A licence under this section shall be in force until the expiry of the term for which the offender was ordered to be detained in a Borstal school, unless sooner revoked.

(3) The period during which an offender is absent from a Borstal school during the continuance of a licence granted to him under this section shall, for the purposes of computing his term of detention in such school, be deemed to be part of that detention.

²[15. (1) Subject to any general or special directions of the State Government, a licence granted under section 14 may at any time be suspended by the Principal of the Borstal school or the Inspector-General for a period not exceeding three months or be revoked by the Inspector-General in consultation with the Visiting Committee. For the purposes of such revocation, the Inspector-General or the Visiting Committee may make such enquiry as he or it deems necessary, either through a Probation Officer or otherwise. ^{Suspension or revocation of licence.}]

(2) If an offender removes himself from the supervision of the institution, society or person under which he was by licence permitted to live, his licence shall be deemed to have been revoked from the date on which he has so removed himself.

(3) When any licence is suspended or revoked or deemed to be revoked, the offender shall forthwith return to the Borstal school and if he fails to do so he may be arrested by any Police Officer without a warrant and sent back to the school.

(4) On the suspension or revocation of a licence, the period beginning from the date on which the licence is suspended or revoked or deemed to be revoked till the date on which the offender returns to the school or is arrested, whichever is earlier, shall, subject to the provisions of section 17, be excluded in computing the period for which he has been ordered to be detained in a Borstal School.]

16. (1) When the Inspector-General and the Visiting Committee report that the conduct ³[or progress] of any offender detained in a Borstal school has been such that it is expedient that he shall remain under supervision for a further period after the end of the term of detention, the ⁴[State] ⁵[Government] may direct that he shall, on the expiration of the term of his detention, remain for a further period not exceeding one year under the supervision of such authority, society or person as the Inspector-General, subject to rules made under this Act, may direct. ^{Subsequent supervision.}

1 This sub-section was inserted by Bom. 39 of 1948, s. 7.

2 Section 15 was substituted for the original by Mah. 21 of 19 0, s. 12.

3 These words were inserted by Bom. 39 of 1948, s. 9 (1).

4 The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

5 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

¹[(2) The *[State] Government may, *[on a further report by the Inspector-General and the Visiting Committee or otherwise and after making such enquiry as it considers necessary], direct that the offender who is under supervision in accordance with sub-section (1) shall—

(a) again be detained in a Borstal school for such period as it may think fit, or

(b) “ ”
undergo imprisonment of such description and for such period as it may direct :

Provided that, the total period of supervision, detention and imprisonment under this section shall not exceed one year.

(3) The provisions of sub-section (2) of section 12 shall apply when an offender is directed to undergo imprisonment under sub-section (2) of this section.]

Period of detention. 17. No person shall be detained in a Borstal school after he has, in the opinion *[of the *[State] Government], attained the age of twenty-three years, or, if in any particular case the *[*[State] Government] so directs, after he has attained the age of twenty-five years.

Discharge from Borstal school. *[17A. The *[*[State] Government] may at any time order any person detained in a Borstal school to be discharged from such school either absolutely or on such conditions as may be imposed.]

17B. [Investigating Committee to investigate into complaints against offenders discharged on probation, etc.] Deleted by Mah. 21 of 1960, s. 14.

Arrest of offender escaping from Borstal school, or escaping from supervision. 18. Any offender who in contravention of the provisions of this Act, has escaped from a Borstal school ²[or has escaped from a civil hospital to which he was removed for treatment under section 13B] or has escaped from the supervision of any authority, institution, society or person under whose supervision he has been directed to remain, or has been permitted to live by licence under section 14, ³[or has committed a breach of any of the condition imposed under section 17A] may be arrested by any officer of Police without warrant and without the order of a Magistrate and sent back to the Borstal school ⁴[or to the civil hospital] or to such authority, institution, society or person, as the case may be.

1 These sub-sections were substituted by Bom. 39 of 1948, s. 9 (ii).

2 This word was substituted for the word “Provincial” by the Adaptation of Laws Order, 1950.

3 These words were substituted for the words “after considering the report of the Investigating Committee forwarded to it under section 17B” by Mah. 21 of 1960, s. 13(1).

4 The words “if the Investigating Committee report that the conduct of the offender has been such that he is unfit for detention in a Borstal school” were deleted. *Ibid.*, s. 13(2).

5 The words “Provincial Government” were substituted for the word “Governor in Council” by the Adaptation of Indian Laws Order in Council.

6 Section 17A was inserted by Bom. 3 of 1934, s. 4.

7 These words were inserted by Bom. 39 of 1948, s. 11.

8 These words, figures and letter were inserted by Bom. 3 of 1934, s. 5.

19. (1) The ¹[State] Government may make rules for the regulation and Rules management of any Borstal school and for the carrying into effect of the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for or determine—

- (a) the control and management of Borstal schools established under this Act;
- (b) the appointment, powers and duties of officials in such schools;
- (c) the constitution, powers and duties of visiting committees ²[and allowances to be paid to the non-official members thereof];
- (d) the classification, control, discipline, training, instruction and treatment of offenders ordered to be detained in a Borstal school and for the temporary detention of such offenders until arrangements can be made for sending them to such school;
- (e) the regulation of visits to, and communication with, offenders detained in such school;
- (f) the restriction or prohibition of the supply to, or possession by, offenders detained in such school of any specified articles or kinds of articles;
- (g) the period for which offenders or any class or classes of offenders may within the limits fixed by this Act, be ordered to be detained in such school;
- (h) the class or classes (if any) of offenders who shall not be ordered to be detained in such school;
- ³[(hh) the removal of offenders to Borstal schools in other ⁴[States] in ⁵** India and the reception and detention in a Borstal school established under this Act of offenders transferred from other ⁶[States];]
- (i) the form and conditions of licences granted under section 14;
- (j) the supervision of offenders after the expiration of the term of their detention;
- (k) the transfer of incorrigible offenders from a Borstal school to prison;
- ⁷[(l) the conditions on which an offender may be discharged under section 17A;]
- ⁸[(m) for the award of marks, the suspension or remission and consequent shortening of the term of detention in a Borstal school and the grant of release on parole or furlough and determining the conditions on which and the authority by which the term of detention may be suspended or remitted and the offenders may be released on parole or furlough.]

1 The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

2 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

3 These words were added by Mah. 57 of 1975, s. 4.

4 Clause (hh) was inserted by Bom. 2 of 1936, s. 6.

5 This word was substituted for the word "Provinces" by the Adaptation of Laws Order, 1950.

6 The word "British" was omitted, *ibid.*

7 Clause (l) was added by Bom. 3 of 1934, s. 6.

8 Clause (m) was substituted for the original by Mah. 21 of 1960, s. 15 (1).

(3) The making of rules under this section shall be subject to the condition of previous publication. ¶All rules made under this section shall be laid before each House of the State Legislature as soon as may be after they are made and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.)

Removal of
disqualifica-
tion.

20. The "[State] Government] may, on the recommendation of the Inspector-General and the Visiting Committee, or otherwise remove any disqualification incurred by an offender ordered to be detained in a Borstal school on account of such detention.

Appeal or
revision.

21. For the purposes of appeal and revision under the Code of Criminal V of 1898. Procedure, 1898, "an order of detention under section 6 of this Act shall be deemed to be a sentence of imprisonment for the same period :

* * * * *

Repeal of
C. P. and
Berar IX of
1928 and
Hyd. XV of
1956 and
saving.

22. On the commencement of the Bombay Borstal Schools (Extension and Amendment) Act, 1960, the Central Provinces and Berar Borstal Act, 1928, in its application to the Vidarbha region of the State of Maharashtra, and the Hyderabad Borstal Schools Act, 1956, in its application to the Hyderabad area of the State of Maharashtra, shall stand repealed : Mah. XXI of 1960, C. P. and Berar, IX of 1928, Hyd. XV of 1956.

Provided that, the repeal shall not affect—

- (a) the previous operation of any of the laws so repealed, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any of the laws so repealed, or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any of the laws so repealed, or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Bombay Borstal Schools (Extension and Amendment) Act, 1960 had not commenced in the area in which the repealed law was in force :

Mah. XXI of
1960.

Provided further that, subject to the preceding proviso, anything done or any action taken (including any appointment made, detention order passed, notification, order or direction issued, rule or form, framed, licence or certificate granted) under any such law shall, in so far as it is not inconsistent with this Act, be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.]

1 This portion was substituted for the portion beginning with "Such rules" and ending with "may rescind the rule" by Mah. 21 of 1960, s. 15 (2).

2 The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

3 This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

4 The proviso was deleted by Bom. 39 of 1948, s. 13.

5 Section 22 was added by Mah. 21 of 1960, s. 16.

* See now the Code of Criminal Procedure, 1973, (2 of 1974.)

The Bombay Borstal Schools Act, 1929

Act 18 of 1929



Mahalaxmi Homoeopathic
Medical College, Raigaoon, Satara.



2535

The Bombay Borstal Schools Act, 1929

Act 18 of 1929

Keyword(s):

Borstal School, Inspector General, Prisons Act, Detention



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THE BOMBAY BORSTAL SCHOOLS ACT, 1929.

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BOMBAY ACT No. XVIII OF 1929.¹[THE BOMBAY BORSTAL SCHOOLS ACT, 1929.]²

[25th November 1929]

Amended by Bom. 10 of 1932.

" " " 3 of 1934.

" " " 18 of 1935.

" " " 2 of 1936.

Adapted and modified by the Adaptation of Indian Laws Order in Council.

Amended by Bom. 3 of 1948.

Adapted and modified by the Adaptation of Laws Order, 1950.

Amended by Bom. 23 of 1951.

Adapted and modified by the Bombay Adaptation of Laws (State and Concurrent Subjects) Order, 1956.

Adapted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

Amended by Mah. 21 of 1960.

" " " 57 of 1975. (19-12-1975)³An Act to provide for the establishment of Borstal Schools in the
²[State of Maharashtra].WHEREAS it is expedient to provide for the establishment of Borstal schools
in the ²[State of Maharashtra];⁴

It is hereby enacted as follows:—

1. This Act may be called the Bombay Borstal Schools Act, 1929.

Short title.

2. ⁴[(1) It extends to the whole of the State of Maharashtra.]Extent and
commence-
ment.

(2) It shall come into operation ⁴[in the pre-Reorganisation State of Bombay] on such date as the ⁴[State Government] may, by notification in the ⁴[Official Gazette], appoint ⁴[in this behalf; and in the Vidarbha and Hyderabad areas of the State of Maharashtra, it shall come into operation on the commencement of the Bombay Borstal Schools (Extension and Amendment) Act, 1960.]

Mah.
XXI
of
1960.

¹ For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1929, Part V, p. 129; for Report of the Select Committee, see *ibid.*, 1929, Part V, p. 143, and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1929, Vols. XXVI and XXVII.

² These words were substituted for the words " Presidency of Bombay " by Mah. 21 of 1960, ss. 3 and 4.

³ The portion beginning with " and whereas " and ending with " passing of this Act " was deleted, *ibid.*, s. 4(2).

⁴ Sub-section (1) was substituted for the original, *ibid.*, s. 5(f).

⁵ These words were inserted, *ibid.*, s. 5(g).

⁶ The words " Provincial Government " were substituted for the words " Governor in Council " by the Adaptation of Indian Laws Order in Council.

⁷ This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.

⁸ The words " Official Gazette " were substituted for the words " Bombay Government Gazette " by the Adaptation of Indian Laws Order in Council.

⁹ This portion was substituted for the words " in this behalf " by Mah. 21 of 1960, s. 5(2).

¹⁰ This Act was extended to, and shall, by virtue of such extension, be in force in that part of the State of Maharashtra to which, immediately before the commencement of Mah. 21 of 1960, it did not extend (*vide* Mah. 21 of 1960, s. 2).

¹¹ This indicates the date of commencement of Act.

Definitions

3. In this Act, unless there is anything repugnant in the subject or context,—
 (a) "Borstal school" means a place in which young offenders, whilst detained in pursuance of this Act, are given such industrial training and other instruction and are subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime;

(b) "Inspector-General" means the Inspector-General of Prisons and includes [a Deputy Inspector-General of Prisons to whom the Inspector-General may delegate all or any of his duties under this Act, with the prior approval of the State Government, and also] any officer appointed by the [State Government] to perform all or any of the duties imposed by this Act on the Inspector-General;

(c) "Prescribed" means prescribed by rules made under this Act.

Establishment of Borstal schools

4. (1) For the purposes of this Act the [State Government] may establish one or more Borstal schools.

[(1A) For every Borstal School, there shall be a Principal and such other officers and servants as the State Government thinks necessary.]

(2) For every Borstal school, a visiting committee shall be appointed in such manner as may be prescribed.

Application of the Prisons Act, 1894, and the Prisoners Act, 1900.

5. Subject to any alterations, adaptations, and exceptions made by this Act and the rules framed under it, the Prisons Act, 1894, and the Prisoners Act, 1900 and the rules framed thereunder shall apply in the case of every Borstal school established under this Act as if it were a prison [the inmates prisoners and the, Principal Superintendent].

Court may pass order for detention in a Borstal school.

6. When an offender is found guilty of an offence for which he is liable to be sentenced to transportation or imprisonment, or is liable to imprisonment for failure to furnish security under Chapter VIII of the Code of Criminal Procedure, 1898, whether any previous conviction is proved against him or not, and it appears to the Court—

(a) that the offender is not less than sixteen or, in any district or place in which [the Bombay Children Act 1948, the Central Provinces and Berar Children Act, 1928 or the Hyderabad Children Act, 1951], is not in operation less than fifteen, nor more than twenty-one years of age, and

(b) that by reason of his criminal habits or tendencies or association with persons of bad character it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation,

it shall be lawful for the Court, if empowered in this behalf, to pass, in lieu of a sentence of transportation or imprisonment or of an order of imprisonment under section 123 of the Code of Criminal Procedure, 1898, an order for the detention of

¹ This portion was inserted by Mah. 21 of 1960, s. 6.

² The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

³ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

⁴ Sub-section (1A) was inserted by Mah. 21 of 1960, s. 7.

⁵ See Central Acts.

⁶ These words were substituted for the words "and the inmates prisoners" by Mah. 21 of 1960, s. 8.

⁷ This portion was substituted for the words and figures "the Bombay Children Act, 1924", *ibid.*, s. 9.

IX of 1894, III of 1900.

V of 1898.

Bom. LXXI of 1948. C. P. and Berar X of 1928. Hyd. XXXII of 1951. V of 1898.

the offender in a Borstal school¹ [established under this Act or subject to the provisions of section 13-A, in a Borstal school in any other² [State] in³ India] for such term, not being less than⁴ [three] years nor more than five years, as the Court subject to rules made under this Act, thinks fit :

Provided that before passing such an order the Court shall give an opportunity to the parents or guardians of the said offender to be heard and shall consider any report or representation which may be made to it as to the suitability of the case for treatment in⁵ [such Borstal school], and shall be satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case, are such that the offender is likely to profit by such instruction and discipline as aforesaid.

7. The⁶ [State] Government may, by rules made under this Act, direct that any class or classes of persons specified in such rules shall not be ordered to be detained in a Borstal school.

Power of
[State]
Government
to exempt

8. The powers conferred on Courts by this Act shall be exercised only by the High Court, a Court of Session,⁷ a salaried Presidency Magistrate, or a Magistrate of the first class and may be exercised by such Courts whether the case comes before them originally, or on appeal or in revision.

Courts em-
powered to
pass order
for detention

9. (1) When any Magistrate not empowered to pass an order for detention under this Act is of the opinion that an offender who has been found guilty by him or who has failed to furnish the security which the Magistrate has ordered him to furnish under Chapter VIII of the Code of Criminal Procedure, 1898, is a proper person to be detained in a Borstal school, he may, without passing any order, record such opinion and submit his proceedings and forward the offender to the⁸ [Magistrate of the first class] or the Chief Presidency Magistrate, as the case may be, to whom he is subordinate.

Procedure
when Magis-
trate is not
empowered
to pass an
order under
this Act

(2) The⁹ [Magistrate of the first class] or Chief Presidency Magistrate to whom the proceedings are so submitted may transfer the proceedings to any Magistrate subordinate to him competent to pass an order under this Act, or, as the case may be, to a salaried Presidency Magistrate.

(3) The¹⁰ [Magistrate of the first class] or Chief Presidency Magistrate to whom the proceedings are so submitted or any Magistrate to whom the proceedings are so transferred may make such further enquiry (if any) as he may think fit and may pass such order for the detention of the offender in a Borstal school, or such other sentence or order, as he might have passed if such offender had originally been brought before or tried by him.

10. Any offender detained in a Borstal school for failure to furnish security when ordered to do so under section 106 or section 118 of the Code of Criminal Procedure, 1898, shall be released on furnishing such security or on the passing of an order under section 124 of the said Code.

Limitation
on powers
conferred by
section 6

¹ These words, figures and letter were inserted by Bom. 2 of 1936, s. 2.(1).
² This word was substituted for the word "province" by the Adaptation of Laws Order, 1950.
³ The word "British" was omitted by the Adaptation of Laws Order, 1950.
⁴ The word "three" was substituted for the word "two" by Bom. 17 of 1935, s. 2.
⁵ The words "such Borstal school" were substituted for the words "a Borstal school" by Bom. 2 of 1936, s. 2.(2).
⁶ The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.
⁷ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
⁸ The words "a District Magistrate, a sub-divisional Magistrate" were deleted by Bom. 23 of 1961, s. 2, Schedule.—Part III.
⁹ These words were substituted for the words "District Magistrate", *ibid.*

Transfer
on prison
to Borstal
school [for
reference]

[11. (1) If the Inspector-General is satisfied that a person undergoing transportation or imprisonment in consequence of a sentence² [passed under any law or undergoing imprisonment under an order made under section 123 of the Code of Criminal Procedure, 1898, for failure to give security] being within the limits of age within which persons may be ordered to be detained in a Borstal school, by reason of his criminal habits or tendencies, or association with persons of bad character, might with advantage be detained in a Borstal school, the Inspector-General may by order in writing direct such person to be transferred from prison to a Borstal school³ [established under this Act or subject to the provisions of section 13A, to a Borstal school in any other⁴ [State] in⁵ India] and to be detained in such school, in lieu of the unexpired residue of his sentence, [for of the period of imprisonment which he is liable to undergo for failure to give security, as the case may be.] for such period as together with the period of transportation or imprisonment already undergone will not exceed the maximum period for which such person could have been ordered to be detained by a Court under section 6 :

v of
1898.

Provided that the Inspector-General shall not, without the previous sanction of [the⁶ [State] Government], direct such person to be detained in a Borstal school for a period which including the period of imprisonment or transportation undergone exceeds the period of imprisonment or transportation to which such person has been sentenced [for the period of imprisonment which he is liable to undergo for failure to give security, as the case may be].

(2) A person transferred to a Borstal school under sub-section (1) shall upon transfer to such school be deemed to be an offender ordered to be detained by a Court under the provisions of section 6 and the provisions of the Act shall apply to such person accordingly.]

[3] Where a person transferred to a Borstal school under this section is at any time found unsuitable for training in the school, the Inspector-General may, on the recommendation of the Visiting Committee, commute the unexpired residue of the term of detention to such term of imprisonment as he may determine but in no case exceeding¹⁰ [the term of imprisonment in consequence of which such person was transferred to the Borstal school reduced by the period of imprisonment already undergone and of the period of detention in the Borstal school] and issue a warrant for confinement of the offender in a prison and thereupon the provisions of sub-section (2) of section 12 shall apply to such offender as if he had been so ordered to be confined in the prison by warrant under the hand of a Secretary to the State Government.]

[4] Where any person after he has been detained in a Borstal school has been found guilty of an offence committed before his detention therein and sentenced to imprisonment mentioned in sub-section (1) by a court of law, then the Inspector-General may by order in writing commute the period of such imprisonment to that of detention in a Borstal school, and notwithstanding anything contained in this Act direct that such person be detained in the Borstal school beyond the normal period

- ¹ This section was substituted for the original s. 11 by Bom. 3 of 1934, s. 2.
- ² These words were substituted for the original by Bom. 39 of 1948, s. 2.
- ³ These words, figures and letter were inserted by Bom. 2 of 1936, s. 3.
- ⁴ This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.
- ⁵ The word "British" was omitted by the Adaptation of Laws Order, 1950.
- ⁶ These words were inserted by Bom. 39 of 1948, s. 2.
- ⁷ The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.
- ⁸ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
- ⁹ Sub-section (1) was added by Mah. 21 of 1960, s. 10(1).
- ¹⁰ These words were substituted for the words, brackets and figures "the shorter of the two periods referred to in sub-section (1) of section 12" by Mah. 57 of 1975, s. 2(1).
- ¹¹ Sub-section (4) was added, *ibid.*, s. 2(2).
- ¹² These words were added by Mah. 21 of 1960, s. 10(2).

of detention therein for such period as together with the period of imprisonment already undergone will not exceed the maximum period for which such person could have been ordered to be detained by a Court under section 6:

Provided that no such person shall be detained in the Borstal school after he has attained the age of twenty-five years.]

12. (1) Where an offender detained ¹[by a Court] in a Borstal school escapes, or is reported to the ²[State] Government by the Inspector-General to be incorrigible or to exercise ³[or to be likely to exercise] a bad influence on the other inmates of the school, ⁴[or to be more than twenty years of age], ⁵[*] or is, in the opinion of the ⁶[State] Government, otherwise unsuitable for training in a Borstal school], the ⁷[State] Government may commute the unexpired residue of the term of detention to such term of imprisonment of either description as the ⁸[State] Government may determine, but in no case exceeding the shorter of the following two periods :—

(a) the unexpired residue of the term of detention, or

(b) the maximum period of imprisonment provided by law for the offence of which the offender was found guilty or the failure to give security, as the case may be, in consequence of which the offender was ordered to be detained in a Borstal school * * *

(2) Such offender may be confined in any prison within the ⁹[State of Maharashtra] by warrant under the hand of a Secretary to ¹⁰[the ¹¹[State] Government] and effect shall be given to such warrant and the sentence of imprisonment passed upon such offender shall be executed in the same manner as if such person had been sentenced by a competent court of criminal jurisdiction.

13. (1) Every offender ordered to be detained in a Borstal school shall be detained in such Borstal school as the ¹²[State] Government may, by general or special order, or in the prescribed manner, appoint for the reception of persons so ordered to be detained :

Provided that, if accommodation in a Borstal school is not immediately available for such offender, he may be detained in a special ward, or such other suitable part of a prison as the ¹³[State] Government may direct until he can be sent to a Borstal school. The period of detention so undergone shall be treated as detention in a Borstal school.

¹ These words were inserted by Mah. 21 of 1960, s. 11(f).

² The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

³ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

⁴ These words were inserted by Bom. 39 of 1948, s. 3.

⁵ The words "or to be more than twenty years of age", were inserted by Bom. 10 of 1932, s. 2.

⁶ This portion was inserted by Bom. 39 of 1948, s. 3.

⁷ The words "or where a licence granted under section 14 is revoked by the State Government under clause (ii) of the proviso to sub-section (1) of section 15" were deleted by Mah. 21 of 1960, s. 11(g).

⁸ The words "or ordered to be transferred to and detained in such school by the Inspector-General" were deleted, *ibid.*, s. 11(j).

⁹ These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

¹⁰ The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

(2) The [Inspector General] may order the removal of any offender from any one Borstal school to any other Borstal school, [established under this Act or to a Borstal school in any other [State] in India] provided that the whole period of his detention in a Borstal school shall not be increased by such removal.

Power to order detention in or removal of offenders to a Borstal school in another [State]
 13A. (1) No order for the detention in or transfer or removal to a Borstal school in any other [State] in India shall be passed except with the previous concurrence of the officer in charge of such Borstal school and unless the [State] Government of the said [State] under any law in force therein or by general or special order, has consented, or is empowered, to receive such offender for detention in such Borstal school.

Power to accept transfers of offenders from another [State] to a Borstal School in the Presidency.
 (2) The officer in charge of a Borstal school established under this Act may, subject to the rules made in this behalf, give effect to any order for the detention therein of any person passed by any authority under any enactment in force in any other [State] India. A person detained in such Borstal school under this provision shall be deemed to be an offender ordered to be detained under the provisions of section 6 and the provisions of this Act shall apply to such person accordingly.]

Removal of person detained to civil hospital in [State] for medical treatment.
 13B. (1) If an offender detained in a Borstal school is suffering from any illness and the Inspector-General is satisfied that it is not possible to render to him proper medical care or treatment in the school, the Inspector-General may provide for the removal of such offender to any civil hospital in the [State] for the purpose of undergoing medical treatment and for his return to the school after such treatment is undergone.

(2) The period during which an offender is absent from a Borstal school under sub-section (1) shall, for the purposes of computing his term of detention in the school, be deemed to be part of that detention.]

Power to release on licence.
 14. (1) Subject to the prescribed conditions, the Inspector-General may, on the recommendation of the Visiting Committee, at any time after the expiration of six months from the commencement of the detention of an offender in a Borstal school, if he is satisfied that there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life, discharge him from the Borstal school and grant him a written licence in the prescribed form and on the prescribed conditions permitting him to live under the supervision and authority of such--

- (a) [Government officer],
- (b) secular institution,

* These words were substituted for the words "State Government" by Mah. 57 of 1975, s. 3.
 * These words were inserted by Bom. 2 of 1936, s. 4.
 * This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.
 * The word "British" was omitted, *ibid*.
 * The words "or in an Acceding State" were omitted, *ibid*.
 * Section 13A was inserted by Bom. 2 of 1936, s. 3.
 * The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.
 * This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.
 * The words "or the Government of the said Acceding State" were omitted by the Adaptation of Laws Order, 1950.
 * This section was inserted by Bom. 39 of 1948, s. 6.
 * These words were substituted for the words "servant of the Crown" by the Adaptation of Laws Order, 1950.

(c) religious society, or

(d) responsible person,

as may be approved by the Inspector-General and willing to take charge of the offender.

[(1A) The Inspector-General may, subject to the prescribed conditions, discharge any offender who had been previously granted a licence but whose licence was subsequently revoked under section 15 and grant him a fresh written licence and in such case the provisions of this Act shall apply as if such fresh licence had been granted under sub-section (1).]

(2) A licence under this section shall be in force until the expiry of the term for which the offender was ordered to be detained in a Borstal school, unless sooner revoked.

(3) The period during which an offender is absent from a Borstal school during the continuance of a licence granted to him under this section shall, for the purposes of computing his term of detention in such school, be deemed to be part of that detention.

[15. (1) Subject to any general or special directions of the State Government, a licence granted under section 14 may at any time be suspended by the Principal of the Borstal School or the Inspector-General for a period not exceeding three months or be revoked by the Inspector-General in consultation with the Visiting Committee. For the purposes of such revocation, the Inspector-General of the Visiting Committee may make such enquiry as he or it deems necessary, either through a Probation Officer or otherwise. Suspension or revocation of licence.]

(2) If an offender removes himself from the supervision of the institution, society or person under which he was by licence permitted to live, his licence shall be deemed to have been revoked from the date on which he has so removed himself.

(3) When any licence is suspended or revoked or deemed to be revoked, the offender shall forthwith return to the Borstal School and if he fails to do so he may be arrested by any Police officer without a warrant and sent back to the school.

(4) On the suspension or revocation of a licence, the period beginning from the date on which the licence is suspended or revoked or deemed to be revoked till the date on which the offender returns to the school or is arrested, whichever is earlier, shall, subject to the provisions of section 17, be excluded in computing the period for which he has been ordered to be detained in a Borstal School.]

16. (1) When the Inspector-General and the Visiting Committee report that the conduct [or progress] of any offender detained in a Borstal school has been such that it is expedient that he shall remain under supervision for a further period after the end of the term of detention, the [State] Government may direct that he shall, on the expiration of the term of his detention, remain for a further period not exceeding one year under the supervision of such authority, society or person as the Inspector-General, subject to rules made under this Act, may direct. Subsequent supervision.]

¹ This sub-section was inserted by Bom. 39 of 1948, s. 7.

² Section 15 was substituted for the original by Mah. 21 of 1960, s. 12.

³ These words were inserted by Bom. 39 of 1948, s. 9.

⁴ The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

⁵ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

10. (1) The ¹[State] Government may make rules for the regulation and management of any Borstal school and for the carrying into effect of the provisions of this Act. Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for or determine—

- (a) the control and management of Borstal schools established under this Act ;
- (b) the appointment, powers and duties of officials in such schools ;
- (c) the constitution, powers and duties of visiting committees ²[and allowances to be paid to the non-official members thereof] ;

(d) the classification, control, discipline, training instruction and treatment of offenders ordered to be detained in a Borstal school and for the temporary detention of such offenders until arrangements can be made for sending them to such school ;

(e) the regulation of visits to, and communication with, offenders detained in such school ;

(f) the restriction or prohibition of the supply to, or possession by, offenders detained in such school of any specified articles or kinds of articles ;

(g) the period for which offenders or any class or classes of offenders may, within the limits fixed by this Act, be ordered to be detained in such school ;

(h) the class or classes (if any) of offenders who shall not be ordered to be detained in such school ;

³[(h)] the removal of offenders to Borstal Schools in other ⁴[States] in ⁵** India and the reception and detention in a Borstal school established under this Act of offenders transferred from other ⁶[States] ;]

(i) the form and conditions of licences granted under section 14 ;

(j) the supervision of offenders after the expiration of the term of their detention ;

(k) the transfer of incorrigible offenders from a Borstal school to prison ;

⁷[(l) the conditions on which an offender may be discharged under section 17A ;]

⁸[(m) for the award of marks, the suspension or remission and consequent shortening of the term of detention in a Borstal School and the grant of release on parole or furlough and determining the conditions on which and the authority by which the term of detention may be suspended or remitted and the offenders may be released on parole or furlough.]

¹ The words " Provincial Government " were substituted for the words " Governor in Council " by the Adaptation of Indian Laws Order in Council.

² This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.

³ These words were added by Mah. 57 of 1975, s. 4.

⁴ Clause (h) was inserted by Bom. 2 of 1936, s. 6.

⁵ This word was substituted for the word " Provinces " by the Adaptation of Laws Order, 1950.

⁶ The word " British " was omitted, *ibid.*

⁷ Clause (l) was added by Bom. 3 of 1934, s. 6.

⁸ Clause (m) was substituted for the original by Mah. 21 of 1960, s. 15(1).

(3) The making of rules under this section shall be subject to the condition of previous publication. [All rules made under this section shall be laid before each House of the State Legislature as soon as may be after they are made and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.]

20. The [State] Government may, on the recommendation of the Inspector-General and the Visiting Committee, or otherwise remove any disqualification incurred by an offender ordered to be detained in a Borstal school on account of such detention.

21. For the purposes of appeal and revision under the Code of Criminal Procedure, 1898, an order of detention under section 6 of this Act shall be deemed to be a sentence of imprisonment for the same period :

“ ”

22. On the commencement of the Bombay Borstal Schools (Extension and Amendment) Act, 1960, the Central Provinces and Berar Borstal Act, 1928, in its application to the Vidarbha region of the State of Maharashtra, and the Hyderabad Borstal Schools Act, 1956, in its application to the Hyderabad area of the State of Maharashtra, shall stand repealed :

Provided that, the repeal shall not affect—

- (a) the previous operation of any of the laws so repealed, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any of the laws so repealed, or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any of the laws so repealed, or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Bombay Borstal Schools (Extension and Amendment) Act, 1960 had not commenced in the area in which the repealed law was in force :

Provided further that, subject to the preceding proviso, anything done or any action taken (including any appointment made, detention order passed, notification, order or direction issued, rule or form framed, licence or certificate granted) under any such law shall, in so far as it is not inconsistent with this Act, be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.]

* This portion was substituted for the portion beginning with "Such rules" and ending with "may rescind the rule" by Mah. 21 of 1960, s. 15(2).

* The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

* This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

* The proviso was deleted by Bom. 39 of 1948, s. 13.

* Section 22 was added by Mah. 21 of 1960, s. 16.

Mah.
XXI
of
1960.
C. P.
and
Berar
IX of
1928.
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XV of
1956.

Mah.
XXI
of
1960.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

ARRANGEMENT OF SECTIONS

Jawahar Lal Nehru Homoeopathic
Medical College, Raigaon, Satara.



2530



THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

ARRANGEMENT OF SECTIONS

SECTIONS

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4. Provision for maintenance and residence to female contracting party to child marriage.
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18. Protection of action taken in good faith.
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20. Amendment of Act No. 25 of 1955.
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THE PROHIBITION OF CHILD MARRIAGE ACT, 2006
ACT NO. 6 OF 2007

[10th January, 2007.]

An Act to provide for the prohibition of solemnisation of child marriages and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Prohibition of Child Marriage Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir; and it applies also to all citizens of India without and beyond India:

Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and any reference in any provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

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

(a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) “child marriage” means a marriage to which either of the contracting parties is a child;

(c) “contracting party”, in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised;

(d) “Child Marriage Prohibition Officer” includes the Child Marriage Prohibition Officer appointed under sub-section (1) of section 16;

(e) “district court” means, in any area for which a Family Court established under section 3 of the Family Courts Act, 1984 (66 of 1984) exists, such Family Court, and in any area for which there is no Family Court but a city civil court exists, that court and in any other area, the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(f) “minor” means a person who, under the provisions of the Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority.

3. Child marriages to be voidable at the option of contracting party being a child.—(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage;

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

1. 1st November, 2007, vide notification No. S.O. 1850(E), dated 30th October, 2007, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

4. Provision for maintenance and residence to female contracting party to child marriage.—(1) While granting a decree under section 3, the district court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to the marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.

(2) The quantum of maintenance payable shall be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.

(3) The amount of maintenance may be directed to be paid monthly or in lump sum.

(4) In case the party making the petition under section 3 is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage.

5. Custody and maintenance of children of child marriages.—(1) Where there are children born of the child marriage, the district court shall make an appropriate order for the custody of such children.

(2) While making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the district court.

(3) An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the district court may, in the interest of the child, deem proper.

(4) The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

6. Legitimacy of children born of child marriages.—Notwithstanding that a child marriage has been annulled by a decree of nullity under section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.

7. Power of district court to modify orders issued under section 4 or section 5.—The district court shall have the power to add to, modify or revoke any order made under section 4 or section 5 and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition.

8. Court to which petition should be made.—For the purpose of grant of reliefs under sections 3, 4 and 5, the district court having jurisdiction shall include the district court having jurisdiction over the place where the defendant or the child resides, or where the marriage was solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition.

9. Punishment for male adult marrying a child.—Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

10. Punishment for solemnising a child marriage.—Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

11. Punishment for promoting or permitting solemnisation of child marriages.—(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or

any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees:

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.

12. Marriage of a minor child to be void in certain circumstances.—Where a child, being a minor—

(a) is taken or enticed out of the keeping of the lawful guardian; or

(b) by force compelled, or by any deceitful means induced to go from any place; or

(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes,

such marriage shall be null and void.

13. Power of court to issue injunction prohibiting child marriages.—(1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.

(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take *suomotu* cognizance on the basis of any reliable report or information.

(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as *AkshayaTrutiya*, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.

(5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.

(6) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).

(9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both:

Provided that no woman shall be punishable with imprisonment.

14. Child marriages in contravention of injunction orders to be void.—Any child marriage solemnised in contravention of an injunction order issued under section 13, whether interim or final, shall be void *ab initio*.

15. Offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be cognizable and non-bailable.

16. Child Marriage Prohibition Officers.—(1) The State Government shall, by notification in the Official Gazette, appoint for the whole State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.

(2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.

(3) It shall be the duty of the Child Marriage Prohibition Officer—

- (a) to prevent solemnisation of child marriages by taking such action as he may deem fit;
- (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
- (c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
- (d) to create awareness of the evil which results from child marriages;
- (e) to sensitize the community on the issue of child marriages;
- (f) to furnish such periodical returns and statistics as the State Government may direct; and
- (g) to discharge such other functions and duties as may be assigned to him by the State Government.

(4) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.

(5) The Child Marriage Prohibition Officer shall have the power to move the Court for an order under sections 4, 5 and 13 and along with the child under section 3.

17. Child Marriage Prohibition Officers to be public servants.—The Child Marriage Prohibition Officers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

18. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prohibition Officer in respect of anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

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

(2) Every rule made under this Act shall, as soon as may be after it is made, be laid before the State Legislature.

20. Amendment of Act No. 25 of 1955.—In the Hindu Marriage Act, 1955, in section 18, for clause (a), the following clause shall be substituted, namely:—

“(a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both”.

21. Repeal and savings.—(1) The Child Marriage Restraint Act, 1929 (19 of 1929) is hereby repealed.

(2) Notwithstanding such repeal, all cases and other proceedings pending or continued under the said Act at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed.

Consumer Protection Act, 1986

[68 of 1986]



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2525

Consumer Protection Act, 1986

[18 of 1986]

An Act to provide for the better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

Be it enacted by Parliament in the Thirty-seventh year of the Republic of India as follows :—

Chapter I

Preliminary

Short title, extent, commencement and application.

1. (1) This Act may be called the Consumer Protection Act, 1986.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification¹, appoint and different dates may be appointed for different States and for different provisions of this Act.
- (4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

Definitions.

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

¹[(a) "appropriate laboratory" means a laboratory or organization—

(i) recognised by the Central Government;

(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect.]

²[(aa) "branch office" means—

1. Substituted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Inserted, *ibid*.

³15-4-1987 (Chapters I, II & IV).

1.3

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Consumer protection Act, 1986

L4



(i) any establishment described as a branch by the opposite party; or

(ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;]

(b) "complainant" means—

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government;

¹[(iv) one or more consumers, where there are numerous consumers having the same interest;]

who or which makes a complaint;

(c) "complaint" means any allegation in writing made by a complainant that—

²[(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader;]

(ii) ³[the goods bought by him or agreed to be bought by him] suffer from one or more defects;

(iii) ⁴[the services hired or availed of or agreed to be hired or availed of by him] suffer from deficiency in any respects;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods;

⁵[(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods;]

with a view to obtaining any relief provided by or under this Act;

(d) "consumer" means any person who,—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment

1. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Substituted, *ibid*.

3. Substituted for "the goods mentioned in the complaint", *ibid*.

4. Substituted for "the services mentioned in the complaint", *ibid*.

5. Inserted, *ibid*.

5 Consumer protection Act, 1986

S. 2

when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires ¹[or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires ¹[or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

¹[Explanation.—For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

(e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

(f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or ¹[under any contract, express or implied, or] as is claimed by the trader in any manner whatsoever in relation to any goods;

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

(h) "District Forum" means a Consumer Dispute Redressal Forum-established under clause (a) of section 9;

(i) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);

(j) "manufacturer" means a person who—

(i) makes or manufactures any goods or parts thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself; or

(iii) Puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

Explanation.—Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts

1. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2 Consumer protection Act, 1986

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so dispatched to it are assembled at such branch office and are sold or distributed from such branch

office;

¹[(j)] "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;]

(k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

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

(m) "person" includes,—

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co-operative society;

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;

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

¹[(nn)] "restrictive trade practice" means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services;]

(o) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, ¹[housing construction,] entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(p) "State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;

(q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

²[(r)] "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely :—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

(i) falsely represents that the goods are of a particular standard quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

1. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Substituted, *ibid.*

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(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defense shall lie on the person raising such defense;

(viii) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) Gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of clause (1), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

Consumer protection Act, 1986

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

*Explanation.—*For the purposes of clause (2), "bargaining price" means—

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.]

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

Act not in derogation of any other law.

3. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Chapter II

Consumer Protection Council

The Consumer Protection Council.

4. (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely :—

(a) the Minister Incharge of ¹[consumer affairs] in the Central Government, who shall be its Chairman, and

(b) Such number of other official or non-official members representing such interests as may be prescribed.

Procedure for meetings of the Central Council.

5. (1) The Central Council shall meet as and when necessary, but ²[at least one meeting] of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

Objects of the Central Council.

6. The objects of the Central Council shall be to promote and protect the rights of the consumer such as,—

(a) the right to be protected against the marketing of goods ³[and services] which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods ³[or services, as the case may be,] so as to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to a variety of goods ³[and services] at competitive prices;

(d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices ³[or restrictive trade practices] or unscrupulous exploitation of consumers; and

(f) The right to consumer education.

1. Substituted for "the Department of Food and Civil Supplies" by the Consumer Protection (Amendment) Act,

1993, w.e.f. 18-6-1993.

2. Substituted for "not less than three meetings", *ibid*.

3. Inserted, *ibid*.

S. 9

Consumer protection Act, 1986

1.10

The State Consumer Protection Councils.

7. (1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for (hereinafter referred to as State Council).

¹[(2) The State Council shall consist of the following members, namely :—

(a) the Minister in-charge of consumer affairs in the State Government who shall be its Chairman;

(b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.]

Objects of the State Council.

8. The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

Chapter III* Consumer Disputes Redressal Agencies

Establishment of Consumer Disputes Redressal Agencies.

9. There shall be established for the purposes of this Act, the following agencies, namely :—

(a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government ²[* * *] in each district of the State by notification :

³[Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.]

(b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government ²[* * *] in the State by notification; and

(c) A National Consumer Disputes Redressal Commission established by the State Government by notification.

1. Substituted for sub-section (2) by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.
2. Words "with the prior approval of the Central Government" omitted, *ibid*.
3. Inserted, *ibid*.
- *1-7-1987.

1.11	Consumer protection Act, 1986	S. 11
	<p>Composition of the District Forum.</p> <p>10. ¹[(1) Each District Forum shall consist of—</p> <ul style="list-style-type: none"> (a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President; (b) Two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.] <p>²[(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—</p> <ul style="list-style-type: none"> (i) President of the State Commission—Chairman, (ii) Secretary, Law Department of the State—Member, (iii) Secretary, Incharge of the Department dealing with consumer affairs in the State—Member.] <p>(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier, and shall not be eligible for re-appointment:</p> <p>Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.</p> <p>(3) The salary or honorarium and other allowance payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.</p> <p>Jurisdiction of the District Forum.</p> <p>11. (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed ¹[does not exceed rupees twenty lakhs.]</p> <p>(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—</p>	

by the District Forum, the District Forum shall proceed to settle the consumer dispute,—

- (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or
- (ii) On the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

S. 14	Consumer protection Act, 1986	1.14
<p>(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.</p> <p>(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—</p> <ul style="list-style-type: none"> (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath; (ii) the discovery and production of any document or other material object producible as evidence; (iii) the reception of evidence on affidavits; (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source; (v) issuing of any commission for the examination of any witness; and (vi) Any other matter which may be prescribed. <p>(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).</p> <p>¹[(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.]</p> <p>Findings of the District Forum.</p> <p>14. (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to ²[do] one or more of the following things, namely:—</p>		

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

1. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Substituted for "take", *ibid*.

1.15	Consumer protection Act, 1986	S. 16
<p>(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer, due to the negligence of the opposite party;</p> <p>¹(e) to remove the effects or deficiencies in the services in question;</p> <p>(f) to discontinue the unfair trade practice or the restrict trade practice or not to repeat them;</p> <p>(g) not to offer the hazardous goods for sale;</p> <p>(h) to withdraw the hazardous goods from being offered for sale;</p> <p>(i) To provide for adequate costs to parties.]</p> <p>²(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:</p> <p>Provided that where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding <i>de novo</i>.</p> <p>(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:</p> <p>Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.]</p> <p>(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matter shall be such as may be prescribed by the State Government.</p> <p>Appeal.</p> <p>15. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:</p> <p>Provided that the State Commission may entertain an appeal after the expiry of the said period thirty days if it is</p>		

satisfied that there was sufficient cause for not filing it within that period.

Composition of the State Commission.

16. (1) Each State Commission shall consist of—

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President;

1. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Substituted for sub-section (2), by the Consumer Protection (Amendment) Act, 1991, w.e.f. 15-6-1991.

S. 17

Consumer protection Act, 1986

1.16

¹[Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;]

(b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman;

²[Provided that every appointment under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

(i) President of the State Commission—Chairman,

(ii) Secretary of the Law Department of the State—Member,

(iii) Secretary, Incharge of the Department dealing with consumer affairs in the State—Member.]

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service ³[* * *] of, the members of the State Commission shall be such as may be prescribed by the State Government.

⁴[(3)] Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for re-appointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

Jurisdiction of the State Commission.

17. Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees ¹[twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forums within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

1. Inserted by the Consumer Protection (Amendment) Act, 2002, w.e.f. 15-03-2003.

2. Substituted, *ibid*.

3. Words "(including tenure of office)" omitted, *ibid*.

4. Inserted, *ibid*.

5. Substituted for "one lakh but does not exceed rupees ten lakhs", *ibid*.

1.17	Consumer protection Act, 1986	S. 20
<p>Procedure applicable to State Commissions.</p> <p>18. ¹[The provisions of sections 12, 13 and 14 and the rules made thereunder] for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.</p> <p>²[Vacancy in the Office of the President.</p> <p>18A. When the Office of the President of the District Forum or of the State Commission, as the case may be, is vacant or when any such President is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such person, who is qualified to be appointed as President of the District Forum or, as the case may be, of the State Commission, as the State Government may appoint for the purpose.]</p> <p>Appeals.</p> <p>19. Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:</p> <p>Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.</p> <p>Composition of the National Commission.</p>		

20. (1) The National Commission shall consist of—

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President;

²[Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;]

(b) four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman;

⁴[Provided that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India—Chairman,

1. Substituted for "The procedure specified in sections 12, 13 and 14 and under the rules made thereunder" by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Inserted by the Consumer Protection (Amendment) Act, 1991, w.e.f. 15-6-1991.

3. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

4. Substituted, *ibid*.

S. 22	Consumer protection Act, 1986	1.18
	<p>(b) the Secretary in the Department of Legal Affairs in the Government of India—Member,</p> <p>(c) Secretary of the Department dealing with consumer affairs in the Government of India—Member.]</p> <p>(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service ¹[***] of the members of the National Commission shall be such as may be prescribed by the Central Government.</p> <p>²[(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for reappointment.</p> <p>(4) Notwithstanding anything contained in sub-section (3), a person appointed as a president or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]</p> <p>Jurisdiction of the National Commission.</p> <p>21. Subject to the other provisions of this Act, the National Commission shall have jurisdiction—</p> <p>(a) to entertain—</p>	

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

⁴[Power of and procedure applicable to the National Commission.

22. The National Commission shall, in the disposal of any complaints or any proceedings before it, have—

(a) the powers of a civil court as specified in sub-sections (4), (5) and (6) of section 13;

(b) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clauses (a) to (i) of sub-section (1) of section 14,

and follow such procedure as may be prescribed by the Central Government.]

1. Words "(including tenure of office)" omitted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Inserted, *ibid*.

3. Substituted for "ten", *ibid*.

4. Substituted, *ibid*.

1.19

Consumer protection Act, 1986

S. 25

Appeal.

23. Any person, aggrieved by an order made by the National Commission in exercise of its power conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order.

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Finality of orders.

24. Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

¹[Limitation period.

24A: (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

Administrative control.

24B. (1) The National Commission shall have administrative control over all the State Commission in the following matters, namely:—

- (i) calling for periodical returns regarding the institution, disposal, pendency of cases;
- (ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
- (iii) Generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).]

Enforcement of orders by the Forum, the State Commission or the National Commission.

25. Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same

1. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

S. 28	Consumer protection Act, 1986	1,20
<p>manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction,—</p> <p>(a) in the case of an order against a company, the registered office of the company is situated, or</p> <p>(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,</p> <p>and thereupon, the court to which the order is so sent, shall execute the orders as if it were a decree or order sent to it for execution.</p> <p>¹ [Dismissal of frivolous or vexatious complaints.</p> <p>26. Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.]</p>		

Penalties.

27. Where a trader or a person against whom a complaint is made ²[or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person ²[or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

Chapter IV**Miscellaneous****Protection of action taken in good faith.**

28. No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in a good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

1. Substituted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

2. Inserted, *ibid*.

1.21

Consumer protection Act, 1986

S. 31

Power to remove difficulties.

29. (1) If any difficulty arises in giving effect to the provision of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

¹[Vacancies or defects in appointment not to invalidate orders.

29A. No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.]

Power to make rules.

30. (1) The Central Government may, by notification, make rules for carrying out the provisions contained in ²[clause (a) of sub-section (1) of section 2], clause (b) of sub-section (2) of section 4, sub-section (2) of section 2, clause (vi) of sub-section (4) of section 13, section 19, sub-section (2) of section 20 and section 22 of this Act.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in ²[clause (b) of sub-section (2) and sub-section (4) of section 7], sub-section (3) of section 10, clause (c) of sub-section (1) of section 13, sub-section (3) of section 14, section 15 and sub-section (2) of section 16.

Laying of rules.

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

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

1. Inserted by the Consumer Protection (Amendment) Act, 1991, w.e.f. 15-6-1991.

2. Inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18-6-1993.

THE DANGEROUS DRUGS ACT.

**[INDIA ACT II,
1930.]**

(1st February, 1931.)



Mahalaxmi Homoeopathic
Medical College, Raigaoon, Satara.



2523



THE DANGEROUS DRUGS ACT.

THE DANGEROUS DRUGS ACT.

[INDIA ACT II, 1930.]

(1st February, 1931.)

Preamble.

WHEREAS India participated in the Second International Opium Conference, which was convoked in accordance with the resolution of the Assembly of the League of Nations, dated the 27th day of September, 1923, met at Geneva on the 17th day of November, 1924, and on the 19th day of February, 1925, adopted the Convention relating to Dangerous Drugs (hereinafter referred to as the Geneva Convention);

AND WHEREAS India was a State signatory to the said Geneva Convention;

AND WHEREAS the Contracting Parties to the said Geneva Convention resolved to take further measures to suppress the contraband traffic in and abuse of Dangerous Drugs, especially those derived from opium, Indian hemp and coca leaf, such measures being more particularly set forth in the Articles of the said Geneva Convention;

AND WHEREAS for the effective carrying out of the said measures it is expedient that the control of certain operations relating to Dangerous Drugs should be centralized and vested in the President of the Union;

AND WHEREAS it is also expedient that the penalties for certain offences relating to Dangerous Drugs should be increased, and that all penalties relating to certain operations should be rendered uniform throughout the Union of Burma:

It is hereby enacted as follows:-

CHAPTER I.

PRELIMINARY.

1. ****

Definitions.

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

(a) "coca leaf" means-

(i) the leaf and young twigs of any coca plant, that is, of the *Erythroxylon coca* (Lamk.) and the *Erythroxylon novogranatense* (Hiern.) and their varieties, and of any other species of this genus which the President of the Union may, by notification in the Gazette, declare to be coca plants for the purpose of this Act; and

(ii) any mixture thereof, with or without neutral materials, but does not include any preparation containing not more than 0.1 per cent. of cocaine;

(b) "coca derivative" means—

- (i) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;
- (ii) ecgonine, that is, laevo-ecgonine having the chemical formula $C_9H_{15}NO_8 \cdot H_2O$, and all the derivatives of laevo-ecgonine from which it can be recovered;
- (iii) cocaine, that is, methyl-benzoyl-laevo-ecgonine having the chemical formula $C_{17}H_{21}NO_4$, and its salts; and
- (iv) all preparations official and non-official, containing more than 0.1 per cent. of cocaine;

(c) "hemp" means—

- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa* L.), including all forms known as bhung, siddhi, or ganja;
- (ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; and
- (iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom;

(d) "medicinal hemp" means any extract or tincture of hemp;

(e) "opium" means—

- (i) the capsules of the poppy (*Papaver somniferum* L.);
 - (ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and
 - (iii) any mixture, with or without neutral materials, of any of the above forms of opium;
- but does not include any preparation containing not more than 0.2 per cent. of morphia;

(f) "opium derivative" means—

- (i) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether in powder form or granulated or otherwise mixed with neutral materials;
- (ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking, and the dross or other residue remaining after opium is smoked;
- (iii) morphine, that is, the principal alkaloid of opium having the chemical formula $C_{17}H_{19}NO_8$, and its salts;
- (iv) diacetylmorphine, that is, the alkaloid, also known as diamorphone or heroin, having the chemical formula $C_{21}H_{23}NO_5$, and its salts; and
- (v) all preparations, official and non-official, containing more than 0.2 per cent. of morphine, or containing any diacetylmorphine;

(g) "opium-smoking establishment" means a building, house, room, shop or any other place kept or used as a resort for persons desiring to smoke opium;

(g) "manufactured drug" includes-

(i) all coca derivatives, medicinal hemp and opium derivatives; and

(ii) any other narcotic substance which the President of the Union may, by notification in the Gazette made in pursuance of a recommendation under Article 10 of the Geneva Convention or in pursuance of any international convention supplementing the Geneva Convention, declare to be a manufactured drug.

but does not include any preparation which the President of the Union may, by notification in the Gazette made in pursuance of a finding under Article 8 of the Geneva Convention, declare not to be a manufactured drug.

(h) "dangerous drug" includes coca leaf, hemp and opium, and all manufactured drugs;

(i) "to import into the Union of Burma" means to bring into the Union of Burma by land, sea or air;

(j) * * * *

(k) "to export from the Union of Burma" means to take out of the Union of Burma by land, sea or air;

(l) * * * *

(m) "to transport" means to take from one place to another in the Union of Burma.

Calculation of percent ages in liquid preparations.

3. The President of the Union may make rules prescribing the method by which percentages in the case of liquid preparations shall be calculated for the purposes of clauses (a), (b), (c) and (f) of section 2:

Provided that, unless and until such rules are made, such percentages shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gramme of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less percentage.

CHAPTER II.

PROHIBITION AND CONTROL.

Prohibition of certain operations.

4. (1) No one shall-

(a) cultivate any coca plant, or gather any portion of a coca plant;

(b) manufacture or possess prepared opium, unless it is prepared from opium lawfully possessed for the consumption of the person so possessing it, or

(c) import into the Union of Burma, export from the Union of Burma, tranship or sell prepared opium.

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of Government.

- (2) The President of the Union may make rules restricting and regulating the manufacture and possession of prepared opium from opium which is lawfully possessed under clause (b) of sub-section (1).

Control of President over production and supply of opium.

5. (1) No one shall-

- (a) cultivate the poppy (*Papaver somniferum* L.), or
- (b) manufacture opium,

save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

- (2) The President of the Union may make rules permitting and regulating the cultivation of the poppy (*Papaver somniferum* L.) and the manufacture of opium, and such rules may prescribe the form and conditions of licences for such cultivation and manufacture, the authorities by which such licences may be granted, the fees that may be charged therein, and any other matter requisite to render effective the control of the President of the Union over such cultivation and manufacture.

- (3) The President of the Union may also make rules permitting and regulating the sale of opium from Government factories for export or to manufacturing chemists.

Control of President over manufacture of manufactured drugs.

6. (1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

- (2) The President of the Union may make rules permitting and regulating the manufacture of manufactured drugs, other than prepared opium, and such rules may prescribe the form and conditions of licences for such manufacture, the authorities by which such licences may be granted and the fees that may be charged therein, and any other matter requisite to render effective the control of the President of the Union over such manufacture.

- (3) Nothing in this section shall apply to the manufacture of medicinal opium or of preparations containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Control of President over operations at land and sea frontiers.

7. (1) No one shall-

- (a) import into the Union of Burma,
- (b) export from the Union of Burma, or
- (c) tranship

any dangerous drug other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

- (2) The President of the Union may make rules permitting and regulating the import into and export from the Union of Burma and the transshipment of dangerous drugs, other than prepared opium, and such rules may prescribe the ports or places at which any kind of dangerous drug may be imported, exported or transhipped, the form and conditions of licences for such import, export or transshipment, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the President of the Union over such import, export and transshipment.

Control of President over internal traffic in manufactured drugs and coca leaf.

8. (1) No one shall-

- (a) transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or
 - (b) manufacture medicinal opium or any preparation containing morphine, diacetylmorphine or cocaine,
- save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under these rules.

(2) The President of the Union may make rules permitting and regulating-

- (a) the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf, and
- (b) the manufacture of medicinal opium or of any preparation containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Such rules may prescribe the form and conditions of licences for such transport, possession, sale and manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other matters requisite to render effective the control of the President of the Union over such import, export, transport, possession, sale and manufacture.

(3) Save in so far as may be expressly provided in rules made under sub-section (2), nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government.

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the rules made by the President of the Union under this section, is not entitled to their possession.

Prohibition against inducing or helping a person under twenty-five years of age to use prepared opium, etc.

8A. No one shall-

- (a) induce any person under twenty-five years of age-
 - (i) to use prepared opium, or
 - (ii) to enter an opium-smoking establishment, or
 - (iii) to procure prepared opium, or
- (b) facilitate the doing by any person under twenty-five years of age of any of the acts set out in clause (a).

Consent of President over external dealings in dangerous drugs.

9. No one shall engage in or control any trade whereby a dangerous drug is obtained outside the Union of Burma and supplied to any person outside the Union of Burma, save in accordance with the conditions of a licence granted by and at the discretion of the President of the Union.

CHAPTER III.

OFFENCES AND PENALTIES.

Punishment for contravention of section 4.

10. Whoever—

- (a) cultivates any coca plant or gathers any portion of a coca plant,
- (b) manufactures or prepares prepared opium otherwise than as permitted under section 4, or
- (c) imports into the Union of Burma, exports from the Union of Burma, tranships or sells prepared opium,

shall be punished with imprisonment which may extend to two years, or with fine, or with both:

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of Government.

Punishment for contravention of section 5.

11. Whoever, in contravention of section 5, or any rule made under that section, or of any condition of a licence granted thereunder,

- (a) cultivates the poppy, or
- (b) manufactures opium,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 6.

12. Whoever, in contravention of section 6, or any rule made under that section, or any condition of a licence granted thereunder, manufactures any manufactured drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 7.

13. Whoever, in contravention of section 7, or any rule made under that section, or any condition of a licence granted thereunder,

- (a) imports into the Union of Burma,
- (b) exports from the Union of Burma, or
- (c) tranships

any dangerous drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 8.

14. Whoever, in contravention of section 8, or any rule made under that section, or any condition of a licence issued thereunder,

- (a) transports, possesses or sells any manufactured drug or coca leaf, or
- (b) manufactures medicinal opium or any preparation containing morphine, diacetylmorphine or cocaine,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 8A.

14A. Whoever, in contravention of section 8A—

(a) induces any person under twenty-five years of age—

(i) to use prepared opium, or

(ii) to enter an opium-smoking establishment, or

(iii) to procure prepared opium, or

(b) facilitates the doing by any person under twenty-five years of age of any of the acts set out in clause (a),

shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

Punishment for allowing premises to be used for the commission of an offence.

15. Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle, or place, knowingly permits it to be used for the commission by any other person of an offence punishable under section 10, section 12, section 13, section 14 or section 14A, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Enhanced punishment for certain offences after previous conviction.

16. Whoever, having been convicted of an offence punishable under section 10, section 12, section 13, section 14 or section 14A, is again guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

Enhanced punishment for offence under section 15 after previous conviction.

17. Whoever, having been convicted of an offence punishable under section 15, is again guilty of an offence punishable under that section, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

Security for abstaining from commission of certain offences.

18. (1) Whenever any person is convicted of an offence punishable under section 10, section 12, section 13, section 14 or section 14A, and the Court convicting him is of opinion that it is necessary to require such persons to execute a bond for abstaining from the commission of offences punishable under those sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

(2) The bond shall be in the form contained in Schedule 1, and the provisions of the Code of Criminal Procedure shall, in so far as they are

applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate Court, or by the High Court when exercising its powers of revision.

Penalty for contravention of section 9.

19. Whoever engages in or controls any trade whereby a dangerous drug is obtained outside the Union of Burma and supplied to any person outside the Union of Burma, otherwise than in accordance with the conditions of a licence granted under section 9, shall be punished with fine which may extend to one thousand rupees.

Attempts.

20. Whoever attempts to commit an offence punishable under this Chapter, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with the punishment provided for the offence.

Abetments.

21. (1) Whoever abets an offence punishable under this Chapter shall, whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in section 116 of the Penal Code, be punished with the punishment provided for the offence.
- (2) A person abets an offence within the meaning of this section who, in the Union of Burma, abets the commission of any act in a place without and beyond the Union of Burma which-
- (a) would constitute an offence if committed within the Union of Burma; or
- (b) under the laws of such place, is an offence relating to dangerous drugs having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within the Union of Burma.

CHAPTER IV.

PROCEDURE.

Power to issue warrants.

22. (1) The Collector, or other officer authorized by the President of the Union in this behalf, or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the President of the Union in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under Chapter III, or for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed.
- (2) The officer to whom a search-warrant under sub-section (1) is addressed shall have all the powers of an officer acting under section 23.

Power of entry, search, seizure and arrest without warrant.

23. (1) Any officer of the department of Excise, Police, Customs, Salt, Opium, or Revenue, superior in rank to a peon or constable, authorized in this behalf by the President of the Union, who has reason to believe, from personal knowledge or from information given by any person and taken

down in writing, that any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset:-

- (a) enter into any such building, vessel or place;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such drug and all materials used in the manufacture thereof, and any other article which he has reason to believe to be liable to confiscation under section 33, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug; and
- (d) detain and search, and, if he think proper, arrest any person whom he has reason to believe to have committed an offence punishable under Chapter III relating to such drug.

Provided that if such officer has reason to believe that a search-warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, vessel or enclosed place at any time between sunset and sunrise, after recording the grounds of his belief.

- (2) Where an officer takes down any information in writing under sub-section (1), or records grounds for his belief under the proviso therein, he shall forthwith send a copy thereof to his immediate official superior.

Power of seizure and arrest in public places.

24. Any officer of any of the departments mentioned in section 23 may:-

- (a) seize, in any public place or in transit, any dangerous drug in respect of which he has reason to believe an offence punishable under Chapter III has been committed, and, along with such drug, any other article liable to confiscation under section 33, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug;
- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter III, and, if such person has any dangerous drug in his possession and such possession appears to him to be unlawful, arrest him and any other persons in his company.

Made of making searches and arrests.

25. The provisions of the Code of Criminal Procedure shall apply, in so far as they are not inconsistent with the provisions of sections 22, 23 and 24, to all warrants issued and arrests and searches made under those sections.

Obligations on officers to assist each other.

26. All officers of the several departments mentioned in section 23 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Report of arrests and seizures.

27. Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Punishment for vexatious entry, search, seizure or arrest.

28. Any person empowered under section 23 or section 24 who—

- (a) without reasonable grounds of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place;
- (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any dangerous drug or other article liable to be confiscated under section 23, or of seizing any document or other article liable to seizure under section 23 or section 24; or
- (c) vexatiously and unnecessarily detains, searches or arrests any person,

shall be punished with fine which may extend to five hundred rupees.

Disposal of persons arrested and of articles seized.

29. (1) Every person arrested and article seized under a warrant issued under section 22 shall be forwarded without delay to the authority by whom the warrant was issued, and every person arrested and article seized under section 23 or section 24 shall be forwarded without delay to the officer in charge of the nearest police-station or to the nearest officer of the Excise Department empowered under section 30.

- (2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

Power to invest Excise officers with powers of an officer in charge of a police-station.

30. The President of the Union may invest any officer of the Excise Department, or any class of such officers, with the powers of an officer in charge of a police-station for the investigation of offences under this Act.

Jurisdiction to try offences.

31. No Magistrate shall try an offence under this Act unless he is a Magistrate of the first class, or a Magistrate of the second class specially empowered by the President of the Union in this behalf.

Presumption from possession of illicit articles.

32. In trials under this Act it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under Chapter III in respect of—

- (a) any dangerous drug;
- (b) any poppy or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adapted for the manufacture of any dangerous drug; or
- (d) any materials which have undergone any process towards the manufacture of a dangerous drug, or any residuum left of the materials from which a dangerous drug has been manufactured,

for the possession of which he fails to account satisfactorily.

Liability of illicit articles to confiscation.

33. (1) Whenever any offence has been committed which is punishable under Chapter III, the dangerous drug, materials, apparatus and utensils in respect of which or by means of which such offence has been committed shall be liable to confiscation.

(2) Any dangerous drug lawfully imported, transported, manufactured, possessed, or sold along with, or in addition to, any dangerous drug which is liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any dangerous drug, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages, and the animals, vehicles, vessels and other conveyances used in carrying the same, shall likewise be liable to confiscation.

Provided that no animal, vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be or was likely to be, committed.

Procedure in making confiscation.

34. (1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the Court shall decide whether any article seized under this Chapter is liable to confiscation under section 33; and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article seized under this Chapter appears to be liable to confiscation under section 33, but the person who committed the offence in connection therewith is not known or cannot be found, the Collector, or other officer authorized by the President of the Union in this behalf, may inquire into and decide such liability, and may order confiscation accordingly.

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right therein and the evidence, if any, which he produces in respect of his claim.

Provided further that, if any such article, other than a dangerous drug, is liable to speedy and natural decay, or if the Collector or other officer is of opinion that its sale would be for the benefit of its owner, he 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.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

Power to make rules regulating disposal of confiscated articles and rewards.

35. The President of the Union may make rules to regulate—

- (a) the disposal of all articles confiscated under this Act; and
- (b) the rewards to be paid to officers, informers and other persons out of the proceeds of fines and confiscations under this Act.

CHAPTER V.

MISCELLANEOUS.

Provisions regarding rules.

36. All rules made under this Act shall be subject to the condition of previous publication and, when made, shall be published in the Gazette.

Recovery of sums due to Government.

37. (1) Any arrears of any licence-fee chargeable by any rule made under this Act may be recovered from the person primarily liable to pay the same or from his surety (if any) as if it were an arrears of land-revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under section 18) for the performance of any act, or for his abstinence from any act, such performance or abstinence shall be deemed to be a public duty, within the meaning of section 74 of the Contract Act, and, upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrears of land-revenue.

Application of the Sea Customs Act.

38. All prohibitions and restrictions imposed by or under this Act on the import into the Union of Burma, the export from the Union of Burma, and the transshipment of dangerous drugs, shall be deemed to be prohibitions and restrictions imposed under section 19 or section 134 of the Sea Customs Act, and the provisions of that Act shall apply accordingly.

Provided that, where the doing of any thing is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.



Mahalaxmi Homoeopathic
Medical College, Raigaon, Talara.



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Sou. Devibai Narayandas Chhabada Rural Education Society, Satara's
**MAHALAXMI HOMOEOPATHIC MEDICAL
COLLEGE, HOSPITAL & RESEARCH CENTER**
Raigaon, Satara.



Survey No. 259, At Post- Raigaon, Tal-Jaoli, Dist-Satara. Ph.: (02378) 200200, Fax : 240202
H.O. Plot No. 30, Gulmohar Colony, Opp. I.T.I. Gandarnai, Satara.
Phone : (02162) 250400, 250982, 250993, Fax : (02162) 250492

Email : info@sdncedu.com / sdncmhmc@gmail.com

Website : www.sdncedu.com

Date : / /201

Ref No.

Department of Forensic medicine & Toxicology

Total Area OF DEPARTMENT	58.16 SQ.MT
HOD room/ DEPARTMENTAL ROOM	Available
Act copies	Available
Museum cum demonstration room	Available
Visit details	Uploaded
Department library	Available




Principal
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Hospital and Research Center Raigaon, Satara.



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**MAHALAXMI HOMOEOPATHIC MEDICAL
COLLEGE, HOSPITAL & RESEARCH CENTER**
Raigaon, Satara.



Survey No. 259, At. Post- Raigaon, Tal.-Jaoli, Dist-Satara. Ph.: (02378) 200200, Fax : 240202
H.O.: Plot No. 30, Gulmohor Colony, Opp. I.T.I. Gendamal, Satara.
Phone : (02162) 250400, 250992, 250993, Fax : (02162) 250492.

Website : www.sdncedu.com

Email : info@sdncedu.com / sdncmhmc@gmail.com

Ref.No.

Date : / /201

DEPARTMENT OF FORENSIC MEDICINE & TOXICOLOGY

SR.NO	NAME OF TECHER	DESIGNATION	APPROVAL
1	DR.RAHUL JADHAV	ASSO.PROFESSOR	YES
2	DR.SANTOSH NALE	ASST.PROFESSOR	YES


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Dept. of FMT
MHMC, Raigaon, Satara.



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**MAHALAXMI HOMOEOPATHIC MEDICAL
 COLLEGE, HOSPITAL & RESEARCH CENTER**
 Raigaon, Satara.



Survey No. 259, At. Post- Raigaon, Tal- Jach, Dist-Satara. Ph. (02378) 250250. Fax: 240212
 H.O. Plot No. 30, Gulmohar Colony, Opp. I.T.I. Gendasmal, Satara.
 Phone: (02162) 250400, 250682, 250893, Fax: (02162) 250492

Website: www.sdncedu.com

Email: info@sdncedu.com / sdncmhmc@gmail.com

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FMT DEPARTMENT

LIST OF FURNITURE

Sr. No.	Name of Furniture	Quantity
1.	Table	01
2.	Black chair with hand rest	01
3.	Black chair	02
4.	N computing :- Monitor	01
5.	Key board	01
6.	Mouse	01
7.	Wooden Cupboard	01
8.	Glass Cupboard	01
9.	Phone	01
10.	Stool	20+1
11.	Tube light	04
12.	Ceiling Fan	02
13.	Green Board	01
14.	Display Board A, B,	02
15.	Glass Display Cupboard A, B	02

LIST OF CHARTS

Sr. No.	Name of charts	Quantity
1.	Homicidal poisoning	01
2.	Poison and drugs	01
3.	Death Certificate	01
4.	Consent Certificate	01
5.	Sickness Certificate	01
6.	Different Poisons A, B, C	03
7.	Wounds and Injuries A, B, C, D, E	05
8.	Natural Disease	01
9.	Death scene	01
10.	Temporary and Permanent Teeth	01
11.	Dying declaration	01
12.	Route and fate of poison	01
13.	Antemortem and Postmortem	01
14.	Arsenic and cholera poisoning	01
15.	Poisonous and Non-poisonous snake	01
16.	Negligence	01
17.	Fitness Certificate	01

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 Mahalaxmi Homoeopathic Medical College Hospital & Research Center Raigaon, Satara.

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LIST OF MODEL

Sr. No.	Name of model	Quantity
1.	Nose cut by knife	01
2.	Homicidal shooting with gun	01
3.	Burn by explosion of crackers	01
4.	Tyre large	01
5.	Tyre medium	01
6.	Tyre small	01
7.	Lacerated Wound	01
8.	Defensive Wound	01
9.	Suicidal cut throat with Razor	01
10.	Nose cut off with knife	01
11.	Kerosin burning	01
12.	Ant bite mark	01
13.	Homicidal cut throat with multiple marking	01
14.	Suicidal by shooting with a gun	01


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**MAHALAXMI HOMOEOPATHIC MEDICAL
 COLLEGE, HOSPITAL & RESEARCH CENTER**
 Raigaon, Satara.



Survey No. 259, At. Post- Raigaon, Tal.-Jaoli, Dist-Satara. Ph : (02376) 200200, Fax : 240202
 H.O. Plot No. 30, Gulmohar Colony, Opp. I.T.I. Gendamal, Satara
 Phone : (02162) 250400, 250982, 250993, Fax : (02162) 250492

Website : www.sdnoedu.com

Email : info@sdnoedu.com / sdnomhmc@gmail.com

Ref No.

Date / / 201

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LIST OF INSTRUMENTS

Sr. No.	Name of instruments (Sharp)	Quantity
1.	Sickle	03
2.	Koyte	02
3.	Cross cut saw	01
4.	Back saw	01
5.	Knife	01
6.	Wood chisels	01
7.	Meson	01
8.	Axe	01
9.	Vegetable peeler	01
10.	Pizza cutter	01
11.	Grass cutter	01

Sr. No.	Name of instruments (Pointed)	Quantity
1.	Bradawl	03
2.	Hand fork	02
3.	Hand travel	01
4.	Hand scraper	01
5.	sword	01

Sr. No.	Name of instruments (Blunt)	Quantity
1.	Hunter	03
2.	Police baton/ lathi	02
3.	Chain	01
4.	Hand cuff	01
5.	Cable	01
6.	Finishing Hunter	01
7.	Gun (Revolver)	01
8.	Bat	01
9.	Stump	01
10.	Balan	01
11.	Gun (Rifle)	01
12.	Pav-bhaji smasher	01
13.	Spatula	01
14.	Net spatulal	01
15.	Wooden whisk	01
16.	Soup ladel	01
17.	Tong	01
18.	Jumping rope	01
19.	Nilon rope	01
20.	Tong (steel)	01

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Mahalaxmi Homoeopathic Medical College Hospital & Research Center Raigaon, Satara.

FMT DEPARTMENT

List Of Equipments

Sr no	Name of Equipments	Quantity
1	Weighing Machine	01
2	Measuring Height	01
3	Vernier Caliper	01

List of Specimen

Sr. No.	Name of Specimen	Quantity
1.	Sodium hydroxide	01
2.	Kanherpilla	01
3.	Epson salt	01
4.	Nutmeg	01
5.	Castor seed	01
6.	Iodine	01
7.	Papaya seed	01
8.	Copper sulphate	01
9.	Chirata	01
10.	Aloe	01
11.	Capsicum	01
12.	Kanher white	01
13.	Ritha	01
14.	Chloral hydrate	01
15.	Borax	01
16.	Potassium permagnate	01


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 Dept. of FMT
 M-HMC, Raigaon, Satara



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 Raigaon, Satara.



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 H.O. Plot No. 30, Guimohar Colony, Opp. I.T.I., Gendarnal, Satara
 Phone: (02162) 250400, 250882, 250883, Fax: (02162) 250482

Website: www.adhncedu.com

Email: info@adhncedu.com / adhnmhmc@gmail.com

Ref. No.

Department of FMT

Date: / / 201

Sr. No.	Name of Specimen	Quantity
16.	Potassium permanganate	01
17.	Hyoscyamus khorasani	01
18.	Nux-Vomica seed	01
19.	Tobacco	01
20.	Potassium Sulphate	01
21.	Bhang	01
22.	Lead carbonate	01
23.	Pila Dhatura root	01
24.	Dhatura stem	01
25.	Kanher flower (white)	01
26.	Calotropis (white)	01
27.	Match stick powder (phosphorous)	01
28.	Kanher root (white)	01
29.	Dhatura root	01
30.	Kanher flower (yellow)	01
31.	Dhatura fruit	01
32.	Betal nut	01
33.	Hair	01
34.	Kanher root (yellow)	01
35.	Calatropis (blue)	01
36.	Naphthalene	01
37.	Dhatura (yellow)	01
38.	Vinegar	01
39.	Hydrochloric Acid	01
40.	Sulphuric Acid	01
41.	Chloroform	01

HOD

Dept. of FMT
 MHMC, Raigaon, Satara.

Sou Devibai Narayandas Chhabada Rural Education Society Satara.

Mahalaxmi Homoeopathic Medical College Hospital & Research Center Raigaon, Satara.

FMT DEPARTMENT

LIST OF ACT / LEGISLATIONS

LIST OF BOOKS

Sr. No.	Name of charts	Quantity
1.	The Indian Penal Code - Arrangement Of Section	01
2.	The Dangerous Drug Act (Indian Act II 1930)	01
3.	Bombay Act No. XVMOF 1929. 1- The Bombay Borstal School Act 1929	01
4.	Consumer Protection Act 1986	01
5.	The Workmen's Compensation Act 1923	01
6.	The Medical And Toilet Preparation (Excise Duty) Act 1995	01
7.	The Drug (Control) Act 1950	01
8.	The Mental Health Act 1987	01
9.	The Prohibition Of Child Marriage Act 2006	01
10.	The Indian Evidence Act 1872 Arrangement Of Section	01
11.	The Pre Natal Diagnostic Techniques (PNDT) Act And Rules	01
12.	The Employees Compensation Act 1923	01
13.	The Transplantation Of Human Organ Act 1994	01
14.	The Bombay Borstal School Act 1929	01
15.	The Drug And Magic Remedies (Objectionable Act 1954)	01
16.	Indian Lunacy Act	01
17.	The Employees State Insurance Act 1948	01
18.	The Personal Injuries (Compensation Insurance) Act 1963	01
19.	Medical Termination of Pregnancy Act 1971	01

Sr. No.	Name of charts	Quantity
1.	The essential of FMT (34 th edition) - Dr. K.S.Narayan Reddy and Dr. murty	01
2.	Parikh's (8 th edition) -B.V.Subrahmanyam	01
3.	Principles of forensic medicine and toxicology - Apurba Nandy	01
4.	Viva in forensic medicine and toxicology L.C.gupta, K.K. modi	01
5.	Textbook of medical laboratory technology - Praful B. Ghodkar, Darshab P. Ghodkar	01
6.	Principle of forensic medicine and toxicology - Rajesh	01
7.	Forensic Toxicology - Singhal's	01


HOD
Dept. of FMT
MHMC, Raigaon, Satara.

THE HOMOEOPATHY CENTRAL COUNCIL ACT, 1973

Dr. Ramesh M.D.

17.8.2019

(59 OF 1973)



GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

THE HCMOEOPATHY CENTRAL COUNCIL ACT, 1973

No. 59 of 1973



[19th December, 1973]

An Act to provide for the constitution of a Central Council of Homoeopathy and the maintenance of a Central Register of Homoeopathy and for matters connected therewith.

Be it enacted by Parliament in the Twenty fourth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Homoeopathy Central Council Act, 1973.

(2) It extends to the whole of India.

(3) It shall come into force in a State on

Short
title,
extent
and
commence-
ment.

such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf for such State and different dates may be appointed for different States and for different provisions of this Act.

Defini-
tion

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

(a) "Board" means a Board, Council, Examining Body or Faculty of Homoeopathy (by whatever name called) constituted by the State Government under any law for the time being in force regulating the award of medical qualifications in, and registration of practitioners of Homoeopathy;

(b) "Central Council" means the Central Council of Homoeopathy constituted under section 3;

(c) "Central Register of Homoeopathy" means the register maintained by the Central Council under this Act;

(d) "Homoeopathy" means the Homoeopathic system of medicine and includes the use of Biochemic remedies;

(e) "medical institution" means any institution within or without India which grants Degrees, Diplomas or licences in Homoeopathy;

(f) "prescribed" means prescribed by

regulations;

(g) "recognised medical qualification" means any of the medical qualifications in Homoeopathy included in the Second or the Third Schedule;

(h) "regulation" means a regulation made under section 33;

(i) "State Register of Homoeopathy" means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Homoeopathy;

(j) "University" means any University in India established by law and having a Faculty of Homoeopathy and includes a University in India established by law in which instruction, teaching, training or research in Homoeopathy is provided.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

CHAPTER II

THE CENTRAL COUNCIL AND ITS COMMITTEES

3. (1) The Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act a Central Council

Constitu-
tion of
Central
Council.

consisting of the following members, namely: —

(a) such number of members not exceeding five as may be determined by the Central Government in accordance with the provisions of the First Schedule from each State in which a State Register of Homoeopathy is maintained, to be elected from amongst themselves by persons enrolled on that register as practitioners of Homoeopathy;

(b) one member from each University to be elected from amongst themselves by the members of the Faculty or Department (by whatever name called) of Homoeopathy of that University;

Provided that until any such Faculty or Department of Homoeopathy is started in at least seven Universities, the Central Government may nominate such number of members not exceeding seven as may be determined by the Central Government from amongst the teaching staff of medical institutions within India, so however, that the total number of members so nominated and elected under this clause shall in no case exceed seven;

(c) such number of members, not exceeding forty percent of the total number of members elected under clause (a) and (b), as may be nominated by the Central Government, from amongst persons having

special knowledge or practical experience in respect of Homoeopathy or other related disciplines:

Provided that until members are elected under clause (a) or clause (b) in accordance with the provisions of this Act and the rules made thereunder, the Central Government shall nominate such number of members, being persons qualified to be chosen as such under the said clause (a) or clause (b), as the case may be, as that Government thinks fit; and references to elected members in this Act shall be construed as including references to members so nominated.

(2) The President and the Vice-President of the Central Council shall be elected by the members of the Central Council from amongst themselves in such manner as may be prescribed;

Provided that for two years from the first constitution of the Central Council, the President and the Vice-President shall be nominated by the Central Government from amongst the members of the Central Council and the President and the Vice-President so nominated shall, notwithstanding anything contained in sub-section (1) of section 7, hold office during the pleasure of the Central Government.

4. (1) An election under clause (a) or clause (b) of sub-section (1) of section 3 shall be

Made of
election

conducted by the Central Government in accordance with such rules as may be made by it in this behalf.

(2) Where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final.

Restric-
tion on
elections
and
member-
ship.

5. (1) No person shall be eligible for election to the Central Council unless he possesses any of the medical qualifications included in the Second or the Third Schedule, is enrolled on any State Register of Homoeopathy and resides in the State concerned.

(2) No person may at the same time serve as a member in more than one capacity.

Incorpo-
ration of
Central
Council.

6. The Central Council shall be a body corporate by the name of the Central Council of Homoeopathy having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

Term of
office of
President,
Vice-
President
and
members of
Central
Council.

7. (1) The President, Vice-President or a member of the Central Council shall hold office for a term of five years from the date of his election or nomination, as the case may be, or until his successor shall have been duly elected or nominated, whichever is longer.

(2) A person who holds or who has held

office as President or Vice-President of the Central Council, shall be eligible for re-election to that office once, but only once.

(3) Members of the Central Council shall be eligible for re-election or re-nomination.

(4) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Central Council, from three consecutive ordinary meetings of the Central Council or, in the case of a member elected under clause (a) of sub-section (1) of section 3, if he ceases to be enrolled on the concerned State Register of Homoeopathy, or in the case of a member elected under clause (b) of that sub-section, if he ceases to be a member of the Faculty or Department (by whatever name called) of Homoeopathy of the University concerned.

(5) A casual vacancy in the Central Council shall be filled by election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(6) Where the said term of five years is about to expire in respect of any member, a successor may be elected or nominated at any time within three months before the said term expires but he shall not assume office until the said term has expired.

Homoeopathy Central Council

8

Meetings
of
Central
Council.

8. (1) The Central Council shall meet at least once in each year at such time and place as may be appointed by the Central Council.

(2) Unless otherwise prescribed, one-third of the total number of members of the Central Council shall form a quorum, and all the acts of the Central Council shall be decided by a majority of the members present and voting.

The Executive
Committee
and other
committees.

9. (1) The Central Council shall constitute from amongst its members an Executive Committee and such other committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act.

(2) (i) The Executive Committee (hereafter in this section referred to as the Committee) shall consist of the President and Vice-President who shall be members *Ex officio*, and not less than five and not more than seven members who shall be elected by the Central Council from amongst its members.

(ii) The President and the Vice-President shall be the President and Vice-President respectively of the Committee.

(iii) In addition to the powers and duties conferred and imposed upon it by this Act, the Committee shall exercise and discharge such powers and duties as the Central Council may confer or impose upon it by any regulations which may be made in this behalf.

10. (1) The Committees constituted under section 9 shall meet at least twice in each year at such time and place as may be appointed by the Central Council.

Meetings
of com-
mittees.

(2) Unless otherwise prescribed, one-third of the total number of members of a committee shall form a quorum, and all the acts of the committee shall be decided by a majority of the members present and voting.

11. The Central Council shall —

(a) appoint a Registrar who shall also act as Secretary;

Officers
and
other em-
ployees
of Central
Council.

(b) employ such other persons as it deems necessary to carry out the purposes of this Act;

(c) require and take from the Registrar or from any other employee, such security for the due performance of his duties as the Central Council deems necessary; and

(d) with the previous sanction of the Central Government, fix the remuneration and allowances to be paid to the President, Vice-President and members of the Central Council and to the members of the committees thereof and determine the conditions of service of the employees of the Central Council.

12. No act or proceeding of the Central Council or any committee thereof shall be

Vacancies
in the
Central

Council and committees thereof not to invalidate acts, etc.

called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Central Council or the committee, as the case may be.

CHAPTER III

RECOGNITION OF MEDICAL QUALIFICATIONS

Recognition of medical qualifications granted by certain medical institutions in India.

13. (1) The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognised, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification only when granted after a specified date.

Recognition of medical qualifications granted by medical institutions in States or countries

14. (1) The medical qualifications granted by medical institutions outside India which are included in the Third Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) (a) The Central Council may enter into negotiations with the authority in any State or country outside India, which by the law of such State or country is entrusted with the maintenance of a Register of practitioners of Homoeopathy for settling of a scheme of reciprocity for the recognition of medical qualifications in Homoeopathy, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to include therein any medical qualification which the Central Council has decided should be recognised and any such notification may also direct that an entry shall be made in the last column of the Third Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

(b) Where the Council has refused to recommend any medical qualification which has been proposed for recognition by any authority referred to in clause (a) and that authority applies to the Central Government in this behalf, the Central Government, after considering such application and after obtaining from the Council a report, if any, as to the reasons for any such refusal, may, by notification in the Official Gazette, declare that such qualification shall be a recognised medical qualification and the provisions of clause (a) shall apply accordingly.

15. (1) Subject to the other provisions contained in this Act, any medical qualification

Rights of
persons

assessing
qualifications
included in
second or
Third
Schedule to
enrolled,

included in the Second or the Third Schedule shall be sufficient qualification for enrolment on any State Register of Homoeopathy.

(2) No person, other than a practitioner of Homoeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy —

(a) shall hold office as Homoeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise Homoeopathy in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give any evidence at any inquest or any court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to Homoeopathy.

1 of 1872

(3) Nothing contained in sub-section (2) shall affect—

(a) the right of a practitioner of Homoeopathy enrolled on a State Register of Homoeopathy to practise Homoeopathy in

any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

(b) the privileges (including the right to practise Homoeopathy) conferred by or under any law relating to registration of practitioners of Homoeopathy for the time being in force in any State, on a Practitioner of Homoeopathy enrolled on a State Register of Homoeopathy;

(c) the right of a person to practise Homoeopathy in a State in which, on the commencement of this Act, a State Register of Homoeopathy is not maintained if, on such commencement, he has been practising Homoeopathy for not less than five years;

(d) the rights conferred by or under the Indian Medical Council Act, 1956 [including the right to practise medicine as defined in clause (f) of section 2 of the said Act] or the Indian Medicine Central Council Act, 1970 of persons possessing any qualifications included in the respective Schedules to the said Act.

102 1956.

48 of 1970.

(4) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both.

Power to
require
information
as to courses
of study and
examina-
tions.

16. Every University, Board or medical institution in India which grants a recognised medical qualification shall furnish such information as the Central Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.

Inspectors
at exami-
nations.

17. (1) The Central Council shall appoint such number of medical inspectors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given, or to attend any examination held by any University, Board or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University, Board or medical institution.

(2) The medical inspectors shall not interfere with the conduct of any training or examination but shall report to the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy, as the case may be, or on the sufficiency of every examination which they attend.

(3) The Central Council shall forward a copy of any such report to the University, Board or medical institution concerned, and

shall also forward a copy with the remarks of the University, Board or medical institution thereon, to the Central Government.

18. (1) The Central Council may appoint such number of visitors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given or to attend any examination for the purpose of granting recognised medical qualification.

Visitors at
examina-
tions.

(2) Any person, whether he is a member of the Central Council or not may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any inspection or examination shall not be appointed as a visitor for the same inspection or examination.

(3) The visitors shall not interfere with the conduct of any training or examination but shall report to the President of the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy or on the sufficiency of every examination which they attend.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Central Council otherwise directs :

Provided that if the Central Government requires a copy of the report of a visitor, the Central Council shall furnish the same.

With-
drawal of
recognition.

19. (1) When upon report by the inspector or the visitor it appears to the Central Council—

(a) that the courses of study and examination to be undergone in or the proficiency required from candidates at any examination held by any University, Board or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or medical institution or in any college or other institution affiliated to the University,

do not conform to the standard prescribed by the Central Council, the Central Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the Government of the State in which the University, Board or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University, Board or medical institution with an intimation of the period within which the University, Board or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or where no explanation is submitted within the period fixed then on the expiry of that period

the State Government shall make its recommendations to the Central Government.

(4) The Central Government after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the Second Schedule against the said medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date or that the said medical qualification if granted to students of a specified college or institution affiliated to any University shall be recognised medical qualification only when granted before a specified date or as the case may be, that the said medical qualification shall be recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date.

20. (1) The Central Council may prescribe the minimum standards of education in Homoeopathy required for granting recognised medical qualifications by Universities, Boards or medical institutions in India.

Minimum standards of education in Homoeopathy.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall, before submitting the regulations or any amendment thereof as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

CHAPTER IV

THE CENTRAL REGISTER OF HOMOEOPATHY

The Central
Register of
Homoeo-
pathy.

21. (1) The Central Council shall cause to be maintained in the prescribed manner, a register of practitioners of Homoeopathy to be known as the Central Register of Homoeopathy which shall contain—

(a) in part I, the names of all persons who are for the time being enrolled on any State Register of Homoeopathy and possess any of the recognised medical qualifications;

(b) in Part II, the names of all persons other than those included in part I, who are for the time being enrolled on any State Register of Homoeopathy.

(2) It shall be the duty of the Registrar of the Central Council to keep and maintain the Central Register of Homoeopathy in accordance with the provisions of this Act and of any orders made by the Central Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 and may be proved by a copy published in the Gazette of India.

Supply of
copies of
State Regi-
ster of Ho-
moeopathy.

22. Each Board shall supply to the Central Council three printed copies of the State Register of Homoeopathy as soon as may be after the commencement of this Act and subsequently

after the first day of April of each year and each Board shall inform the Central Council without delay of all additions to, and other amendments in the State Register of Homoeopathy made from time to time.

23. The Registrar of the Central Council may on receipt of the report of registration of a person in a State Register of Homoeopathy or on application made in the prescribed manner by any person, enter his name in the Central Register of Homoeopathy provided that the Registrar is satisfied that the person concerned is eligible under this Act for such registration.

Registration in the Central Register of Homoeopathy.

24. (1) The Central Council may prescribe standards of professional conduct and a code of ethics for practitioners of Homoeopathy.

Professional conduct.

(2) Regulations made by the Central Council under sub-section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect that is to say, professional misconduct and such provision shall have effect notwithstanding anything contained in any law for the time being in force.

25. (1) If the name of any person enrolled on a State Register of Homoeopathy is removed therefrom in pursuance of any power conferred by or under any law relating to registration of practitioners of Homoeopathy for the time being in force in any State, the Central Council shall direct the removal of the name

Removal of names from the Central Register of Homoeopathy.

of such person from the Central Register of Homoeopathy.

(2) Where the name of any person has been removed from a State Register of Homoeopathy on any ground other than that he is not possessed of the requisite medical qualifications or where any application by the said person for restoration of his name to the State Register of Homoeopathy has been rejected, he may appeal in the prescribed manner and subject to such conditions, including conditions as to the payment of a fee, as may be prescribed to the Central Government whose decision, which shall be given after consulting the Central Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Register of Homoeopathy.

Privileges of persons who are enrolled on the Central Register of Homoeopathy.

26. (1) Subject to the conditions and restrictions laid down in this Act regarding practice of Homoeopathy by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on Part I of the Central Register of Homoeopathy shall be entitled according to his qualifications to practise Homoeopathy in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances or any fees to which he may be entitled.

(2) Subject to the provisions of sub-section (3) of section 15, any person whose name is for the time being borne on Part II of the Central

Register of Homoeopathy, may practise Homoeopathy in any State, other than the State where he is enrolled on the State Register of Homoeopathy with the previous approval of the Government of the State where he intends to practise.

27. (1) If any person whose name is entered in the Central Register of Homoeopathy obtains any title, diploma or other qualification for proficiency in Homoeopathy, which is a recognised medical qualification, he shall, on application made in this behalf in the prescribed manner, be entitled to have an entry stating such other title, diploma or other qualification made against his name in the Central Register of Homoeopathy either in substitution for or in addition to any entry previously made.

Registration of additional qualifications.

(2) The entries in respect of any such person in a State Register of Homoeopathy shall be altered in accordance with the alterations made in the Central Register of Homoeopathy.

28. Every person registered in the Central Register of Homoeopathy shall notify any transfer of the place of his residence or practice to the Central Council and to the Board concerned within ninety days of such transfer, failing which his right to participate in the election of members to the Central Council or a Board shall be liable to be forfeited by order of the Central Government either permanently or for such period as may be specified therein.

Persons enrolled on Central Register of Homoeopathy to notify change of place of residence or practice.

CHAPTER V

MISCELLANEOUS

Information
to be
furnished by
central
council and
publication
thereof.

29. (1) The Central Council shall furnish such reports, copies of its minutes, abstracts of its accounts, and other information to the Central Government as that Government may require.

(2) The Central Government may publish in such manner as it may think fit, any report, copy, abstract or other information furnished to it under this section or under section 18.

Commission
of inquiry.

30. (1) Whenever it is made to appear to the Central Government that the Central Council is not complying with any of the provisions of this Act, the Central Government may refer the particulars of the complaint to a commission of inquiry consisting of three persons, two of whom shall be appointed by the Central Government, one being a Judge of a High Court, and one by the Central Council and such commission shall proceed to inquire in a summary manner and to report to the Central Government as to the truth of the matters charged in the complaint and in case of any charge of default or of improper action being found by the commission to have been established, the commission shall recommend the remedies if any, which are in its opinion necessary.

(2) The Central Government may require the Central Council to adopt the remedies so recommended within such time as having regard to the report of the commission, it may

think fit and if the Central Council fails to comply with any such requirement, the Central Government may amend the regulations of the Central Council or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the commission.

(3) A commission of inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the Code of Civil Procedure, 1908.

5 of 1908.

31. No suit, prosecution or other legal proceeding shall lie against the Government, the Central Council or a Board or any committee thereof or any officer or servant of the Government or the Central Council or the Board or the committee aforesaid for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

32. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

Power to make rules.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the

(o) the fees to be paid on applications and appeals under this Act; and

(p) any matter for which under this Act provision may be made by regulations.

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

THE FIRST SCHEDULE

[See section 3 (1)(a)]

1. The Central Government shall, by notification in the Official Gazette, determine the number of seats allocated in the Central Council of Homoeopathy in each State on the following basis, namely :—

(a) Where the number of persons enrolled on a State Register of Homoeopathy system exceeds 100 but does not exceed 10,000 ... 1 seat,

(b) Where the number of persons enrolled on a State Register of Homoeopathy system exceeds 10,000 but does not exceed 20,000 ... 2 seats

(c) Where the number of persons enrolled on a State Register of Homoeopathy system exceeds 20,000 but does not exceed 30,000 ... 3 seats

(d) Where the number of persons enrolled on a State Register of Homoeopathy system exceeds 30,000 but does not exceed 40,000 ... 4 seats

(e) Where the number of persons enrolled on a State Register of Homoeopathy system exceeds 40,000 ... 5 seats

2. For every subsequent election to the Central Council under clause (a) of sub-section (1) of section 3, the Central Government shall, by notification in the Official Gazette, determine the number of seats allocated in the Central Council of Homoeopathy on the basis laid down in paragraph 1 above,

* THE SECOND SCHEDULE

Recognised Medical Qualifications in Homoeopathy granted by Universities, Boards or Medical Institutions in India.

1 Name of University, Board or Medical Institution	2 Recognised Medical Qualification	3 Abbreviation for registration	4 Remarks
ANDHRA PRADESH			
1. ANDHRA PROVINCIAL HOMOEOPATHIC MEDICAL COLLEGE, GUDIVADA.	DIPLOMA IN HOMOEOPATHIC MEDICINE	D.H.M.	APRIL, 1949 TO MARCH, 1969.
2. DR. GURURAJU GOVT. HOMOEOPATHIC MEDICAL COLLEGE, GUDIVADA	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S	FROM APRIL, 1970 onwards
3. BOARD OF INDIAN MEDICINE, HYDERABAD.	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S	FROM OCTOBER, 1971
3A. HOMOEOPATHIC MEDICAL COLLEGE, RAJAHMUNDRY, A.P.	DIPLOMA IN HOMOEOPATHIC MEDICINE & SURGERY	D.H.M.S	FROM MARCH 1973 TO DECEMBER, 1985

3B. ANDHRA UNIVERSITY,
WALTAIR.

-DO-

BACHELOR OF HOMOEOPATHIC MEDICINE &
SURGERY (DIRECT)

MBS(H)

FROM 1983 TO 1985

BACHELOR OF HOMOEOPATHIC MEDICINE &
SURGERY (GRADED DEGREE COURSE)

MBS(H)

FROM 1983 TO 1985

-DO-

BACHELOR OF HOMOEOPATHIC MEDICINE &
SURGERY (SPECIAL QUALIFYING EXAM.)

MBS(H)

FROM 1979 TO 1984

3C. OSMANIA UNIVERSITY,
HYDERABAD

-DO-

BACHELOR OF HOMOEOPATHIC
MEDICINE & SURGERY

MBS(H) DIRECT

FROM 1984 TO 1990

MBS(H) SPECIAL
QUALIFYING EXAM.

1979 TO 1983

MBS(H) GRADED DEGREE

1983 ONWARDS

BACHELOR IN HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1990 ONWARDS

1	2	3	4
3D. SRI VENKATESWARA UNIVERSITY TIRUPATHI.	BACHELOR OF MEDICINE AND SURGERY IN HOMOEOPATHY	MBS(H)	FROM 1989 ONWARDS
	BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1990 ONWARDS
ASSAY			
3E. BOARD OF HOMOEOPATHIC SYSTEM OF MEDICINE, ASSAM.	DIPLOMA IN HOMOEOPATHIC MEDICINE & SURGERY	D.H.M.S	FROM 1983 TO JUNE, 1987
BIHAR			
4. BIHAR STATE BOARD OF HOMOEOPATHIC MEDICINE	DIPLOMA IN MEDICINE AND SURGERY	D.M.S.	SINCE 1961-1975
	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S	FROM 1971-1975

4A. UNIVERSITY OF BIHAR,
MUZAFFARPUR

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM 1973 TO 1974

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM 1976 ONWARDS

DELHI

5. BOARD OF HOMOEOPATHIC SYSTEM
OF MEDICINE, DELHI

DIPLOMA IN HOMOEOPATHIC
SCIENCE

D.H.S

FROM 1965 TO 1970-71

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM 1971 ONWARDS

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1984 ONWARDS

GUJARAT

1	2	3	4
5A. COUNCIL OF HOMOEOPATHIC SYSTEM OF MEDICINE, GUJARAT, AHMEDABAD	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S	FROM JUNE, 1974 ONWARDS
5B. SARDAR PATEL UNIVERSITY (A) ANAND HOMOEOPATHIC MEDICAL COLLEGE, ANAND.	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1991 TO 1993
5C. SARDAR PATEL UNIVERSITY	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY (GRADED DEGREE)	B.H.M.S (GRADED DEGREE)	FROM 1987 ONWARDS
(A) ANAND HOMOEOPATHIC MEDICAL COLLEGE, ANAND	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY (GRADED DEGREE)	B.H.M.S (GRADED DEGREE)	FROM 1987 ONWARDS

KARNATAKA

6. THE HOMOEOPATHIC MEDICAL
COLLEGE, BELGAUM.

LICENTIATE OF THE COURT
OF EXAMINERS IN HOMOEOPATHY

L.C.E.H.

FROM JUNE, 1971 TO DECEMBER, 1971.

7. COURT OF EXAMINERS IN
HOMOEOPATHIC EDUCATION,
BANGALORE

LICENTIATE OF THE COURT
OF EXAMINERS IN HOMOEOPATHY

L.C.E.H.

FROM JANUARY, 1973

GRADUATE OF THE COURT OF
EXAMINERS IN HOMOEOPATHY

G.C.E.H.

FROM JANUARY, 1973

7A. THE KARNATAKA BOARD OF HOMEO-
-PATHIC SYSTEM OF MEDICINE.

BACHELOR OF HOMEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1985 ONWARDS

7B. GALBARGA UNIVERSITY

BACHELOR OF HOMEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1990 TO 1995

7C. MANGALORE UNIVERSITY

BACHELOR OF HOMEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1991 TO 1995

7D. BANGALORE UNIVERSITY

BACHELOR OF HOMEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1990 TO 1995

7E. SHIVAJI UNIVERSITY

BACHELOR OF HOMEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1990 TO 1995

(A) HOMEOPATHIC MEDICAL
COLLEGE, TARARANI CHOWK,
KAVALA NAKA, KOLHAPUR.

BACHELOR OF HOMEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1990 TO 1995

(B) VENUTAI YASHWANTRAO CHAVAN,
HOMOEOPATHIC MEDICAL COLLEGE,
DASARA CHOK, KOLHAPUR.

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1990 TO 1995

KERALA

8. BOARD OF EXAMINERS IN
HOMOEOPATHY, GOVT. OF KERALA

DIPLOMA IN HOMOEOPATHIC
MEDICINE

D.H.M.

FROM 1962 ONWARDS

-DO-

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM JUNE, 1974 ONWARDS

9. ROYAL COLLEGE OF HOMOEOPATHIC
PHYSICIANS, ERNAKULAM

LICENTIATE OF ROYAL COLLEGE OF
HOMOEOPATHIC PHYSICIANS

L.R.C.H.P.

UPTO 1966-67

9A. UNIVERSITY OF CALICUT,
KERALA.

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1982 ONWARDS

1	2	3	4
98. UNIVERSITY OF KERALA, KERALA	BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1989 TO 1990
99. MAHATMA GANDHI UNIVERSITY / (A) ATHURSSAMAN N.S.S. HOMOEOPATHIC MEDICAL COLLEGE, KOTTAYAM	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	Up to 1995
MADHYA PRADESH			
10. THE BOARD OF HOMOEOPATHIC AND BIOCHEMIC SYSTEM OF MEDICINE, MADHYA PRADESH	DIPLOMA IN HOMOEOPATHY AND BIOCHEMISTRY	D.H.B	FROM 1960 TO 1975

10A	STATE COUNCIL OF HOMOEOPATHY, MADHYA PRADESH	DIPLOMA IN HOMOEOPATHY AND BIOCHEMISTRY	D.H.B	FROM SEPTEMBER 1975 TO 1986
10B	STATE COUNCIL OF HOMOEOPATHY, MADHYA PRADESH	DIPLOMA IN HOMOEOPATHY MEDICINE AND SURGERY	D.H.M.S	FROM 1987 TO 1995
MAHARASHTRA				
11.	THE COURT OF EXAMINERS OF HOMOEOPATHIC AND BIOCHEMIC SYSTEM OF MEDICINE, BOMBAY.	LICENTIATE OF THE COURT OF EXAMINERS IN HOMOEOPATHY	L.C.E.H.	FROM DECEMBER, 1961 ONWARDS
		DIPLOMA IN HOMOEOPATHY AND BIOCHEMISTRY	D.H.B	FROM OCTOBER, 1955 ONWARDS

1	2	3	4
11A. VIDYARBYA BOARD OF HOMOEOPATHIC AND BIOCHEMISTRY MEDICINE, NAGPUR.	DIPLOMA IN HOMOEOPATHY AND BIOCHEMISTRY	D.H.B	FROM NOVEMBER, 1955 TO 1961
11B. THE COURT OF EXAMINERS OF HOMOEOPATHIC AND BIOCHEMIC SYSTEM OF MEDICINE, BOMBAY.	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S	FROM 1976 ONWARDS
11C. PUNE UNIVERSITY	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1988 TO 1990
11D. UNIVERSITY OF BOMBAY.	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1988 TO 1990

11E. COURT OF EXAMINERS OF
HOMOEOPATHIC AND BIOCHEMIC
SYSTEM OF MEDICINE,
BOMBAY.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S.
(C.C.H. REGULATIONS)

FROM 1987 ONWARDS

11F DR. BABASAHEB AMBEDKAR
MARATHWADA UNIVERSITY,
AURANGABAD.

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1991 TO 1995

(A) SHRI BHAGWAN HOMOEOPATHIC
MEDICAL COLLEGE,
AURANGABAD.

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1991 TO 1995

11E. COURT OF EXAMINERS OF
HOMOEOPATHIC AND BIOCHEMIC
SYSTEM OF MEDICINE,
BOMBAY.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S.
(C.C.H. REGULATIONS)

FROM 1957 onwards

11F DR. BABASAHEB AMBEDKAR
MARATHWADA UNIVERSITY,
AURANGABAD.

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1991 TO 1995

(A) SHRI BHAGWAN HOMOEOPATHIC
MEDICAL COLLEGE,
AURANGABAD.

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1991 TO 1995

1	2	3	4
(B) S.K. HOMOEOPATHIC MEDICAL COLLEGE, BEED	BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1971 TO 1975
12 COURT OF EXAMINERS IN HOMOEOPATHY	FELLOW OF THE COURT OF EXAMINERS IN HOMOEOPATHY	F.C.E.H.	IN MAY, 1958 ONLY
12 A MAHARASHTRA COUNCIL OF HOMOEOPATHY	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S.	FROM SEPT., 1988 ONWARDS
(a) HOMOEOPATHIC MEDICAL COLLEGE, KRAYGACH	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S.	FROM SEPT., 1988 ONWARDS

(6)

DAKSHIN KESARI MUNI
MISHRILALJI HOMOEOPATHIC
MEDICAL COLLEGE, AURANGABAD

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM SEPT., 1988 ONWARDS

(cc)

SRI JANATA HOMOEOPATHIC
MEDICAL COLLEGE, AKOLA

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM SEPT., 1988 ONWARDS

(cd)

T.S. HOMOEOPATHIC MEDICAL
COLLEGE, APRARATI

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM SEPT., 1988 ONWARDS

(e)

HOMOEOPATHIC MEDICAL COLLEGE,
AKOLA

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM SEPT., 1988 ONWARDS

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(A)

RAJRISHI CHATARPATI SAHU
HOMOEOPATHIC MEDICAL COLLEGE,
ISLAMPUR.

DIPLOMA IN HOMOEOPATHIC
MEDICAL AND SURGERY

D.H.M.S

FROM SEPT., 1938 ONWARDS

(B)

P.C.HOMOEOPATHIC MEDICAL
COLLEGE, CHANDRAPUR.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM SEPT., 1938 ONWARDS

(C)

HOMOEOPATHIC MEDICAL COLLEGE,
NAGPUR.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM SEPT., 1938 ONWARDS

(D)

BHAGWAN HOMOEOPATHIC MEDICAL
COLLEGE, AURANGABAD.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM SEPT., 1938 ONWARDS

(j)	HOMOEOPATHIC MEDICAL COLLEGE, CHANDWAD.	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S	FROM SEPT., 1988 onwards
(k)	D.S.HOMOEOPATHIC MEDICAL COLLEGE, PUNE	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S	FROM SEPT., 1988 onwards
12B	UNIVERSITY OF PUNE	(I) BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY(DIRECT)	(I) B.H.M.S.(DIRECT)	(I) UPTO 1992.
(a)	D.S. HOMOEOPATHIC MEDICAL COLLEGE, PUNE	(II) BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY (GRADED DEGREE)	(II) B.H.M.S (GRADED DEGREE)	(II) UPTO 1992.

ORISSA

13. ORISSA BOARD OF HOMOEOPATHIC
MEDICINE, BHUBANESHWAR.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S.

FROM 1972 ONWARDS

13A UTKAL UNIVERSITY, VANI VIHAR
BHUBANESHWAR.

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1961 ONWARDS

13B BERNAMPUR UNIVERSITY
BERNAMPUR

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

M.B.S.*
B.N.M.S.

FROM 1983 ONWARDS

RAJASTHAN

13C RAJASTHAN HOMOEOPATHIC
MEDICAL COLLEGE AND HOSPITAL,
JAIPUR.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S.

FROM 1969 TO 1973

13D(1) RAJASTHAN BOARD OF HOMOEOPATHIC MEDICINE, JAIPUR.	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S.	FROM 1979 ONWARDS
(2) RAJASTHAN BOARD OF HOMOEOPATHIC MEDICINE, JAIPUR.	DIPLOMA IN HOMOEOPATHIC MEDICINE AND SURGERY	D.H.M.S. (C.C.H. REGULATIONS)	FROM 1988 ONWARDS
(3) RAJASTHAN BOARD OF HOMOEOPATHIC MEDICINE, JAIPUR.	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY (GRADED)	B.H.M.S. (GRADED)	FROM 1984 TO 1988
(4) DR. M.P.K. RAJASTHAN HOMOEOPATHIC MEDICAL COLLEGE, JAIPUR.	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY (GRADED)	B.H.M.S. (GRADED)	FROM 1984 TO 1988
(5) Y.P.S.M. HOMOEOPATHIC MEDICAL COLLEGE, ALWAR.	BACHELOR IN HOMOEOPATHIC MEDICINE AND SURGERY (GRADED)	B.H.M.S. (GRADED)	FROM 1984 TO 1988
13DD - UNIVERSITY OF RAJASTHAN	BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1950 TO 1993
DR. M.P.K. RAJASTHAN HOMOEOPATHY MEDICAL COLLEGE.	BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY	B.H.M.S.	FROM 1990 ONWARD

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TAMIL NADU

13E TAMIL NADU HOMOEOPATHIC
COUNCIL, MADRASDIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

DURING 1973-74

13F DIRECTOR OF GOVT. EXAMINATION,
MADRAS, TAMIL NADU.DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM 1978 ONWARDS

13G TAMIL NADU HOMOEOPATHIC
COUNCIL, MADRASDIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM 1988 ONWARDS

(A) WHITE MEMORIAL HOMOEOPATHIC
MEDICAL COLLEGE, ATTORDIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S

FROM 1988 ONWARDS

MADRAS KAMRAJ
UNIVERSITYBACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S

FROM AUGUST 1992
ONWARDS(A) GOVT. HOMOEOPATHIC BACHELOR IN HOMOEOPATHIC
MEDICAL COLLEGE
THIRUVANGALAM

B.H.M.S

FROM AUGUST 1992
ONWARDS

UTTAR PRADESH

14. STATE BOARD OF HOMOEOPATHIC
MEDICINE, U.P., LUCKNOW.

GRADUATE OF HOMOEOPATHIC
MEDICINE AND SURGERY

G.H.M.S

IN 1961 TO 1963

BACHELOR OF MEDICINE AND
SURGERY

B.M.S.

FROM 1958 TO 1960
AND FROM 1970 ONWARDS

CERTIFICATE OF HOMOEOPATHIC
PRACTICE

C.H.P.

15. AGRA UNIVERSITY, AGRA

GRADUATE OF HOMOEOPATHIC
MEDICINE AND SURGERY

G.H.M.S

FROM 1965 TO 1967

15A AGRA UNIVERSITY, AGRA

BACHELOR OF MEDICINE AND
SURGERY

B.M.S.

FROM 1981 ONWARDS

15B AGRA UNIVERSITY, AGRA

BACHELOR OF HOMOEOPATHIC
MEDICINE AND SURGERY

B.H.M.S.

FROM 1986 TO 1992

* The year 1982 was substituted with 1981 Vide Govt. of India's Notification No. V.27021/6/82-Homsec Dated 11-9-89.

16. KANPUR UNIVERSITY, KANPUR

GRADUATE OF HOMEOPATHIC
MEDICINE AND SURGERY

G.H.M.D.

FROM 1947 onwards

16A KANPUR UNIVERSITY

BACHELOR OF MEDICINE
AND SURGERY

B.M.S.

FROM 1975 onwards

17. NATIONAL HOMEOPATHIC MEDICAL
COLLEGE AND HOSPITAL, LUCKNOW

M.L.M.S.

FROM 1923 TO 1924

M.M.D.

FROM 1923 TO 1942

H.M.S.

FROM 1924 TO 1947

B.M.S.

FROM 1923 TO 1927

18. HOMEOPATHIC MEDICAL COLLEGE,
LUCKNOW.

H.M.D.

FROM 1921 TO 1923

WEST BENGAL

- 19- THE COUNCIL OF HOMOEOPATHIC MEDICINE, WEST BENGAL
DIPLOMA IN MEDICINE AND SURGERY
D.H.S.
FROM 1965 ONWARDS
20. GENERAL COUNCIL AND STATE FACULTY OF HOMOEOPATHIC MEDICINE, WEST BENGAL
DIPLOMA IN MEDICINE AND SURGERY
D.H.S.
FROM 1943 TO 1964
21. CALCUTTA HOMOEOPATHIC MEDICAL COLLEGE, CALCUTTA
BACHELOR OF HOMOEOPATHIC MEDICINE
H.M.B.
UPTO 1936
BACHELOR OF MEDICINE AND BACHELOR OF SURGERY
B.M.B.S.
FROM 1936 TO 1942
22. BENGAL ALEN HOMOEOPATHIC MEDICAL COLLEGE, CALCUTTA
BACHELOR OF HOMOEOPATHIC MEDICINE AND SURGERY
B.H.M.S.
UPTO 1942
MASTER OF HOMOEOPATHIC MEDICINE AND SURGERY
M.H.M.S.
UPTO 1942
LICENTATE IN HOMOEOPATHIC MEDICINE AND SURGERY
L.H.M.S.
UPTO 1942

1	2	3	4
23.	DUNHAM HOMOEOPATHIC MEDICAL COLLEGE, CALCUTTA.	MEMBER OF DUNHAM COLLEGE OF HOMOEOPATHY	M.D.C.H. UPTO 1942
24.	ASHUTOSH HOMOEOPATHIC MEDICAL COLLEGE, CALCUTTA.	PRACTITIONER OF RATIONAL SYSTEM OF MEDICINE PRACTITIONER OF HEALING ART	P.R.S.M. UPTO 1942 P.H.A. UPTO 1942
25.	HERRING HOMOEOPATHIC MEDICAL COLLEGE, CALCUTTA.	LICENTATE OF THE RATIONAL HOMOEOPATHIC SOCIETY	L.R.H.S. UPTO 1942
26.	REGULAR HOMOEOPATHIC MEDICAL COLLEGE, CALCUTTA.	LICENTATE IN HOMOEOPATHIC MEDICINE AND SURGERY	H.L.M.S. UPTO 1942
27.	CENTRAL HOMOEOPATHIC COLLEGE, CALCUTTA.	H.L.M.S. 1910 H.M.B. 1910

B. BENGAL HOMOEOPATHIC MEDICAL
COLLEGE, CALCUTTA.

BACHELOR OF HOMOEOPATHIC MEDICINE

H.M.B.

UP TO 1942

29. NATIONAL INSTITUTE OF
HOMOEOPATHY, CALCUTTA.

DIPLOMA OF NATIONAL INSTITUTE
OF HOMOEOPATHY

DIPLOMA N.I.H.

FROM OCTOBER, 1979 onwards

29A THE COUNCIL OF HOMOEOPATHIC
MEDICINE, WEST BENGAL

BACHELOR OF MEDICINE
AND BACHELOR OF SURGERY

M.B.S. (HOM.)

1972 TO 1975

29B UNIVERSITY OF CALCUTTA

BACHELOR OF HOMOEOPATHIC MEDICINE
AND SURGERY

B.H.M.S.

FROM 1984 TO 1991

PUNJAB

30. COUNCIL OF HOMOEOPATHIC
SYSTEM OF MEDICINE, PUNJAB.

DIPLOMA IN HOMOEOPATHIC
MEDICINE AND SURGERY

D.H.M.S.

FROM 1978 onwards

* The year 1988 was substituted with 1991 in the Govt. of India's Notification No. V.2702/11/88-Homoeo Dated 5-3-92

THE THIRD SCHEDULE
(See Section 14)
Qualifications Granted by Medical Institution Outside India

1 Name of University Board or Medical Institution	2 Recognised Medical Qualification	3 Abbreviation for registration	4 Remarks
1. FACULTY OF HOMOEOPATHY, LONDON	DIPLOMA OF THE FACULTY OF HOMOEOPATHY	D.F. HOM.	-
2. FACULTY OF HOMOEOPATHY, LONDON	MEMBERS OF THE FACULTY OF HOMOEOPATHY	M.F. HOM.	
3. FACULTY OF HOMOEOPATHY, LONDON	FELLOW OF THE FACULTY OF HOMOEOPATHY	F.F. HOM.	



Homoeopathic Practitioners
(Professional Conduct, Etiquette & Code of Ethics)
Regulations

(Approved by Central Government)



CENTRAL COUNCIL OF HOMOEOPATHY

10, Community Centre, Basant Lok, Vasant Vihar, New Delhi - 110057

1982

105-251

(Approved by the Central Government *vide* Ministry of Health & Family Welfare letter No. V. 27021/7/81—Homoeo. dated the 12th August, 1981 and published by the Central Council of Homoeopathy *vide* Notification No. 2 in Part III Section 4 of the Gazette of India Extraordinary dated the 16th March, 1982.)

C.C.H. Pub. No. 1.—16-3-82—10,000

Central Council of Homoeopathy

REGULATIONS

In exercise of the powers conferred by clause (f) of section 33 read with section 24 of the Homoeopathy Central Council Act, 1973 (59 of 1973), the Central Council of Homoeopathy, with the previous sanction of the Central Government, hereby makes the following regulations, namely :-

1. These regulations may be called the **Homoeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982.**

I. DECLARATION AND OATH

2. (a) At the time of registration, each applicant shall submit the following declaration and oath read and signed by him to the Registrar concerned attested by the Registrar himself or by a registered practitioner of Homoeopathy :—

- (1) I solemnly pledge myself to consecrate my life to the service of humanity.
- (2) Even under threat, I will not use my medical knowledge contrary to the laws of humanity.
- (3) I will maintain the utmost respect for human life.
- (4) I will not permit considerations of religion, nationality, race, political beliefs or social standing to intervene between my duty and my patient.
- (5) I will practise my profession with conscience and dignity in accordance with the principles of Homoeopathy and/or in accordance with the principles of biochemic system of medicine (tissue remedies).
- (6) The health of my patient shall be my first consideration.
- (7) I will respect the secrets which are confided to me.
- (8) I will give to my teachers the respect and gratitude which is their due.

- (9) I will maintain by all means in my power the honour and noble traditions of medical profession.
- (10) My colleagues will be my brothers and sisters.
- (11) I make these promises solemnly, freely and upon my honour.

(b) **Hahnemannian Oath**

"On my honour I swear that I shall practise the teachings of Homoeopathy, perform my duty, render justice to my patients and help the sick whosoever comes to me for treatment.

May the teachings of master Hahnemann inspire me and may I have the strength for fulfilment of my mission."

II. GENERAL PRINCIPLES

3. Character of Medical Practitioner

The primary object of the medical profession is to render service to humanity with full respect for the dignity of man; financial reward is a subordinate consideration. Whosoever chooses this profession assumes the obligation to conduct himself in accordance with its ideals. A practitioner of Homoeopathy shall be an upright man, instructed in the art of healing. He shall keep himself pure in character and be diligent in caring for the sick. He shall be modest, sober, patient and prompt and do his duty without anxiety, and shall be pious and conduct himself with propriety in his profession and in all the actions of his life.

4. Standards of Character and Morals

The medical profession expects from its members the highest level of character and morals, and every practitioner of Homoeopathy owes to the profession and to the public alike a duty to attain such a level. It shall be incumbent on a practitioner of Homoeopathy to be temperate in all matters, for the practice of medicine requires unremitting exercise of a clear and vigorous mind.

5. Practitioner's Responsibility

A practitioner of Homoeopathy shall merit the confidence of patients entrusted to his care, rendering to each full measure of service and devotion. The honoured ideals of the medical profession imply that the responsibilities of a practitioner of Homoeopathy extend not only to individuals but also to the entire society.

6. Advertising

(1) Solicitation of patients directly or indirectly by a practitioner of Homoeopathy either personally or by advertisement in the newspapers, by placards or by the distribution of circular cards or handbills is unethical. A practitioner of Homoeopathy shall not make use of, or permit others to make use of, him or his name as a subject of any form or manner of advertising or publicity through lay channels which shall be of such a character as to invite attention to him or to his professional position or skill or as would ordinarily result in his self-aggrandisement provided that a practitioner of Homoeopathy is permitted formal announcement in press about the following matters, namely :—

- i) the starting of his practice;
- ii) change of the type of practice;
- iii) change of address;
- iv) temporary absence from duty;
- v) resumption of practice;
- vi) succeeding to another's practice.

(2) He shall further not advertise himself directly or indirectly through price lists or publicity materials of manufacturing firms or traders with whom he may be connected in any capacity, nor shall he publish cases, operations or letters of thanks from patients in non-professional newspapers or journals provided it shall be permissible for him to publish his name in connection with a prospectus or a director's or a technical expert's report.

7. Payment of Professional Service

(1) A practitioner of Homoeopathy engaged in the practice of medicine shall limit the sources of his income to fees received from professional activities for services rendered to the patient. Remuneration received for such services shall be in the form and amount specifically announced to the patient at the time the service is rendered; in all other cases he shall deem it a point of honour to adhere to the compensation for professional services prevailing in the community in which he practices.

(2) Fees are reducible at the discretion of the practitioner of Homoeopathy and he shall always recognise poverty as presenting valid claims for gratuitous services.

(3) It shall be unethical to enter into a contract of "no cure no payment".

8. Rebates and Commission

A practitioner of Homoeopathy shall not give, solicit or receive, nor shall he offer to give, solicit or receive, any gift, gratuity, commission or bonus in consideration for the referring, recommending or procuring of any patient for medical, surgical or other treatment nor shall he receive any commission or other benefit from a professional colleague, trader of appliances, dentist or an oculist.

III. DUTIES OF HOMOEOPATHIC PRACTITIONERS TO THEIR PATIENTS

9. Obligations to the Sick

Though a practitioner of Homoeopathy is not bound to treat each and every one asking for his services except in emergencies, he shall, for the sake of humanity and the noble traditions of the profession, not only be ever ready to respond to the calls of the sick and the injured, but shall be mindful of the high character of his mission and the responsibility he incurs in the discharge of his professional duties.

10. Patient not be Neglected

(1) A practitioner of Homoeopathy is free to choose whom he will serve provided he shall respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service.

(2) Once having undertaken a case, a practitioner of Homoeopathy shall not neglect the patient nor shall he withdraw from the case without giving notice to the patient, his relatives or his responsible friends sufficiently long in advance of his withdrawal to allow them time to secure another practitioner.

11. Termination of Service

(a) The following shall be valid reasons for his withdrawal :-

- (1) where he finds another practitioner in attendance;
- (2) where remedies other than those prescribed by him are being used;
- (3) where his remedies and instructions are refused;
- (4) where he is convinced that illness is an imposture and that he is being made a party to a false pretence;

(5) where the patient persists in the use of opium, alcohol, chloral or similar intoxicating drugs against medical advice;

(6) where complete information concerning the facts and circumstances of the case are not supplied by the patient or his relatives.

(b) The discovery that the malady is incurable is no excuse to discontinue attendance so long as the patient desired his services.

12. Acts of Negligence

(1) No practitioner of Homoeopathy shall wilfully commit an act of negligence that may deprive his patient of necessary medical care.

(2) A practitioner of Homoeopathy is expected to render that diligence and skill in services as would be expected of another practitioner of Homoeopathy with similar qualifications, experience and attainments.

(3) His acts of commission or omission shall not be judged by any non-Homoeopathic standards of professional service expected of him but by those standards as are expected from a Homoeopath of his training, standing and experience.

(4) A practitioner of Homoeopathy shall use any drug prepared according to Homoeopathic principles and adopt other necessary measures as required.

13. Behaviour towards Patients

The demeanour of a practitioner of Homoeopathy towards his patients shall always be courteous, sympathetic, friendly and helpful. Every patient shall be treated with attention and consideration.

14. Visits

A practitioner of Homoeopathy shall endeavour to add to the comfort of the sick by making his visits at the hour indicated to the patients.

15. Prognosis

(1) The practitioner of Homoeopathy shall neither exaggerate nor minimize the gravity of a patient's condition. He shall ensure that the patient, his relatives or responsible friends have such knowledge of the patient's condition as will serve the best interest of the patient and his family.

(2) In cases of dangerous manifestations, he shall not fail to give timely notice to the family or friends of the patient and also to the patient when necessary.

16. Patience, Delicacy & Secrecy

Patience and delicacy shall characterize the attitude of a practitioner of Homoeopathy. Confidences concerning individual or domestic life entrusted by patients to a practitioner and defects in the disposition or character of patients observed during the medical attendance shall not be revealed by him to anyone unless their revelation is required by the laws of the State.

IV. DUTIES OF PRACTITIONERS TO THE PROFESSION

17. Upholding honour of Profession

A practitioner of Homoeopathy shall, at all times, uphold the dignity and honour of this profession.

18. Membership of Medical Society

For the advancement of his profession a practitioner of Homoeopathy may affiliate himself with Medical Societies and contribute his time, energy and means to their progress so that they may better represent and promote the ideals of the profession.

19. Exposure of Unethical Conduct

A practitioner of Homoeopathy shall expose, without fear or favour, the incompetent, corrupt, dishonest or unethical conduct on the part of any member of the profession.

20. Association with Unregistered Persons

A practitioner of Homoeopathy shall not associate himself professionally with any body or society of unregistered practitioners of Homoeopathy.

21. Appointment of Substitutes

Whenever a practitioner of Homoeopathy requests another to attend to his patients during his temporary absence from practice, professional courtesy requires the acceptance of such appointment by the latter, if it is consistent with his other duties. The practitioner of Homoeopathy acting under such an appointment shall give the utmost consideration to the interests and reputa-

tion of the absent practitioner. He shall not charge either the patient or the absent practitioner of Homoeopathy for his services, except in the case of a special arrangement between them. All such patients shall be restored to the care of the absent practitioner of Homoeopathy upon his return.

22. Charges for service to Practitioners of Homoeopathy

(1) There is no rule that a practitioner of Homoeopathy shall not charge another practitioner of Homoeopathy for his services, but a practitioner of Homoeopathy shall consider it a pleasure and privilege to render gratuitous service to his professional brother and his dependents, if they are in his vicinity or to a medical student.

(2) When a practitioner of Homoeopathy is called from a distance to attend or advise another practitioner of Homoeopathy or his dependents reimbursement shall be made for travelling and other incidental expenses.

23. (1) The practitioner of Homoeopathy called in an emergency to visit a patient under the care of another practitioner of Homoeopathy shall, when the emergency is over, retire in favour of the latter; but he shall be entitled to charge the patient for his services.

(2) When a practitioner of Homoeopathy is consulted at his own residence, it is not necessary for him to enquire of the patient if he is under the care of another practitioner of Homoeopathy.

(3) When a consulting practitioner of Homoeopathy sees a patient at the request of another practitioner of Homoeopathy, it shall be his duty to write a letter stating his opinion of the case with the mode of treatment he thinks is required to be adopted.

24. Engagement for an Obstetrics Case

(1) If a practitioner of Homoeopathy is engaged to attend to a woman during her confinement, he shall do so. Refusal to do so on an excuse of any other engagement shall not be considered ethical except when he is already engaged on a similar or other serious case.

(2) When a practitioner of Homoeopathy who has been engaged to attend on an obstetrics case is absent and another is sent for and delivery is accomplished, the acting practitioner of Homoeopathy shall be entitled to his professional

fees; provided he shall secure the patient's consent to withdraw on the arrival of the practitioner of Homoeopathy already engaged.

25. When it becomes the duty of a practitioner of Homoeopathy occupying an official position to see and report upon an illness or injury, he shall communicate to the practitioner of Homoeopathy in attendance so as to give him an option of being present. The medical officer shall avoid remarks upon the diagnosis or the treatment that has been adopted.

V. DUTIES OF PRACTITIONERS IN CONSULTATION

26. Consultation shall be Encouraged

In cases of serious illness, especially in doubtful or difficult conditions the practitioner of Homoeopathy shall request consultation. He shall also do so in perplexing illness, in therapeutic abortions, in the treatment of a woman who had procured criminal abortion, in suspected cases of poisoning, or when desired by the patient or his representative.

27. Punctuality in Consultation

Utmost punctuality shall be observed by a practitioner of Homoeopathy in meeting for consultation. If the consultant practitioner of Homoeopathy does not arrive within a reasonable time such as a quarter of an hour after the appointed time, the first practitioner of Homoeopathy shall be at liberty to see the patient alone provided he shall leave his conclusion in writing in a closed envelope.

28. Patient referred to another Physician

When a patient is referred to another practitioner of Homoeopathy by the attending practitioner of Homoeopathy, a statement of the case shall be given to the latter practitioner of Homoeopathy. The latter practitioner of Homoeopathy shall communicate his opinion in writing in a closed cover direct to the attending practitioner of Homoeopathy.

29. Consultation for Patient's Benefit

In every consultation, the benefit to the patient shall be of first importance. All practitioners of Homoeopathy interested in the case shall be candid with a member of the patient's family or responsible friends.

30. Conduct in Consultation

(1) In consultations, there shall be no place for insincerity, rivalry or envy. All due respect shall be shown to the practitioner of Homoeopathy in charge of case and no statement or remarks shall be made which would impair the confidence reposed in him by the patient. For this purpose, no discussion shall be carried on in the presence of the patient or his representatives.

(2) All statements of the case to the patient or his representatives shall take place in the presence of all the practitioners consulting, except as otherwise agreed; the announcement of the opinion to the patient or his relations or friends shall rest with the attending practitioner of Homoeopathy.

(3) Differences of opinion shall not be divulged unnecessarily; provided when there is an irreconcilable difference of opinion, the circumstances shall be frankly and impartially explained to the patient or his friends.

(4) It shall be open to them to seek further advice if they so desire.

31. Cessation of Consultation

Attendance of the consulting practitioner of Homoeopathy shall cease when the consultation is concluded, unless another appointment is arranged by the attending practitioner of Homoeopathy.

32. Treatment after Consultation

(1) No decision shall restrain the attending practitioner of Homoeopathy from making such subsequent variations in the treatment as any unexpected change may require; provided at the next consultation, reasons for variation are stated.

(2) The same privilege, with its obligations, belongs to the consultant when sent for in an emergency during the absence of the attending practitioner of Homoeopathy. The attending practitioner of Homoeopathy may prescribe at any time for the patient, but the consultant, only in case of emergency.

33. Consultant not to take Charge of the Case

(1) When a practitioner of Homoeopathy has been called as a Consultant

none but the rarest and most exceptional circumstances shall justify the consultant taking charge of the case.

(2) He must not do so merely on the solicitation of the patient or his friends.

34. **Bar against Consulting Non-registered Practitioner**
No practitioner of Homoeopathy shall have consultation with any practitioner of Homoeopathy who is not registered.

VI. DUTIES OF PRACTITIONERS TO THE PUBLIC

35. Practitioners as Citizens

Practitioners of Homoeopathy as good citizens, possessed of special training, shall advise concerning the health of the community wherein they dwell. They shall play their part in enforcing the laws of the community and in sustaining the institutions that advance the interest of humanity. They shall cooperate with the authorities in the observance and enforcement of sanitary laws and regulations and shall observe the provisions of all laws relating to Drugs, Poisons and Pharmacy made for the protection and promotion of public health.

36. Public Health

Practitioners of Homoeopathy engaged in public health work, shall enlighten the public concerning quarantine regulations and measures for the prevention of epidemic and communicable diseases. At all times the practitioners shall notify the constituted public health authorities of every case of communicable disease under their care, in accordance with the laws, rules and regulations of the health authorities. When an epidemic prevails, the practitioner of Homoeopathy shall continue his labours without regard to the risk to his own health.

37. Dispensing

A practitioner of Homoeopathy has a right to prepare and dispense his own prescription.

VII. PROFESSIONAL MISCONDUCT

38. The following actions shall constitute professional misconduct :

- 1) Committing adultery or improper conduct with a patient, or maintaining an improper association with a patient;
- 2) Conviction by a Court of Law for offences involving moral turpitude;
- 3) Signing of or giving by any practitioner of Homoeopathy under his name and authority any certificate, report or document of kindred character which is untrue, misleading or improper;
- 4) Contravention of the provisions of laws relating to Drugs and regulations made thereunder;
- 5) Selling a drug or poison regulated by law to the public or his patients save as provided by that law.
- 6) Performing or enabling an unqualified person to perform an abortion or any illegal operation for which there is no medical, surgical or psychological indication;
- 7) Issue of certificates in Homoeopathy to unqualified or non-medical persons provided that this shall not apply so as to restrict the proper training and instruction of legitimate employees of doctors, midwives, dispensers, surgical attendants or skilled mechanical and technical assistants under the personal supervision of practitioners of Homoeopathy.
- 8) Affixing a signboard on a chemist's shop or in places where the practitioner of Homoeopathy does not reside or work;
- 9) Disclosing the secrets of a patient that have been learnt in the exercise of profession, except in a Court of law under orders of the presiding judge.
- 10) Publishing photographs or case-reports of patients in any medical or other journal in a manner by which their identity could be made out without their permission, provided that if the identity of patients is not disclosed, their consent is not necessary;

- 11) Public exhibition of the scale of fees provided that the same may be displayed in the physician's consulting or waiting room;
 - 12) Using of touts or agents for procuring patients;
 - 13) Claiming to be a specialist without having put on substantial number of years of study and experience in the subject concerned or without possessing a special qualification in the branch concerned.
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INDIAN LUNACY ACT

[ACT No IV of 1912]



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2537

INDIAN LUNACY ACT

[ACT No-IV of 1912]

An Act to consolidate and amend the law relating to Lunacy-

Whereas it is expedient to consolidate and amend the law relating to lunacy: It is hereby enacted as follows:—

PART I Preliminary

CHAPTER I

1. Short title and extent.—(1) This Act may be called the Indian Lunacy Act, 1912.

(2) It extends to the whole of India.

2. Savings.—Nothing contained in Part II shall be deemed to affect the powers of any High Court over any person found to be a lunatic by inquisition, or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

3. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum or mental hospital for lunatics established or licensed by the Central Government or any State Government ;

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum together with any other charge specified in this behalf by the State Government in exercise of any power conferred upon it by this, Act ;

(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Metropolitan towns;

(4) "Criminal lunatic" means any person for whose detention in, or removal to an asylum, jail or other place of safe custody, an order has been made in accordance with the provisions of section 330 or sections 335 and 336 of the Code of Criminal Procedure, 1973 or of section 30 of the Prisoners Act, 1900, or of section 103A of the Indian Army Act, 1911;

(3A) "India" means the territory of India excluding the State of Jammu and Kashmir;

(5) "lunatic" means an idiot or a person of unsound mind ;

(6) "Magistrate" means a Metropolitan Magistrate, District Magistrate, Sub-divisional Magistrate, or a Magistrate of the first class specially empowered by the State Government to perform the functions of a Magistrate under this Act,;

- (7) "medical officer" means a gazetted medical officer in the service of the Government and includes a medical practitioner declared by general or special order of the State Government to be a medical officer for the purposes of this Act ;
- (8) "medical practitioner" means holder of a qualification to practice medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the State Government to be a medical practitioner for the purpose of this Act ;
- (9) "prescribed" means prescribed by this Act or by rule made thereunder ;
- (10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition ;
- (11) "relative" includes any person related by blood marriage or adoption ; and
- (12) "rule" means rule made under this Act,)

PART II

Reception, Care and Treatment of Lunatics

CHAPTER II Reception of Lunatics

4. Reception of persons in asylum.—(1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98 :

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception Order on Petition

5. Application for reception order.—(1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court : and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Metropolitan towns unless the State Government has, by notification in the official Gazette, declared such area as an area in which reception orders may be made.

6. Application by whom to be presented.—(1) Subject to the provisions of sub-section (3), the petition shall be presented by the husband or wife of the alleged lunatic or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented.

(2) If the petition is not so presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition shall contain a statement of the reasons why it is not so presented/and of the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner and the statement of prescribed particulars by the person making such statement.

7. Procedure upon petition for reception order.—(1) Upon the presentation of the petition, the Magistrate shall consider the allegation in the petition and the evidence of lunacy appearing by the certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless-for reasons to be recorded in writing, he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should

be given) for the consideration of the petition, and he may make such further or other inquiries of, or concerning, the alleged lunatic as he thinks fit.

8. Detention of lunatic pending enquiry.—Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the enquiry.

9. Consideration of petition.—The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

10. Order.—(1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception

order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

11. Further provisions as to reception orders on petition.—No reception order shall be made under section 7 or section 10, save -in the case of a lunatic who is dangerous and unfit to be at large, unless—

(a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

¹**[11-A. Power to appoint substitute for the person upon whose application a reception order has been made.**—(1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last-mentioned person shall be construed accordingly:

¹ Ins. by Act 2 of 1926.

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate notice should be given ; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date .or any subsequent date to which the proceeding may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution :

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the lunatic, unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an enquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person of whom it is intended,]

¹[11-B]. Reception order in case of lunatics from foreign States in India.— 1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in ²[India], the ³[Central Government] may, by notification in the ⁵[official Gazette], direct that reception orders may be made under this

Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the ⁴[State or States] within which such reception orders may be made.

(2) On publication of a notification under sub-section (1), the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely:

(a) any application for reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the ⁴[State Government] in this behalf ;

(b) the functions of the Magistrate shall be performed by such officer as the ⁴[State Government] may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions;

(c) for the purposes of Sees. 5 and 18(1), the expressions "medical officer" and "medical practitioner" shall include such person or class of persons as the ⁴[State Government] may specify in this behalf;

(d) the Magistrate may in his discretion extend the period prescribed by Sec. 19 within which the alleged lunatic must have been medically examined; and

(e) sections 6 (1), (2), (3), 11, ⁴[II-A] and 34 of the Act, shall not apply and with such other modifications, restrictions or adaptations as the ²[Central Government] may, by notification in the ² [official Gazette], direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order made under Sec. 7 or Sec. 10, as the case may be.

Reception Order otherwise than on Petition

12. Reception order in case of an European lunatic soldier, sailor or airman.—

When any European who is subject to the provisions of the ⁸[Army Act (44 & 45 Vict., c. 58)], ⁴[the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934 (34 of 1934)], ⁵[the Air Force Act] or the ⁶ [Indian Air Force Act, 1932 (14 of 1932)] has been declared a lunatic in accordance with the provisions of the military ⁴[naval] ⁷[or Air Force] regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, made a reception order under his hand for

the admission of the said lunatic into any asylum which has been duly authorized for the purpose by the ²[Central Government].

13. Powers and duties of police in respect of wandering or dangerous lunatics or lunatics cruelly treated or not under proper care and control. — (1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

14. Reception order in case of wandering and dangerous lunatics.—Whenever any person is brought before a Magistrate under the provision of sub-section (1) of Sec. 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other enquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum;

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement :

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

15. Order in case of lunatic cruelly treated or not under proper care and control.—

(1) If it appears to the Magistrate on the report of a police officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a

lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated and if such relative or other person willfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14 and upon being satisfied in the manner aforesaid that the person deemed to be a lunatic, is a lunatic and a proper person to be detained under care and treatment, may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum..

16. Detention of alleged lunatic, pending report by medical officer.—(1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate, from time to time, for the same purpose by order in writing, authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary :

Provided (hat no person shall be detained in accordance with the prisons of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

17. Commissioners of Police, etc. to act in the Metropolitan towns.—All acts which the Magistrate is authorised or required to do by section 14, 15 or 16 may be done in the Metropolitan towns by the Commissioners of Police and all duties which an officer in charge of a police station is authorised or required to perform, may be performed in any of the Metropolitan towns by an officer of the police force not below the rank of an Inspector.

Further provisions as to reception orders and medical certificates

18. Medical certificates.—(1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others, and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

19. Time and manner of medical examination of lunatic.—(1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. Authority for reception.—A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorized by him, or in the case of an order made upon petition, for the person authorized so to do by the person making the order to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order:

²Provided that no reception order shall continue to have effect—

(a) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein that period, or

² Ins by Act 32 of 1923.

(b) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

21. Copy of reception order to be sent to person in charge of asylum.—Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

22. Restriction as to asylums into which reception order may direct admission.—Subject to the provisions of Sec. 85, no Magistrate shall make a reception order for the admission of any lunatic into ³[any Government asylum] outside the ⁴[State] in which the Magistrate exercises jurisdiction.

23. Detention of lunatics pending removal to asylum.—When any reception order has been made under Sec. 7, 10, 14, or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Reception and detention of criminal lunatics

24. Reception and detention of criminal lunatics.—An order under section 330 or sections 335 and 336 of the Code of Criminal Procedure, 1973, or under section 30 of the Prisoners Act, 1900 or under section 145 of the Army Act, 1950 (46 of 1950), directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of a criminal lunatic shall be sufficient authority for the reception and detention of any person named therein in such asylum or any other asylum to which he may be lawfully transferred.

Reception after inquisition

25. Reception after inquisition.—A lunatic so found by inquisition may be admitted into any asylum—

- (1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court;
- (2) in the case of an inquisition under Chapter V, on an order made by the District Court.

26. Order for payment of cost of maintenance of lunatic.—(1) When any lunatic has been admitted into any asylum in accordance with the provisions of Sec. 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the

³ Subs. by A. O., 1937, for "any asylum established by Government."

⁴ Subs. by A. L. O., 1950.

lunatic of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead to making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate

27 Amendment of order or certificate.—If after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made in or defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

CHAPTER III

Care and Treatment

Visitors

28. **Appointment of visitors.**—(1) The 1[State Government] shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspect or-General of Prisons (where such office exists) shall be a visitor *ex-officio* of all the asylums within the limits of his jurisdiction.

29. **Monthly inspection by visitors.**—Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and broader therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

Comment

In England visitors in lunacy commonly referred to as "Chancery visitors" discharge, amongst other functions the duty of visiting lunatics so found by inquisition and also

persons not so found, but with reference to whom proceedings have been taken in lunacy.⁵

30. Inspection of criminal lunatics by Inspector-General or visitors.—(1) When any person is ⁶[detained] under the provisions of Sec. 466 or Sec. 471 of the Code of Criminal Procedure, 1898 (5 of 1898), ⁷[or under the provisions of Sec. 103-A of the Indian Army Act, 1911], the Inspector-General of Prisons, if such person is ⁶[detained] in a jail or the visitors of the asylum or any two of them, if he is "[detained], in an asylum, may visit him in order to ascertain his state of mind ; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid ; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is [detained].

(2) The ⁷[State Government] may empower the officer-in-charge of the jail in which such person may be ⁸[detained] to discharge all or any of the functions of the Inspector-General under sub-section (1).

Discharge of lunatics

31. Order of discharge from asylum by visitors.—(1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged :

Provided that no order under this sub-section shall be made in the case of a person detained under reception order under Sec. 12, or, in the case of a criminal lunatic, otherwise than as provided by Sec. 30 of the Prisoners Act, 1900 (3 of 1900).

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

32. Discharge of lunatics in other cases and of European military lunatics—(1) A lunatic detained in any asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum :

⁵ Halsbury's ~~LEGISLATION~~ Vol. 19, p. 467.

⁶ Subs. by Act 11 of 1923, for "confined".

⁷ Subs. by A. X O. 1950.

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer-in-charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in any asylum under a reception order made under Sec. 12 shall be detained therein until he is discharged therefrom in accordance with the military "[naval] ⁸[or air force] regulations in force for the time being or until the officer making the order applies for his transfer to the military ⁵⁸ [naval] ³[or air force] authorities in view to his removal to England.

(3) Whenever it appears to the officer-in-charge of an asylum that the discharge of a person therein detained under an order made under Sec. 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the general or other Officer Commanding the division, district, brigade or force, or other officer authorized to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with military naval or air force regulations in force for the time being.

33. Order of discharge on undertaking of relative for due care of the lunatic.—

When any relative or friend of a lunatic detained in any asylum under the provisions of Sees. 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

~~REPEALED BY THE BOMBAY ACT XV OF 1938~~

~~REPEALED BY THE BOMBAY ACT XV OF 1938~~—After Sec. 33, the following Sec. 33-A has been added by Bombay Act XV of 1938 3

"33-A. Temporary release of lunatics.—(1) When any relative or friend a lunatic detained in any asylum under the provisions of Sec. 7, or 17 is desirous that such lunatic shall be temporarily released and delivered over to his care and custody, he may make an application to the person in charge of the asylum, who s'll make an order for the

temporary release of such lunatic for a period not exceeding sixty days, unless for any reason, he considers that such release is undesirable and such lunatic shall thereupon be so released.

(2) No order under sub-section (1) for the temporary release of a lunatic detained under Sec. 7 or 10 shall be passed except on an application of the petitioner on whose petition such lunatic was detained or without the consent in writing of such petitioner :

Provided that, if in any such case, it appears to the person in charge of any asylum that such petitioner refuses, without sufficient reasons, to accord such consent, he shall refer the application made to him under sub-section (1), to the Magistrate who would have jurisdiction to detain such lunatic under Sec. 7 or 10 and such Magistrate may, after making such enquiry as he thinks fit, order the temporary release of such lunatic for the period specified in sub-section (1).

(3) Any order made for the release of a lunatic under sub-section (1) may, on the application of any relative or friend, at any time during the period of his release, be set aside, or varied by the Magistrate who would have jurisdiction to detain such lunatic in an asylum under Sec. 7, 10, 14, 15 or 17 on any ground other than the lunatic was not in a state of mind fit to be released at the time the order for his release was made under sub-section (1). If the order of release is so set aside, the lunatic shall be re-admitted and detained in the asylum.

(4) If a lunatic released under sub-section (1) or (2) is, at any time during the period of his release, found to be unmanageable or dangerous and unfit to be at large, the person who applied for his release may take the lunatic to the asylum, and such lunatic shall thereupon be re-admitted and detained in the asylum.

(5) If a lunatic released under sub-section (1) or (2) does not return to the asylum at the expiration of the period for which he was released and if no order for his discharge has been passed under Sec. 31, or Sec. 33 or if he is at any time during the period of his release, found to be unmanageable or dangerous or unfit to be at large and the person who applied for his release states by a written application to the person in charge of the asylum that he is unable to bring him to the asylum such lunatic shall be deemed to have escaped from the asylum and may at any time within one month after the expiration of the said period be retaken to and detained in the asylum in the manner provided in Sec.

36 :

Provided that such a person shall be deemed to be discharged if on or before the expiry of the period for which he was released, the Board of Visitors is satisfied either (a) as a

result of investigations conducted by the person in charge of the asylum concerned, or (6) on receipt of a certificate signed by a medical practitioner that the person may with safety be discharged."

Madras Amendment.—After Sec. 33, the following Sec. 33-A has been added by Madras Act XV of 1938 as amended by Madras Act 12 of 1943 ;

"33-A. Temporary order of discharge of lunatic in interests of his health. —If the person in charge of any asylum in which a lunatic is detained under the provisions of Sees 14, 15 or 17 is satisfied that in the interests of the in-health of the lunatic, it is necessary to discharge him temporarily, the person aforesaid may order such discharge for such period, as he may think fit, and subject to such conditions as the State Government may by rule prescribe."

34. Discharge of person subsequently found on inquisition not to be of unsound mind.—If any lunatic detained in an asylum on a inception order made under Sec. 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge lunatic from the asylum.

Removal of lunatic

35. Removal of lunatics and criminal lunatics.—(1) ¹[Any lunatic may, in accordance with any general or special order of the [State Government] be removed from any Government asylum to any other asylum within the State, or to any other asylum in any other ²[State], with the consent of the State Government of that State:

Provided that no lunatic admitted into an asylum a reception order made on petition shall be removed in accordance with the provisions of this subsection until notice of such intended removal has been given to the petitioner.

(2) The [State Government] may make such general or special order as [it] thinks fit directing the removal of any person for whose [detention] an order has been made under Sec. 466 or Sec. 471 of the Code of Criminal Procedure, 1898 (5 of 1898) [or under Sec. 103-A of the Indian Army Act, 1911 (8 of 19 J) [from the place where he is for the time being ⁵[detained] to any asylum, jail or other place of safe custody [in the State,] or to any asylum, jail or other place of safety, in any other [State] with the consent of the [State] Government of the [State].

Escape and re-capture.

36. Order to justify detention and re-capture after escape.— Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is , removed or discharged as authorized by law and in the case of escape may, by virtue of such order, be re-taken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum :

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape.

PART III
Judicial Inquisition as to Lunacy
CHAPTER IV
Proceedings in Lunacy in Presidency-towns
Inquisition

37. Jurisdiction in lunacy in Presidency-towns.—The courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay.

Comment

The High Court of Madras having jurisdiction under the Lunacy Act pursuant to Sec. 37 have made rules as provided by Sec. 61 of the Act in order to carry into effect the provisions of Chapter 4 of the Statute.

38. Court may order inquisition as to persons alleged to be insane.—(i) The Court may, upon application, by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be a lunatic, is of unsound mind and incapable of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

39. Application by whom to be made.—Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.

Comment

Proof of insanity.—The question of insanity requires a most careful examination and it is difficult to think that bare assertion by witnesses unsupported by any details of the

cause, the course and the treatment of the malady ought to be accepted as satisfactory proof.

40. Notice of time and place of inquisition.—(1) Notice shall be given to the alleged lunatic of the time and place at which it is propose to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

41. Powers of Court in respect of attendance and examination of lunatic.—(1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

(2) The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

42. Rules respecting attendance and examination of females alleged to be lunatic.—The attendance and examination of the alleged lunatic under the provisions of Sec. 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

Comments

Scope.—The section in terms refers only to the attendance and examination of the lunatic in Court but the principle contained in the said section would apply equally to her attendance and examination before a doctor.⁸

Inquiry—Scope of.—The mode of enquiry prescribed in Sees. 40, 41 and 42 is therefore a statutory prescription compelling obedience. These provisions serve great public interest and are necessary for an effective discharge of the duties vested in the Courts.*

43. Power to direct District Court to make inquisition in certain cases.— (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be ; and such District Court shall accordingly proceed to make 'such inquisition in the same manner as if the alleged lunatic were subject to its

jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

44. Amendment of finding of District Court if defective or insufficient in form.—If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form it may either amend the same or refer it back to the Court which made the inquisition to be amended.

45. Proceeding on finding of Court.—The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of Sec. 43 with such amendments as may be made under the provisions of Sec. 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in Sec. 12 of the Lunacy (Supreme Courts) Act, 1858 (34 of 1858),¹ immediately before the commencement of this Act.

Judicial powers over person and estate of lunatic

46. Custody of lunatics and management of their estates.—(1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

47. Powers of manager in respect of management of lunatic's estates.—The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist;

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, change or transfer by sale, gift, exchange or otherwise, any immoveable property of the lunatic ; or

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

48. Power to make order concerning any matter connected with the lunacy.—The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit.

Management and administration

49. Power to dispose of lunatic's property for certain purposes.—The Court may, if it appears to be just or for the lunatic's benefit, order that any property, moveable or immovable, of the lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of arising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely :

- (1) the payment of the lunatic's debts or engagements ;
- (2) the discharge of any incumbrance on his property ;
- (3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit ;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto ;
- (5) the payment of the costs of any enquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

50. Execution of conveyances and powers by manager under order of Court.—(1)

The manager of the lunatic's estate shall, in the name of and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian:

51. Court may order performance of contract.—Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfillment of the contract as it shall think proper.

52. Dissolution and disposal of property of partnership on a member becoming lunatic.—(1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other particulars, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership as the Court shall think proper.

53. Disposal of business premises.—Where a lunatic has been engaged in business the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

54. Manager may dispose of lease.—Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court surrender assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

55. Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.—If a lunatic is possessed of any immoveable property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the "[State] wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management:

Provided that—

- (1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any

Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immoveable property which so subjects the proprietor as aforesaid ;

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct;

(3) nothing contained in this section shall effect the powers given to the High Court by Sees. 49, 50 and 51 or (except so far as relates to the management of the said immoveable property which so subjects the proprietor as aforesaid) the powers given by any other section.

56 Power to apply property for lunatic's maintenance without appointing manager in certain cases.—(1) If it appears to the Court having regard to the situation and

condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

Vesting orders

57. Power to order transfer of stock belonging to lunatic in certain cases.—Where any stock or Government securities or any share in a company (transferable within [India] or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same and to receive and pay over the dividends in such manner as the Court directs.

58, Power to order transfer of stock of lunatic residing out of India and the United Kingdom.—Where any such stock or Government securities or share in a company is or



are standing in the name of, or vested in, any person residing out of * [India] and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General

59. Power to apply property for lunatics maintenance in case of temporary lunatic.—If it appears to the Court that the unsoundness of mind of a lunatic is in its nature, temporary and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under Sec. 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

60. Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.—(1) When any person has been found under this Chapter to be of unsound mind and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic ; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease, or to be set aside on such terms and conditions as to the Court may deem fit.

61. Power of Court to make rules.—The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunatic.

CHAPTER V

Proceedings in Lunacy outside Presidency-towns

Inquisition

Comment

All orders passed under Chapter V are appealable.—There is no provision in Chapter V, Lunacy Act, for the removal of a guardian or manager of a lunatic when the

lunatic dies. In this respect, the provisions of the Lunatic Act resemble those of the Guardians and Wards Act. But a manager can continue only so long as the lunatic is alive. When the lunatic dies, the lunacy jurisdiction comes to an end and the Court must pass some order about the property in the hands of the manager. If the title to the property be in dispute, the Court may either decide the issue or ask the manager to file an inter-pleader suit. But whichever course is followed, the order of the Court will be referable to the jurisdiction exercised over the property of the lunatic under Chapter V and the order must be deemed to be an order under that Chapter. Under Sec. 83 of the Lunacy Act and appeal lies against an order made under Chapter Y of the Act. Section 83 of the Lunacy Act is different from Sec 47, Guardians and Wards Act. In the latter Act only orders passed under certain sections of the Act are appealable. Section 83 of the Lunacy Act, does not enumerate the order which alone are appealable but makes all orders passed under Chapter Y appealable to the High Courts.¹

62. Power of District Court to institute inquisition as to person alleged to be lunatic.—Whenever any person not subject to the jurisdiction of any of the courts mentioned in Sec. 37 is possessed of property and is alleged to be a lunatic the District Court, within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

63. Application by whom to be made.—(1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841 (19 of 1841)² (hereinafter referred to as the Curator), or by the Government pleader, as defined in the Code of Civil Procedure, 1908 (5 of 1908), or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the District in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in any State where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be by Collector on behalf of the Court of Wards.

64. Regulation of proceedings of District Court.—The provisions of Sees. 40, 41 and 42 shall regulate proceedings of the District Court with regard to the matters to which they relate.

65. Inquisition by District Court and finding thereon.—(1) The District Court, if it thinks fit may appoint two or more persons to act as assessor to the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

66. Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.—(1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall

67. Custody of lunatics and management of their estates.—(1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

68. Court of Wards to be authorized in certain cases to take charge of estate of lunatic—If the estate of a lunatic so found or any part thereof consists of property which, by the law for time being in force, subjects the proprietor if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

69. Power to direct Collector to take charge of person and estate of lunatic in certain cases. — (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic :

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

70. Control over proceedings of Collector.—All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the ²[State] Government or of such authority as it may appoint in this behalf.

71 Power to District Court to appoint guardian and manager and take security from manager.—(1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person;

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under Sees. 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

72. Restriction on appointment of legal heir of lunatic to be guardian of his person.—The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector as the case may be for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

73. Remuneration of managers and guardians.—A guardian of the person of a lunatic or a manager of his estate appointed under this chapter shall be

74. Duties of guardian.—(1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

75. Powers of managers.—(1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic :

Provided that no manager so appointed shall without the permission of the Court—(a) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic,

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may deem necessary in the interests of the lunatic.

76. Manager to furnish inventory and annual accounts.—(1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector annually within three months of the close of the year property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

77. Proceeding if accuracy of inventory of accounts is impugned—If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

78. Payment into public treasury and investment of proceeds of estate.—All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate and shall be invested from time to time in any of the securities specified in Sec. 20 of the Indian Trusts Act, 1882 (2 of 1882), unless, the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

79. Relative may sue for an account.—Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

80. Removal of managers and guardians. -(1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor for all money received or disbursed by him.

81. Penalty on manager for refusing to deliver accounts or property.—The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

82. Proceedings in lunacy to cease or to be set aside if the court finds that the unsoundness of mind has ceased.-(1) When any person has been found under this chapter to be of unsound mind and it is subsequently shown to me District Court that there is reason to believe that such unsoundness of mind ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry, shall, as far as may be, be conducted in the same manner as if prescribed in this chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind ceased, me Court shall order all

proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

83. Appeals.—An appeal shall lie to the High Court from any order made by a District Court, under this chapter.

PART IV Miscellaneous CHAPTER VI

Establishment of Asylums

84. State Government may establish or licence the establishment of asylums.—The "[State] Government may establish or licence the establishment of asylums at such places as it thinks fit ³[if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases.]

84-A. Power to cancel licence if provision for curative treatment is insufficient.—If in any licensed asylum no provision for curative treatment has been made, or the State Government considers that the provision made is insufficient, the State Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the State Government may revoke licence.]

85. Provision for admission of lunatics in asylums outside a State.—The Magistrates or courts exercising jurisdiction in any State may send lunatics or any class of lunatics to any asylum situate in any other State in accordance with any general or special order of the State Government made in that behalf with the consent of the State Government of such other State.]

CHAPTER VII Expenses of Lunatics

86. Payment of cost of maintenance in licensed asylums in certain cases by Government.—(1) When any lunatic is admitted to a licensed asylum under a reception order or an order under Sec. 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer-in-charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under Sec. 12.

87. Application of property in the possession of a lunatic found wandering.—Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

88. Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.—

If a lunatic detained in an asylum on a reception order made under Sec. 14, Sec. 15 or Sec. 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

Bombay Amendment.—In the State of Bombay, the following amendments have been made in Sec. 88 by Bombay Act XV of 1936 j

- (i) after the words "has the means to maintain him", the words "or if any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force", shall be inserted ;
- (ii) the words "or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force", shall be omitted;
- (iii) after the word "resides" the words "or the local authority liable for the cost of maintenance is constituted" shall be inserted ;
- (iv) at the end of the original note, the following shall be added, namely:
"or by local authority liable for such costs".

Madras Amendment .—In Sec. 88, the following amendments have been made by Madras Act XV of 1938 :

The words and figures "on a reception order made under Sec. 14, Sec. 15 or Sec. 17" have been substituted by the words and figures "on a reception order made under Sec. 7, 10, 14, 15 or 17 or on an order under Sec. 8 or 16" and the

words "authority which made the reception order" have been substituted by "authority which made the reception or other order aforesaid".

89. Order of Court and enforcement.—(1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

Bombay Amendment.—In Sec. 89, the following amendments were made by Bombay Act XV of 1938 :

(i) In sub-section (1)—

(a) after the words "such lunatic" where they occur for the second time, the words "or that any local authority is liable for the cost of maintenance of such lunatic under any law for the time being in force" shall be inserted ;

(b) after the words "such person", the words "or from such local authority" shall be added;

(c) at the end, the following proviso shall be added, namely :

"Provided that no order for the recovery of the cost of maintenance of such lunatic from a local authority shall be made if he has an estate applicable to the maintenance or if there is any person legally bound, and having the means, to maintain him ;"

(ii) in sub-section (2), after the word "person", the words "or the local authority" shall be inserted.

Madras Amendment.—In Sec. 89, the following amendment were made by Madras Act XV of 1938 :

In sub-section (1), for the words "may make order.....from such person", the following have been substituted, namely: "may make an order for the recovery of the whole or any portion of the cost of maintenance of such lunatic and of the costs of the application, out of such estate or from such person:

Provided that an order directing recovery out of such estate shall be made only after making due allowance for the needs of the wife, children and other dependents, if any, of the lunatic."

89-A. Fixation of costs of maintenance.—(1) In computing the amount payable on account of the costs of maintenance of lunatic detained in any asylum for the cost of whose maintenance any State Government is liable, charges may be included on account of the upkeep of the asylum of the capital cost of establishment thereof.

(2) In the case of any such lunatic under detention immediately before the commencement of Part III of the Government of India Act, 1935 (26 Geo. 5 c. 2), the amount payable by [State] Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the [President-in-Council] in force immediately before that date and applicable to his case.

89-B. Incidence of costs of maintenance payable by Government.—(1) When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable—

(a) in the case of a lunatic not domiciled in ²[India] by the State Government of the State in which the reception order or the order under Sec. 25, as the case may be, was made ; and

(b) in the case of a lunatic domiciled in ²[India], by the State Government of the State in which the lunatic has last resided for a period of five years before the reception order or the order under Sec. 25, as the case may, be, was made; or, if the lunatic has not been resident in any one State for such period, by the State Government of the State in which such order was made.

90. Saving of liability of relatives to maintain lunatic.—The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

CHAPTER VIII

Rules

91. Power of State Government to make rules.—(1) [* * * *] The State Government may make rules for all or any of the following purposes, namely 5

(a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court [* * *];

(b) to prescribe places of detention and regulate the care and treatment of persons detained under Sec. 8 or Sec. 16 ;

(c) to regulate the detention, care, treatment and discharge of criminal lunatics ;

- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another ;
- (e) to regulate the transfer of criminal lunatics to asylums ;
- (f) to prescribe the procedure to be allowed by District Courts and Magistrate before a lunatic is sent to any asylum established by Government;
- (g) to prescribe the Government asylums] within the State to which lunatics from any area or any class of lunatics shall be sent;
- (h) to prescribe conditions subject to which asylum may be licensed ;
- (i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

92. Publication of rules.—All rules made under Sec. 91 shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act.

93. Penalty for improper reception or detention of lunatics. — Any person who—

- (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or
- (b) for gain detains two or more lunatics in any place not being an asylum, shall be punishable with imprisonment which may extend to two years or with fine or with both.

94. Provision as bonds.—The provisions of sections 445 to 450 (both inclusive) of Chapter XXXIII of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to bonds taken under this Act.

97. Protection to persons acting under Act.—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

98. Power to give effect to warrants and orders of certain Courts outside India.—Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of India established or continued by the Central Government.

99. Power to make rules for reception of lunatics received from outside India.—The State Government may make rules regulating the procedure for the reception and detention in asylums in '[the State] of lunatics whose reception and detention are provided for by Sec. 98.

100. Orders under repealed Acts.—(1) In the case of orders made before the commencement of this Act under Sec. 7 of the Indian Lunatic Asylums Act, 1858 (36 of

1858), for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under Sec. 7 of the Indian Lunatic Asylums Act, 1858 (36 of 1858), before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

100-A. Ranchi European Mental Hospital.—*[Repealed by the A. L. O, 1950].*

101. Repeal of enactments.—*[Repealed by the Second Repealing and Amending Act, 1914 (XVII of 1914), Sec. 3 and Sch. II].*

SCHEDULE I FORM I

(See Sec. 96)

Application for Reception order

(See Sees. 5 and 6)

In the matter of A. B. [¹] residing at....., by occupation....., son of....., a person alleged to be a lunatic.

To.....Presidency Magistrate, for..... [or District Magistrate of....., or Sub-Divisional Magistrate of.....or Magistrate specially empowered under Act IV of 1912 for.....].

The petition of C. D. [¹], residing at....., by occupation....., son of..... in the town of..... [or sub-division of.....in the district of.....]

1. I am..... [²] years of age.

2. I desire to obtain an order for the reception of A.B. as a lunatic in the.....asylum of.....situate at [3].

3. I last saw the said A. B. at.....on the..... [⁴]day of.....

4. I am the..... [⁵] of the said A. B.

[or if the petitioner is not relative of the patient state as follows:]

I am not a relative of the said A. B. The reason why this petition is not presented by a relative are as follows: [State them].

The circumstances under which this petition is presented by me are as follows: [State them]

5. The persons signing the medical certificates which accompany the petition are [⁷].

6. A statement of particulars relating to the said A. B. accompanies this petition.

7. *[if that is the fact.]* An application for an enquiry into the mental capacity of the said A. B. was made to the.....on the.....and a certified copy of the order made on the said petition is annexed hereto.

[Or if that is the fact]

No application for an enquiry into the mental capacity of the said A. B. has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C. D.

The statements contained or referred to in paragraph.....are true to my knowledge; the other statements are true to my information and belief.

(Sd.) C. D.

Dated:

Statement of particulars

[If any of the particulars in this statement is not known, the fact to be so stated.]

The following is a statement of particulars relating to the said A. B:

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.
Whether the patient (is addicted to alcohol, or the use of opium, *ganja*, *char as*, *bhang*,
cocaine or other intoxicant.

[The statements contained or referred to in paras.....are true to my
knowledge. The other statements are true to my information and belief.]

Signature by person making the statement.]

1. Full name, caste and titles.
2. Enter the number of completed years. The petitioner must be at least eighteen or twenty-one whichever is the age of majority under the law to which the petitioner is subject.
3. Insert full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum.
4. A day within 14 days before the date of the presentation of the petition is requisite.
5. Here state the relationship with the patient.
7. Here state whether either of the persons, signing the medical certificate is a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

FORM 2

Reception Order on Petition

(See Sees. 7, 10)

I, the undersigned *E. F.*, being a Presidency Magistrate of.....[or the District Magistrate of.....or sub-divisional Magistrate or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under Act IV of 1912] upon the petition of *C. D.*, of [1] in the matter of *A. B.* [1] a lunatic, accompanied by the medical certificates of *G. H.*, a medical officer, and of *J. K.*, a medical practitioner or medical officer, under the said Act, hereto annexed, hereby authorize you to receive the said *A. B.* into your asylum. And I declare that I have [or have not] personally seen the said *A. B.*, before making this order.

(Sd.) *E. F.*

(Designation as above.)

To[2]

FORM 3

Medical Certificate

(See Sees. 18, 19)

In the matter of *A. B.* of [3].....in the town of.....[or the sub-division of.....in the district of.....] an alleged lunatic.

I, the undersigned *C. D.*, do hereby certify as follows:

gazetted medical officer *for* a medical practitioner declared by
Government under Act IV of 1912]

1. I am _____
a holder of [⁴] *[or declared by* ⁵[State] Government to be a
medical practitioner under Act IV of 1912]
and I am in the actual practice of the medical profession.

1. Address and description.
2. To be addressed to the officer or person in charge of the asylum.
3. Insert residence of patient.
4. Insert qualification to practice medicines and surgery registrable in the United Kingdom.
5. Subs. by A.L.O., 1950.

Town

2. On the.....day of 19..... at [¹] in the-----of *for* village
the sub-division of.....in the district of.....] *[separately from any other
practitioner]* [²], I personally examined the said A. B. and came to the conclusion that the
said A. B. is a lunatic and a proper person to be taken charge of and detained under
care and treatment.
3. I formed this conclusion on the following grounds, viz.
- (a) Facts indicating insanity observed by myself, viz.:
- (b) Other facts (if any) indicating insanity communicated to me by other, viz. *[Here state
the information and from whom.]*

(Sd.) C. D.

*(Designation as
above.)*

FORM 4

Reception Order in case of lunatic soldier

(See Sec. 12)

Whereas it appears to me that A. B., a European, subject to the Army Act, who has been
declared a lunatic in accordance with the provisions of the military regulations, should be
removed to an asylum, I do hereby authorize you to receive the said A. B. into your
asylum.

(Sd.) E.F.

(Administrative Medical Officer.)

To[³]

FORM 5

Reception Order in case of wandering or dangerous lunatics or lunatics not
under proper control or cruelly treated (sent to an asylum
established by Government)

(See Sees. 14, 15, 17)

I, C. D., Presidency Magistrate of..... [or Commissioner of Police for
] [or the District Magistrate of or the Sub-Divisional Magistrate of
.....or a Magistrate specially empowered by Government under Act IV of 1912]
having caused A. B. to be examined by E. F., a Medical Officer under the Indian Lunacy
Act, 1912, being satisfied that A.B. [describing him] is a lunatic who was wandering at
large ; [or is a person dangerous by reason of lunacy] [or is a lunatic not under proper
care and control or is cruelly treated or neglected by the person having the care or
charge of him] and a proper person to be taken charge of and detained under care and
treatment, hereby direct you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above)

Dated the.....

To the Officer-in-charge of the asylum at.....

1. Insert place of examination.
2. Omit this where only one certificate is required.
3. To be addressed to the person in charge of an asylum duly authorized by Government to receive lunatic Europeans subject to the Army Act.

RECEIVED

1912-13

18

I, C. D., [as above laid down to "care and treatment"] and being satisfied which the
engagement entered into in writing by G. H. of [here insert address and description] who
has desired that the said A. B. may be sent to the asylum at[here insert
description of asylum end name of the person in charge] to pay the cost of maintenance
of the said A. B., in the said asylum, hereby authorize you to receive the said A. B. into
your asylum.

(Sd.) [REDACTED]

~~CONFIDENTIAL~~

Dated the.....

To the person in charge of asylum at

~~CONFIDENTIAL~~
Secs. 14, 15, 17)

Whereas [redacted] of inhabitant of..... has been brought up before C. [redacted] Presidency Magistrate for the town of..... [or Commissioner of Police for] [redacted] District/ Sub-Divisional Magistrate of..... [redacted] a Magistrate of the first class specially empowered under Act IV of 19121 and is a lunatic who is believed to be dangerous [redacted] deemed to be a lunatic who is not under proper care and control [redacted] is cruelly treated or neglected by the person having the charge of him] and whereas I, [redacted] of..... inhabitant of..... have applied to the Magistrate [redacted] Commissioner of Police], that the said [redacted] may be delivered to my care.

[redacted] above named hereby bind myself that on the said [redacted] being made over to my care, I will have the said [redacted] properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to '[the Government] 2[* * *] the sum of rupees.....

Dated this.....day of.....19

(Sd.) [redacted]

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the above-named E.F., that he will, on the aforesaid A.B. being made over to his care, have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said ' E.F. making default therein, we bind, ourselves, jointly and severally, to forfeit to 1[the Government] 2[* * *] the sum of rupees.....

Dated this.....day of____19

~~CONFIDENTIAL~~

FORM 8

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care

(See Sec. 33)

Whereas A. B., son of..... inhabitant of..... is a lunatic who is now detained in the asylum at.....under an order made by C. D., a Presidency Magistrate for the town

of..... [or Commissioner of Police for.....] [or the District/ Sub-Divisional Magistrate of....., or a Magistrate of the first class specially empowered under Act IV of 1912] under Sec. 14 [or Sec. 15] of Act IV of 1912, and whereas I, E. F., son of.....inhabitant of..... have applied to the said Magistrate [or Commissioner of Police] that the said A.B. may be delivered to my care and custody.

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others ; and in case of my making default therein, I hereby bind myself to forfeit to ¹[the Government] ²[* * *] the sum of rupees.....

Dated this.....day of..... 19

(Sd.) E.F.

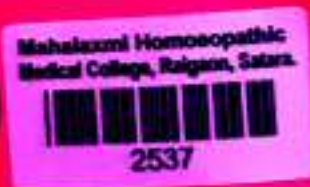
(Where a bond with sureties is to be executed add) We do hereby declare ourselves sureties for the above-named E. F., that he will, on the aforesaid A. B., being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to 1[the Government] ²[* * *] the sum of rupees.

Dated this.....day of 19

(Signature)

~~WHEREAS~~Enactment repealed.— Repealed by the Second Repealing and Amending Act, 1914 (17 of 1914), Sec. 3 and Sch. II.

1. Subs. by the A. L. O., 1950, for the words "His Majesty the King".
2. The words "Emperor of India" omitted by the A.L.O., 1948.



THE INDIAN PENAL CODE

ARRANGEMENT OF SECTIONS



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2522

THE INDIAN PENAL CODE

ARRANGEMENT OF SECTIONS

CHAPTER I

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16. [Repealed].
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"Wrongful loss".
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- 38. Persons concerned in criminal act may be guilty of different offences.
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- 54. Commutation of sentence of death.
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- 57. Fractions of terms of punishment.
- 58. [Repealed].
- 59. [Repealed].
- 60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.
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- 62. [Repealed].
- 63. Amount of fine.
- 64. Sentence of imprisonment for non-payment of fine.
- 65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.
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- 69. Termination of imprisonment on payment of proportional part of fine.
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- 73. Solitary confinement.
- 74. Limit of solitary confinement.
- 75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

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96. Things done in private defence.
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110. Punishment of abetment if person abetted does act with different intention from that of abettor.
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112. Abettor when liable to cumulative punishment for act abetted and for act done.
113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.
114. Abettor present when offence is committed.
115. Abetment of offence punishable with death or imprisonment for life.—if offence not committed, if act causing harm be done in consequence.
116. Abetment of offence punishable with imprisonment.—if offence be not committed, if abettor or person abetted be a public servant whose duty it is to prevent offence.
117. Abetting commission of offence by the public or by more than ten persons.
118. Concealing design to commit offence punishable with death or imprisonment for life.
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if offence be not committed.
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if offence be punishable with death, etc.
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if offence be committed;
if offence be not committed.

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- 122. Collecting arms, etc., with intention of waging war against the Government of India.
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- 125. Waging war against any Asiatic power in alliance with the Government of India.
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- 130. Aiding escape of, rescuing or harbouring such prisoner.

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- 131. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.
- 132. Abetment of mutiny, if mutiny is committed in consequence thereof.
- 133. Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.
- 134. Abetment of such assault, if the assault is committed.
- 135. Abetment of desertion of soldier, sailor or airman.
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- 137. Deserter concealed on board merchant vessel through negligence of master.
- 138. Abetment of act of insubordination by soldier, sailor or airman.
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- 139. Persons subject to certain Acts.
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- 142. Being member of unlawful assembly.
- 143. Punishment.
- 144. Joining unlawful assembly armed with deadly weapon.
- 145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.
- 146. Rioting.
- 147. Punishment for rioting.
- 148. Rioting, armed with deadly weapon.
- 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.
- 150. Hiring, or conniving at hiring, of persons to join unlawful assembly.
- 151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.
- 152. Assaulting or obstructing public servant when suppressing riot, etc.
- 153. Wantonly giving provocation, with intent to cause riot—
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- 153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
Offence committed in place of worship, etc.
- 153AA. Punishment for knowingly carrying arms in any procession or organizing, or holding or taking part in any mass drill or mass training with arms.
- 153B. Imputation, assertions prejudicial to national integration.
- 154. Owner or occupier of land on which an unlawful assembly is held.
- 155. Liability of person for whose benefit riot is committed.
- 156. Liability of agent of owner or occupier for whose benefit riot is committed.
- 157. Harbouring persons hired for an unlawful assembly.

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- 158. Being hired to take part in an unlawful assembly or riot; or to go armed.
- 159. Affray.
- 160. Punishment for committing affray.

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- 162. *[Repealed].*
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- 166A. Public servant disobeying direction under law.
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- 167. Public servant framing an incorrect document with intent to cause injury.
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- 169. Public servant unlawfully buying or bidding for property.
- 170. Personating a public servant.
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- 171B. Bribery.
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- 174. Non-attendance in obedience to an order from public servant.
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- 175. Omission to produce document to public servant by person legally bound to produce it.
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- 177. Furnishing false information.
- 178. Refusing oath or affirmation when duly required by public servant to make it.
- 179. Refusing to answer public servant authorised to question.
- 180. Refusing to sign statement.
- 181. False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.
- 182. False information, with intent to cause public servant to use his lawful power to the injury of another person.
- 183. Resistance to the taking of property by the lawful authority of a public servant.
- 184. Obstructing sale of property offered for sale by authority of public servant.
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- 186. Obstructing public servant in discharge of public functions.
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- 188. Disobedience to order duly promulgated by public servant.
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CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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192. Fabricating false evidence.
193. Punishment for false evidence.
194. Giving or fabricating false evidence with intent to procure conviction of capital offence.
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195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.
- 195A. Threatening any person to give false evidence.
196. Using evidence known to be false.
197. Issuing or signing false certificate.
198. Using as true a certificate known to be false.
199. False statement made in declaration which is by law receivable as evidence.
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201. Causing disappearance of evidence of offence, or giving false information, to screen offender—
if a capital offence;
if punishable with imprisonment for life;
if punishable with less than ten Years' imprisonment.
202. Intentional omission to give information of offence by person bound to inform.
203. Giving false information respecting an offence committed.
204. Destruction of document to prevent its production as evidence.
205. False personation for purpose of act or proceeding in suit or prosecution.
206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.
207. Fraudulent claim to property to prevent its seizure as forfeited or in execution.
208. Fraudulently suffering decree for sum not due.
209. Dishonestly making false claim in Court.
210. Fraudulently obtaining decree for sum not due.
211. False charge of offence made with intent to injure.
212. Harboursing offender.—
if a capital offence;
if punishable with imprisonment for life, or with imprisonment.
213. Taking gift, etc., to screen an offender from punishment.—
if a capital offence;
if punishable with imprisonment for life, or with imprisonment.
214. Offering gift or restoration of property in consideration of screening offender—
if a capital offence;
if punishable with imprisonment for life, or with imprisonment.
215. Taking gift to help to recover stolen property, etc.
216. Harboursing offender who has escaped from custody of whose apprehension has been ordered—
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- 216A. Penalty for harboursing robbers or dacoits.
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217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.
218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.
219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.
220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.
221. Intentional omission to apprehend on the part of public servant bound to apprehend.
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- 225A. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.
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- 231. Counterfeiting coin.
- 232. Counterfeiting Indian coin.
- 233. Making or selling instrument for counterfeiting coin.
- 234. Making or selling instrument for counterfeiting Indian coin.
- 235. Possession of instrument or material for the purpose of using the same for counterfeiting coin;
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- 236. Abetting in India the counterfeiting out of India of coin.
- 237. Import or export of counterfeit coin.
- 238. Import or export of counterfeits of the Indian coin.
- 239. Delivery of coin, possessed with knowledge that it is counterfeit.
- 240. Delivery of Indian coin, possessed with knowledge that it is counterfeit.
- 241. Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.
- 242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.
- 243. Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.
- 244. Person employed in mint causing coin to be of different weight or composition from that fixed by law.
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- 246. Fraudulently or dishonestly diminishing weight or altering composition of coin.
- 247. Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.
- 248. Altering appearance of coin with intent that it shall pass as coin of different description.
- 249. Altering appearance of Indian coin with intent that it shall pass as coin of different description.
- 250. Delivery of coin, possessed with knowledge that it is altered.
- 251. Delivery of Indian coin, possessed with knowledge that it is altered.
- 252. Possession of coin by person who knew it to be altered when he became possessed thereof.
- 253. Possession of Indian coin by person who knew it to be altered when he became possessed thereof.
- 254. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.
- 255. Counterfeiting Government stamp.
- 256. Having possession of instrument or material for counterfeiting Government stamp.
- 257. Making or selling instrument for counterfeiting Government stamp.
- 258. Sale of counterfeit Government stamp.
- 259. Having possession of counterfeit Government stamp.
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- 262. Using Government stamp known to have been before used.
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- 282. Conveying person by water for hire in unsafe or overloaded vessel.
- 283. Danger or obstruction in public way or line of navigation.
- 284. Negligent conduct with respect to poisonous substance.
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- 290. Punishment for public nuisance in cases not otherwise provided for.
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- 331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.
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- 356. Assault or criminal force in attempt to commit theft of property carried by a person.
- 357. Assault or criminal force in attempt wrongfully to confine a person.
- 358. Assault or criminal force on grave provocation.

Of Kidnapping, Abduction, Slavery and Forced Labour

- 359. Kidnapping.
- 360. Kidnapping from India.
- 361. Kidnapping from lawful guardianship.
- 362. Abduction.
- 363. Punishment for kidnapping.
- 363A. Kidnapping or maiming a minor for purposes of begging.
- 364. Kidnapping or abducting in order to murder.

SECTIONS

- 364A. Kidnapping for ransom, etc.
- 365. Kidnapping or abducting with intent secretly and wrongfully to confine person.
- 366. Kidnapping, abducting or inducing woman to compel her marriage, etc.
- 366A. Procurement of minor girl.
- 366B. Importation of girl from foreign country.
- 367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
- 368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person.
- 369. Kidnapping or abducting child under ten years with intent to steal from its person.
- 370. Trafficking of person.
- 370A. Exploitation of a trafficked person.
- 371. Habitual dealing in slaves.
- 372. Selling minor for purposes of prostitution, etc.
- 373. Buying minor for purposes of prostitution, etc.
- 374. Unlawful compulsory labour.

Sexual offences

- 375. Rape.
- 376. Punishment for rape.
- 376A. Punishment for causing death or resulting in persistent vegetative state of victim.
- 376B. Sexual intercourse by husband upon his wife during separation.
- 376C. Sexual intercourse by a person in authority.
- 376D. Gang rape.
- 376DA. Punishment for gang rape on woman under sixteen years of age.
- 376DB. Punishment for gang rape on woman under twelve years of age.
- 376E. Punishment for repeat offenders.

Of Unnatural offences

- 377. Unnatural offences.

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

- 378. Theft.
- 379. Punishment for theft.
- 380. Theft in dwelling house, etc.
- 381. Theft by clerk or servant of property in possession of master.
- 382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

Of Extortion

- 383. Extortion.
- 384. Punishment for extortion.
- 385. Putting person in fear of injury in order to commit extortion.
- 386. Extortion by putting a person in fear of death or grievous hurt.
- 387. Putting person in fear of death or of grievous hurt, in order to commit extortion.
- 388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.
- 389. Putting person in fear of accusation of offence, in order to commit extortion.

Of Robbery and Dacoity

- 390. Robbery.
 - When theft is robbery.
 - When extortion is robbery.
- 391. Dacoity.
- 392. Punishment for robbery.
- 393. Attempt to commit robbery.
- 394. Voluntarily causing hurt in committing robbery.
- 395. Punishment for dacoity.
- 396. Dacoity with murder.
- 397. Robbery, or dacoity, with attempt to cause death or grievous hurt.
- 398. Attempt to commit robbery or dacoity when armed with deadly weapon.
- 399. Making preparation to commit dacoity.
- 400. Punishment for belonging to gang of dacoits.
- 401. Punishment for belonging to gang of thieves.
- 402. Assembling for purpose of committing dacoity.

SECTIONS

- 403. Dishonest misappropriation of property.
- 404. Dishonest misappropriation of property possessed by deceased person at the time of his death.

Of Criminal Breach of Trust

- 405. Criminal breach of trust.
- 406. Punishment for criminal breach of trust.
- 407. Criminal breach of trust by carrier, etc.
- 408. Criminal breach of trust by clerk or servant.
- 409. Criminal breach of trust by public, servant, or by banker, merchant or agent.

Of the Receiving of Stolen Property

- 410. Stolen property.
- 411. Dishonestly receiving stolen property.
- 412. Dishonestly receiving property stolen in the commission of a dacoity.
- 413. Habitually dealing in stolen property.
- 414. Assisting in concealment of stolen property.

Of Cheating

- 415. Cheating.
- 416. Cheating by personation.
- 417. Punishment for cheating.
- 418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
- 419. Punishment for cheating by personation.
- 420. Cheating and dishonestly inducing delivery of property.

Of Fraudulent Deeds and Dispositions of Property

- 421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditor.
- 422. Dishonestly or fraudulently preventing debt being available for creditors.
- 423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
- 424. Dishonest or fraudulent removal or concealment of property.

Of Mischief

- 425. Mischief.
- 426. Punishment for mischief.
- 427. Mischief causing damage to the amount of fifty rupees.
- 428. Mischief by killing or maiming animal of the value of ten rupees.
- 429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.
- 430. Mischief by injury to works of irrigation or by wrongfully diverting water.
- 431. Mischief by injury to public road, bridge, river or channel.
- 432. Mischief by causing inundation or obstruction to public drainage attended with damage.
- 433. Mischief by destroying, moving or rendering less useful a light-house or sea-mark.
- 434. Mischief by destroying or moving, etc., a land-mark fixed by public authority.
- 435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.
- 436. Mischief by fire or explosive substance with intent to destroy house, etc.
- 437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.
- 438. Punishment for the mischief described in section 437 committed by fire or explosive substance.
- 439. Punishment for intentionally running vessel aground, or ashore with intent to commit theft, etc.
- 440. Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass

- 441. Criminal trespass.
- 442. House-trespass.
- 443. Lurking house-trespass.
- 444. Lurking house-trespass by night.
- 445. House-breaking.
- 446. House-breaking by night.
- 447. Punishment for criminal trespass.
- 448. Punishment for house-trespass.
- 449. House-trespass in order to commit offence punishable with death.
- 450. House-trespass in order to commit offence punishable with imprisonment for life.
- 451. House-trespass in order to commit offence punishable with imprisonment.

SECTIONS

- 452. House-trespass after preparation for hurt, assault or wrongful restraint.
- 453. Punishment for lurking house-trespass or house-breaking.
- 454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.
- 455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.
- 456. Punishment for lurking house-trespass or house-breaking by night.
- 457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.
- 458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.
- 459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
- 460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.
- 461. Dishonestly breaking open receptacle containing property.
- 462. Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

- 463. Forgery.
- 464. Making a false document.
- 465. Punishment for forgery.
- 466. Forgery of record of Court or of public register, etc.
- 467. Forgery of valuable security, will, etc.
- 468. Forgery for purpose of cheating.
- 469. Forgery for purpose of harming reputation.
- 470. Forged document.
- 471. Using as genuine a forged document or electronic record.
- 472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.
- 473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.
- 474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.
- 475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.
- 476. Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.
- 477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.
- 477A. Falsification of accounts.

Of Property and Other Marks

- 478. *[Repealed.]*
- 479. Property mark.
- 480. *[Repealed.]*
- 481. Using a false property mark.
- 482. Punishment for using a false property mark.
- 483. Counterfeiting a property mark used by another.
- 484. Counterfeiting a mark used by a public servant.
- 485. Making or possession of any instrument for counterfeiting a property mark.
- 486. Selling goods marked with a counterfeit property mark.
- 487. Making a false mark upon any receptacle containing goods.
- 488. Punishment for making use of any such false mark.
- 489. Tampering with property mark with intent to cause injury.

Of Currency-Notes and Bank-Notes

- 489A. Counterfeiting currency-notes or bank-notes.
- 489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.
- 489C. Possession of forged or counterfeit currency notes or bank-notes.
- 489D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.
- 489E. Making or using documents resembling currency-notes or bank-notes.

CHAPTER XIX

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

- 490. *[Repealed.]*
- 491. Breach of contract to attend on and supply wants of helpless person.
- 492. *[Repealed.]*

CHAPTER XX
OF OFFENCES RELATING TO MARRIAGE

SECTIONS

- 493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.
- 494. Marrying again during life-time of husband or wife.
- 495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.
- 496. Marriage ceremony fraudulently gone through without lawful marriage.
- 497. Adultery.
- 498. Enticing or taking away or detaining with criminal intent a married woman.

CHAPTER XXA
OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

- 498A. Husband or relative of husband of a woman subjecting her to cruelty.

CHAPTER XXI
OF DEFAMATION

- 499. Defamation.
 - Imputation of truth which public good requires to be made or published.
 - Public conduct of public servants.
 - Conduct of any person touching any public question.
 - Publication of reports of proceedings of Courts.
 - Merits of case decided in Court or conduct of witnesses and others concerned.
 - Merits of public performance.
 - Censure passed in good faith by person having lawful authority over another.
 - Accusation preferred in good faith to authorised person.
 - Imputation made in good faith by person for protection of his or other's interests.
 - Caution intended for good of person to whom conveyed or for public good.
- 500. Punishment for defamation.
- 501. Printing or engraving matter known to be defamatory.
- 502. Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII
OR CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

- 503. Criminal intimidation.
- 504. Intentional insult with intent to provoke breach of the peace.
- 505. Statements conducing to public mischief.
 - Statements creating or promoting enmity, hatred or ill-will between classes.
 - Offence under sub-section (2) committed in place of worship, etc.
- 506. Punishment for criminal intimidation.
 - If threat be to cause death or grievous hurt, etc.
- 507. Criminal intimidation by an anonymous communication.
- 508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.
- 509. Word, gesture or act intended to insult the modesty of a woman.
- 510. Misconduct in public by a drunken person.

CHAPTER XXIII
OF ATTEMPTS OF COMMIT OFFENCES

- 511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

THE INDIAN PENAL CODE

ACT NO. 45 OF 1860¹

[6th October, 1860.]

CHAPTER I

INTRODUCTION

• **Preamble.**—WHEREAS it is expedient to provide a general Penal Code for ²[India]; It is enacted as follows:—

1. Title and extent of operation of the Code.—This Act shall be called the Indian Penal Code, and shall ³[extend to the whole of India ⁴[except the State of Jammu and Kashmir]].

2. Punishment of offences committed within India.—Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within ⁵[India] ⁶****.

3. Punishment of offences committed beyond, but which by law may be tried within, India.—Any person liable, by any ⁷[Indian law], to be tried for an offence committed beyond ⁸[India] shall be dealt with according to the provisions of this Code for any act committed beyond ⁸[India] in the same manner as if such act had been committed within ⁵[India].

⁹[4. Extension of Code to extra-territorial offences.—The provisions of this Code apply also to any offence committed by—

¹⁰[(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.]

¹¹[(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

¹²[Explanation.—In this section—

(a) the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code; .

1. The Indian Penal Code has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared in force in—

Sonthal Parganas, by the Sonthal Parganas Settlement Regulation 1872 (3 of 1872) s. 2;

Panth Piploda, by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2 and the Sch.;

Khondmals District, by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and the Sch; and

Angul District, by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and the Sch.

It has been declared under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely: the United Provinces Tarai Districts, see Gazette of India, 1876, Pt. I, p. 505; the Districts of Hazaribagh, Lohardaga [now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44] and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—see Gazette of India, 1881, Pt. I, p. 504.

It has been extended under s. 5 of the same Act to the Lushai Hills—see Gazette of India, 1898, Pt. II, p. 345.

The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I; to Pondicherry by Reg. 7 of 1963, s. 3 and Sch. I and to Lakshadweep by Reg. 8 of 1965, s. 3 and Sch.

2. The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. The Original words have successively been amended by Act 12 of 1891, s. 2 and Sch. 1, the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.

4. Subs. by Act 3 of 1951, s. 3 and the Sch., for “except Part B States”.

5. The original words “the said territories” have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

6. The words and figures “on or after the said first day of May, 1861” rep. by Act 12 of 1891, s. 2 and the First Sch.

7. Subs. by the A.O. 1937, for “law passed by the Governor General of India in Council”.

8. The Original words “the limits of the said territories” have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

9. Subs. by Act 4 of 1898, s. 2, for section 4.

10. Subs. by the A.O. 1950, for cls. (1) to (4).

11. Ins. by Act 10 of 2009, s. 51 (w.e.f. 27-10-2009).

12. Subs. by s. 51, *ibid.*, for the Explanation (w.e.f. 27-10-2009).

(b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (j) of section 2 of the Information Technology Act, 2000 (21 of 2000);]

¹[Illustration]

²***A, ³[who is ⁴[a citizen of India]], commits a murder in Uganda. He can be tried and convicted of murder in any place in ⁵[India] in which he may be found.

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⁷[5. **Certain laws not to be affected by this Act.**—Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.]

CHAPTER II

GENERAL EXPLANATIONS

6. Definitions in the Code to be understood subject to exceptions.—Throughout this Code every definition of an offence, every penal provision, and every *illustration* of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or *illustration*.

Illustrations

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

7. Sense of expression once explained.—Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

8. Gender.—The pronoun "he" and its derivatives are used of any person, whether male or female.

9. Number.—Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

10. ~~Man~~⁵³ ~~Woman~~⁵⁴.—The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

11. ~~Person~~⁵⁵.—The word "person" includes any Company or Association or body of persons, whether incorporated or not.

12. ~~Public~~⁵⁶.—The word "public" includes any class of the public or any community.

13. [Definition of ~~Queen~~⁵⁷] Omitted by the A. O. 1950.

⁸**[14. ~~Servant of Government~~⁵⁸]** The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.]

15. [Definition of ~~British India~~⁵⁹] Rep. by the A. O. 1937.

16. [Definition of ~~Government of India~~⁶⁰] Rep., *ibid*.

1. Subs. by Act 36 of 1957, s. 3 and Sch. II, for "Illustrations"

2. The brackets and letter "(a)" omitted by s. 3 and the Second Sch., *ibid*.

3. Subs. by the A.O. 1948, for "a coolie, who is a Native Indian subject"

4. Subs. by the A.O. 1950, for "a British subject of Indian domicile"

5. The words "British India" have been successively amended by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

6. *Illustrations* (b), (c) and (d) omitted by the A.O. 1950.

7. Subs., *ibid*, for section 5.

8. Subs., *ibid*, for section 14.

¹[17. **Government**.] The word "Government" denotes the Central Government or the Government of a ²***State.]

³[18. **India**.] "India" means the territory of India excluding the State of Jammu and Kashmir.]

19. **Judge**.] The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body or persons, which body of persons is empowered by law to give such a judgment.

Illustrations

(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under ⁴Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. **Court of Justice**.] The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration

A Panchayat acting under ⁴Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. **Public servant**.] The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely: ⁵]

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Second. ⁶Every Commissioned Officer in the Military, ⁶[Naval or Air] Forces ⁷[*** of India];

⁹[*Third.* ⁸Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

Fourth. ⁹Every officer of a Court of Justice ¹⁰[(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth. ¹⁰Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

1. Subs. by the A.O. 1950, for section 17.

2. The word and letter "Part A" omitted by Act 3 of 1951, s. 3 and the Sch.

3. Subs. by s. 3 and the Sch., *ibid.*, for s. 18 which was ins. by the A.O. 1950. The Original s. 18 was rep. by the A.O. 1937.

4. Rep. by the Madras Civil Courts Act, 1873 (3 of 1873).

5. Cl. First omitted by the A.O. 1950.

6. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "or Naval".

7. The original words "of the Queen while serving under the Government of India, or any Government" have successively been amended by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.

8. The words "of the Dominion" omitted by the A.O. 1950.

9. Subs. by Act 40 of 1964, s. 2, for cl. Third.

10. Ins. by s. 2, *ibid.*

Sixth. Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh. Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth. Every officer of ¹[the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth. Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of ¹[the Government], or to make any survey, assessment or contract on behalf of ¹[the Government], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of ¹[the Government], or to make, authenticate or keep any document relating to the pecuniary interests of ¹[the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of ¹[the Government] ^{2***};

Tenth. Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

³[*Eleventh.* Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

⁴[*Twelfth.* Every person⁵]

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]

Illustration

A Municipal Commissioner is a public servant.

Explanation 1. Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2. Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

³[*Explanation 3.* The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.]

* *

22. Movable property. The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

23. Wrongful gain. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

Wrongful loss. "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

1. Subs. by the A.O. 1950, for "the Crown" which had been subs. by the A.O. 1937, for "Government".

2. Certain words omitted by Act 40 of 1964, s. 2.

3. Ins. by Act 39 of 1920, s. 2.

4. Subs. by Act 40 of 1964, s. 2, for Cl. Twelfth.

5. *Explanation 4* omitted by Act 39 of 1920, s. 2.

Gaining wrongfully/Losing wrongfully. [4] A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. Dishonestly [4] Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. Fraudulently [4] A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

26. Reason to believe [4] A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.

27. Property in possession of wife, clerk or servant [4] When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation. [4] A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. Counterfeit [4] A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

¹[*Explanation 1.* [4] It is not essential to counterfeiting that the imitation should be exact.

Explanation 2. [4] When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.]

29. Document [4] The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1. [4] It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2. [4] Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

²[**29A.** ~~Document~~ [4] The words "electronic record" shall have the meaning assigned to them in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]

30. Valuable security [4] The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or

1. Subs. by Act 1 of 1889, s. 9, for the *Explanation*.

2. Ins. by Act 21 of 2000, s. 91 and the First Sch. (w.e.f. 17-10-2000).

released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the unlawful holder of it, the endorsement is a "valuable security".

31. A will. The words "a will" denote any testamentary document.

32. Words referring to acts include illegal omissions. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. Act. Omission. The word "act" denotes as well as series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

34. Acts done by several persons in furtherance of common intention. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Effect caused partly by act and partly by omission. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. Co-operation by doing one of several acts constituting an offence. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38. Persons concerned in criminal act may be guilty of different offences. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

1. Subs. by Act 27 of 1870, s. 1, for s. 34.

39. **Voluntarily** ^[1] A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

¹40. **Offence** ^[2] Except in the ³[Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, ³[Chapter VA] and in the following sections, namely, sections ⁴[64, 65, 66, ⁵[67], 71], 109, 110, 112, 114, 115, 116, 117, ⁶[118, 119 and 120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

41. **Special law** ^[3] A "special law" is a law applicable to a particular subject.

42. **Local law** ^[4] A "local law" is a law applicable only to a particular part of ⁷[⁸***⁹[India]].

43. **Illegal** ^[5] **Legally bound to do** ^[6] The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

44. **Injury** ^[7] The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

45. **Life** ^[8] The word "life" denotes the life of a human being, unless the contrary appears from the context.

46. **Death** ^[9] The word "death" denotes the death of a human being unless the contrary appears from the context.

47. **Animal** ^[10] The word "animal" denotes any living creature, other than a human being.

48. **Vessel** ^[11] The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

49. **Year** ^[12] **Month** ^[13] Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. **Section** ^[14] The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

51. **Oath** ^[15] The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. **Good faith** ^[16] Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

1. Subs. by Act 27 of 1870, s. 2, for section 40.

2. Subs. by Act 8 of 1930, s. 2 and the First Sch., for "Chapter".

3. Ins. by Act 8 of 1913, s. 2.

4. Ins. by Act 8 of 1882, s. 1.

5. Ins. by Act 10 of 1886, s. 21 (f).

6. Ins. by Act 10 of 2009, s. 51 (w.e.f. 27-10-2009).

7. Subs. by the A.O. 1948, for "British India".

8. The words "the territories comprised in" omitted by Act 48 of 1952, s. 3 and the Second Sch.

9. Subs. by Act 3 of 1951, s. 3 and the Sch., for "the States" which had been subs. by the A.O. 1950, for "the Provinces".

¹[52A. "Harbour".] Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

CHAPTER III OF PUNISHMENTS

53. Punishments. The punishments to which offenders are liable under the provisions of this Code are—

First. Death;

²[*Secondly.* Imprisonment for life;]

³•

Fourthly. Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly. Forfeiture of property;

Sixthly. Fine.

⁴[53A. Construction of reference to transportation.] (1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, ⁵[1955 (26 of 1955)], the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to "transportation" in any other law for the time being in force shall, ⁶

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.]

54. Commutation of sentence of death. In every case in which sentence of death shall have been passed, ⁶[the appropriate Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. Commutation of sentence of imprisonment for life. In every case in which sentence of ⁷[imprisonment] for life shall have been passed, ⁸[the appropriate Government] may, without the consent

1. Ins. by Act 8 of 1942, s. 2.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "Secondly.—Transportation" (w.e.f. 1-1-1956).

3. Cl. Thirdly omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

4. Ins. by Act 26 of 1955, s. 117 and the Sch. (w.e.f. 1-1-1956).

5. Subs. by Act 36 of 1957, s. 3 and the Second Sch., for "1954".

6. Subs. by the A.O. 1950, for "the Central Government or the Provincial Government of the Province within which the offender shall have been sentenced". The words in italics were subs. by the A.O. 1937, for "the Government of India or the Government of the place".

7. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation" (w.e.f. 1-1-1956).

8. Subs. by the A.O. 1950, for "the Provincial Government of the Province within which the offender shall have been sentenced". The words in italics were subs. by the A.O. 1937, for "the Government of India or the Government of the place".

of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

¹[55A. Definition of **Appropriate Government**.] In sections fifty-four and fifty-five the expression "appropriate Government" means, [4]

(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and

(b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.]

56. [Sentence of Europeans and Americans to penal servitude. Proviso as to sentence for term exceeding ten years but not for life.] Rep. by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (17 of 1949) (w. e. f. 6-4-1949).

57. Fractions of terms of punishment. [4] In calculating fractions of terms of punishment, [imprisonment] for life shall be reckoned as equivalent to ²[imprisonment] for twenty years.

58. [Offenders sentenced to transportation how dealt with until transported.] Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), s. 117 and the Sch. (w.e.f. 1-1-1956).

59. [Transportation instead of imprisonment.] Rep. by s. 117 and the Sch., *ibid.* (w.e.f. 1-1-1956).

60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple. [4] In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. [Sentence of forfeiture of property.] Rep. by the Indian Penal Code (Amendment) Act, 1921 (16 of 1921), s. 4.

62. [Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.] Rep. by s. 4 *ibid.*

63. Amount of fine. [4] Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64. Sentence of imprisonment for non-payment of fine. [4] In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable ⁴[with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,]

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable. [4] The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66. Description of imprisonment for non-payment of fine. [4] The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

1. Subs. by the A. O. 1950. Earlier ins by the A. O. 1937.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation" (w.e.f. 1-1-1956).

3. Subs. by Act 8 of 1882, s. 2, for "In every case in which an offender is sentenced to a fine".

4. Ins. by Act 10 of 1886, s. 21 (2).

67. Imprisonment for non-payment of fine, when offence punishable with fine only. [If the offence be punishable with fine only, ¹[the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

68. Imprisonment to terminate on payment of fine. [The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. Termination of imprisonment on payment of proportional part of fine. [If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. Fine leviable within six years, of during imprisonment. Death not to discharge property from liability. [The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

71. Limit of punishment of offence made up of several offences. [Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

²[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences].

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But, if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which. [In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

1. Ins. by Act 8 of 1882, s. 3.

2. Added by s. 4, *ibid.*

73. Solitary confinement. [3] Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months;

a time not exceeding two months if the term of imprisonment shall exceed six months and¹ [shall not exceed one] year

a time not exceeding three months if the term of imprisonment shall exceed one year.

74. Limit of solitary confinement. [4] In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

²**75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.** [5] Whoever, having been convicted, [5]

(a) by a Court in ³[India], of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, ⁴***

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to ⁶[imprisonment for life], or to imprisonment of either description for a term which may extend to ten years.]

CHAPTER IV

GENERAL EXCEPTIONS

76. Act done by a person bound, or by mistake of fact believing himself bound, by law. [6] Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Act of Judge when acting judicially. [7] Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

78. Act done pursuant to the judgment or order of Court. [8] Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

1. Subs. by Act 8 of 1862, s. 5, for "be less than a".

2. Subs. by Act 3 of 1910, s. 2, for section 75.

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. The word "or" omitted by Act 3 of 1951, s. 3 and the Sch.

5. Cl. (b) omitted by s. 3 and the Sch., *ibid.*

6. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

79. Act done by a person justified, or by mistake of fact believing himself, justified, by law. [§] Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

80. Accident in doing a lawful act. [§] Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm. [§] Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation. [§] It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations

(a) A, the captain of a steam vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Act of a child under seven years of age. [§] Nothing is an offence which is done by a child under seven years of age.

83. Act of a child above seven and under twelve of immature understanding. [§] Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Act of a person of unsound mind. [§] Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

85. Act of a person incapable of judgment by reason of intoxication caused against his will. [§] Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated. [§] In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent. [§] Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

88. Act not intended to cause death, done by consent in good faith for person's benefit. [§] Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89. Act done in good faith for benefit of child or insane person, by or by consent of guardian. [§] Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided [§]

Provisos. *First.* [§] That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly. [§] That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly. [§] That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly. [§] That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. Consent known to be given under fear or misconception. [§] A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person. [§] If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child. [§] Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. Exclusion of acts which are offences independently of harm caused. [§] The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Act done in good faith for benefit of a person without consent. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided

Provisos. *First.* That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly. That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly. That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly. That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation. Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. Communication made in good faith. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Act to which a person is compelled by threats. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1. A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2. A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Act causing slight harm. [§] Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence

96. Things done in private defence. [§] Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property. [§] Every person has a right, subject to the restrictions contained in section 99, to defend [§]

First. [§] His own body, and the body of any other person, against any offence affecting the human body;

Secondly. [§] The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. Right of private defence against the act of a person of unsound mind, etc. [§] When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. Acts against which there is no right of private defence. [§] There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

Extent to which the right may be exercised. [§] The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1. [§] A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2. [§] A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

100. When the right of private defence of the body extends to causing death. [§] The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely: [§]

First. [§] Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. ⁽¹⁾Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. ⁽²⁾An assault with the intention of committing rape;

Fourthly. ⁽³⁾An assault with the intention of gratifying unnatural lust;

Fifthly. ⁽⁴⁾An assault with the intention of kidnapping or abducting;

Sixthly. ⁽⁵⁾An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

⁽⁶⁾*[Seventhly.* ⁽⁷⁾An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.]

101. When such right extends to causing any harm other than death. ⁽⁸⁾If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. Commencement and continuance of the right of private defence of the body. ⁽⁹⁾The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

103. When the right of private defence of property extends to causing death. ⁽¹⁰⁾The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely: ⁽¹¹⁾

First. ⁽¹²⁾Robbery;

Secondly. ⁽¹³⁾House-breaking by night;

Thirdly. ⁽¹⁴⁾Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly. ⁽¹⁵⁾Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. When such right extends to causing any harm other than death. ⁽¹⁶⁾If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

105. Commencement and continuance of the right of private defence of property. ⁽¹⁷⁾The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. Right of private defence against deadly assault when there is risk of harm to innocent person. [41] If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V

OF ABETMENT

107. Abetment of a thing. [42] A person abets the doing of a thing, who [43]

First. [44] Instigates any person to do that thing; or

Secondly. [45] Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. [46] Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. [47] A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2. [48] Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. Abettor. [49] A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. [50] The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2. [51] To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3. [52] It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4. ⁴The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5. ⁵It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A consents with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

¹[108A. Abetment in India of offences outside India.] ²A person abets an offence within the meaning of this Code who, in ²[India], abets the commission of any act without and beyond ³[India] which would constitute an offence if committed in ²[India].

Illustration

A, in ²[India], instigates B, a foreigner in Goa, to commit a murder in Goa, A is guilty of abetting murder.]

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. ⁴Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation. ⁵An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

1. Added by Act 4 of 1898, s. 3.

2. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Punishment of abettor if person abetted does act with different intention from that of abettor. [4] Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. Liability of abettor when one act abetted and different act done. [5] When an Act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. Abettor when liable to cumulative punishment for act abetted and for act done. [6] If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitute a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor. [7] When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Abettor present when offence is committed. [8] Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115. Abetment of offence punishable with death or imprisonment for life.^[4] **If offence not committed.**^[5] Whoever abets the commission of an offence punishable with death or ¹[imprisonment for life], shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done in consequence.^[6] and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or ¹[imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Abetment of offence punishable with imprisonment.^[6] **If offence be not committed.**^[7] Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence.^[8] and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Abetting commission of offence by the public or by more than ten persons.^[9] Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Concealing design to commit offence punishable with death or imprisonment for life.^[10] Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or ¹[imprisonment for life],

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

¹[voluntarily conceals by any act or illegal omission, or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence or makes any representation which he knows to be false respecting such design,

if offence be committed; if offence be not committed. ²Whoever, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description, for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Public servant concealing design to commit offence which it is his duty to prevent. ³Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

¹[voluntarily conceals, by any act or illegal omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed. ²Whoever, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be punishable with death, etc. ³Whoever, if the offence be punishable with death or ²[imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

if offence be not committed. ³Whoever, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Concealing design to commit offence punishable with imprisonment. ³Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed; if offence be not committed. ²Whoever, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both,

³[CHAPTER VA

CRIMINAL CONSPIRACY

120A. Definition of criminal conspiracy. ³When two or more persons agree to do, or cause to be done, ²

(1) an illegal act, or

1. Subs. by Act 10 of 2009, s. 51, for "voluntarily conceals, by any act or illegal omission, the existence of a design" (w.e.f. 27-10-2009).

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

3. Ins. by Act 8 of 1913, s. 3.

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120B. Punishment of criminal conspiracy. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

CHAPTER VI

OF OFFENCES AGAINST THE STATE

121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India. Whoever wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life] [and shall also be liable to fine].

⁵[Illustration]

⁶***A joins an insurrection against the [Government of India]. A has committed the offence defined in this section.

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⁸[121A. Conspiracy to commit offences punishable by section 121.] Whoever within or without [India] conspires to commit any of the offences punishable by section 121, ¹⁰*** or conspires to overawe, by means of criminal force or the show of criminal force, ¹¹[the Central Government or any [State] Government ¹³***], shall be punished with ¹⁴[imprisonment for life], or with imprisonment of either description which may extend to ten years, ¹⁵[and shall also be liable to fine].

Explanation. To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

122. Collecting arms, etc., with intention of waging war against the Government of India. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the [Government of India], shall be punished with

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation" (w.e.f. 1-1-1956).

2. Subs. by the A. O. 1950, for "Queen".

3. Subs. by 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

4. Subs. by Act 16 of 1921, s. 2, for "and shall forfeit all his property".

5. Subs. by Act 36 of 1957, s. 3 and the Second Sch., for "Illustrations".

6. The brackets and letter "(a)" omitted by s. 3 and the Second Sch., *ibid.*

7. *Illustration (b)* omitted, by the A. O. 1950.

8. Ins. by Act 27 of 1870, s. 4.

9. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

10. The words "or to deprive the Queen of the sovereignty of the Provinces or of any part thereof" omitted by the A. O. 1950.

11. Subs. by the A. O. 1937, for "the G. of I. or any l. G".

12. Subs. by the A. O. 1950, for "Provincial".

13. The words "or the Government of Burma" omitted by the A. O. 1948.

14. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life or any shorter term" (w.e.f. 1-1-1956).

15. Ins. by Act 16 of 1921, s. 3.

¹[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, ²[and shall also be liable to fine].

123. Concealing with intent to facilitate design to wage war.^[12]Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the ³[Government of India], intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.^[13]Whoever, with the intention of inducing or compelling the ⁴[President] of India, or ⁵[Governor ^{6***}] of any ⁷[State], ^{8***} ^{9***} ^{10***} to exercise or refrain from exercising in any manner any of the lawful powers of such ¹¹[President or ⁵[Governor ^{6***}]],

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such ¹¹[President or ⁵[Governor ^{6***}]],

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹²[**124A. Sedition.**^[14]Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, ^{13***} the Government established by law in ¹⁴[India], ^{15***} shall be punished with ¹⁶[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.^[15]The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.^[16]Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.^[17]Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

125. Waging war against any Asiatic Power in alliance with the Government of India.^[18]Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the ³[Government of India] or attempts to wage such war, or abets the waging of such war, shall be punished with ¹[imprisonment for life], to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Subs. by Act 16 of 1921, s. 2, for "and shall forfeit all his property".

3. Subs. by the A. O. 1950, for "Queen".

4. Subs. by the *ibid.*, for "Governor General".

5. Subs. by Act 3 of 1951, s. 3 and the Sch., for "Governor".

6. The words "or Rajpramukh" omitted by the A. O. 1956.

7. Subs. by the A. O. 1950, for "Province" which had been subs. by the A. O. 1937, for "Presidency".

8. The words "or a Lieutenant-Governor" omitted by the A. O. 1937.

9. The words "or a Member of the Council of the Governor General of India" omitted by the A.O. 1948.

10. The words "or of the Council of any Presidency" omitted by the A. O. 1937.

11. The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successively been amended by the A.O. 1937, the A. O. 1948 and the A. O. 1950 to read as above.

12. Ins. by Act 27 of 1870, s. 5 and subs. by Act 4 of 1898, s. 4, for s. 124A.

13. The words "Her Majesty or" omitted by the A.O. 1950. The words "or the Crown Representative" ins. after the word "Majesty" by the A. O. 1937 were omitted by the A. O. 1948.

14. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

15. The words "or British Burma" ins. by the A. O. 1937 and omitted by the A. O. 1948.

16. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life or any shorter term" (w.e.f. 1-1-1956).

126. Committing depredation on territories of Power at peace with the Government of India.^[1]

Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the ¹[Government of India], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

127. Receiving property taken by war or depredation mentioned in sections 125 and 126.^[2]

Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

128. Public servant voluntarily allowing prisoner of state or war to escape.^[3] Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with ²[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

129. Public servant negligently suffering such prisoner to escape.^[4] Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130. Aiding escape of, rescuing or harbouring such prisoner.^[5] Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.^[6] A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in ³[India], is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY, ⁴[NAVY AND AIR FORCE]

131. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.^[7]

Whoever abets the committing of mutiny by an officer, soldier, ⁵[sailor or airman], in the Army, ⁶[Navy or Air Force] of the ¹[Government of India] or attempts to seduce any such officer, soldier, ⁵[sailor or airman] from his allegiance or his duty, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁷[*Explanation.*^[8] In this section the words "officer", ⁸["soldier"], ⁹["sailor"] and "airman"] include any

1. Subs. by the A. O. 1950, for "Queen".

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "and Navy".

5. Subs. by s. 2 and the First Sch., *ibid.*, for "or sailor".

6. Subs. by s. 2 and the First Sch., *ibid.*, for "or Navy".

7. Ins. by Act 27 of 1870, s. 6.

8. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "and soldier".

9. Ins. by Act 35 of 1934, s. 2 and Sch.

person subject to the ¹[Army Act, ²[the Army Act, 1950 (46 of 1950)], ³[the Naval Discipline Act, ⁴***the Indian Navy (Discipline) Act, 1934 (34 of 1934)] ⁵[the Air Force Act or ⁶[the Air Force Act, 1950 (45 of 1950)]], as the case may be.]

132. Abetment of mutiny, if mutiny is committed in consequence thereof. [Whoever abets the committing of mutiny by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], shall, if mutiny be committed in consequence of that abetment, be punished with death or with ¹¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133. Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office. [Whoever abets an assault by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134. Abetment of such assault, if the assault committed. [Whoever abets an assault by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Abetment of desertion of soldier, sailor or airman. [Whoever, abets the desertion of any officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. Harboursing deserter. [Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India], has deserted, harbours such officer, soldier, ⁸[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Exception. [This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. Deserter concealed on board merchant vessel through negligence of master. [The master or person in charge of a merchant vessel, on board of which any deserter from the Army, ⁹[Navy or Air Force] of the ¹⁰[Government of India] is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138. Abetment of act of insubordination by soldier, sailor or airman. [Whoever abets what he knows to be an act of insubordination by an officer, soldier, ⁸[sailor or airman], in the Army, ⁹[Navy or Air Force], of the ¹⁰[Government of India], shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

1. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. 5 of 1869".
2. Subs. by Act 3 of 1951, s. 3 and the Sch., for "the Indian Army Act, 1911".
3. Ins. by Act 35 of 1934, s. 2 and the Sch.
4. The words "or that Act as modified by" omitted by the A. O. 1950.
5. Now see the Navy Act, 1957 (62 of 1957).
6. Subs. by Act 14 of 1932, s. 130 and the Sch., for "or the Air Force Act".
7. Subs. by Act 3 of 1951, s. 3 and the Sch., for "the Indian Air Force Act, 1932".
8. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "or sailor".
9. Subs. by s. 2 and the First Sch., *ibid.*, for "or Navy".
10. Subs. by the A. O. 1950, for "Queen".
11. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

¹138A. [Application of foregoing sections to the Indian Marine Service.] Rep. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

139. Persons subject to certain Acts. [§] No person subject to ²[the Army Act, ³[the Army Act, 1950 (46 of 1950)], the Naval Discipline Act, ⁴[*** ⁵[the Indian Navy (Discipline) Act, 1934 (34 of 1934)], [the Air Force Act or ⁶[the Air Force Act, 1950 (45 of 1950)]]], is subject to punishment under this Code for any of the offences defined in this Chapter.

140. Wearing garb or carrying token used by soldier, sailor or airman. [§] Whoever, not being a soldier, ⁹[sailor or airman] in the Military, ¹⁰[Naval or Air] service of the ¹¹[Government of India], wears any garb or carries any token resembling any garb or token used by such a soldier, ⁹[sailor or airman] with the intention that it may be believed that he is such a soldier, ⁹[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

141. Unlawful assembly. [§] An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is [§]

First. [§] To overawe by criminal force, or show of criminal force, ¹²[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second. [§] To resist the execution of any law, or of any legal process; or

Third. [§] To commit any mischief or criminal trespass, or other offence; or

Fourth. [§] By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth. [§] By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation. [§] An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Being member of unlawful assembly. [§] Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Punishment. [§] Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144. Joining unlawful assembly armed with deadly weapon. [§] Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Ins. by Act 14 of 1887, s. 79.

2. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy".

3. Subs. by Act 3 of 1951, s. 3 and the Sch., for "the Indian Army Act, 1911".

4. Ins. by Act 35 of 1934, s. 2 and the Sch.

5. The words "or that Act as modified by" omitted by the A. O. 1950.

6. Now see the Navy Act, 1957 (62 of 1957).

7. Subs. by Act 14 of 1932, s. 130 and Sch., for "or the Air Force Act".

8. Subs. by Act 3 of 1951, s. 3 and the Sch., for "the Indian Air Force Act, 1932".

9. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "or sailor".

10. Subs. by s. 2 and the First Sch., *ibid.*, for "or Naval".

11. Subs. by the A. O. 1950, for "Queen".

12. Subs., *ibid.*, for "the Central or any Provincial Government or Legislature".

145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse. [§] Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

146. Rioting. [§] Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Punishment for rioting. [§] Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

148. Rioting, armed with deadly weapon. [§] Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object. [§] If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

150. Hiring, or conniving at hiring, of persons to join unlawful assembly. [§] Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse. [§] Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation. [§] If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Assaulting or obstructing public servant when suppressing riot, etc. [§] Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Wantonly giving provocation with intent to cause riot [§] If rioting be committed; if not committed. [§] Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

[153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.] [§] (1) Whoever [§]

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or communities, or



(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,¹ [or]

¹[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) **Offence committed in place of worship, etc.** [Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

²[153AA. **Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.** [Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under section 144A of the Code of Criminal Procedure, 1973 (2 of 1974) shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

Explanation. [“Arms” means articles of any description designed or adapted as weapons for offence or defence and includes firearms, sharp edged weapons, lathis, dandas and sticks].

³[153B. **Imputations, assertions prejudicial to national integration.** (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,⁴

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

154. Owner or occupier of land on which an unlawful assembly is held. [Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

1. Ins. by Act 31 of 1972, s. 2.

2. Ins. by Act 25 of 2005, s. 44 (w.e.f. 23-6-2005).

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Liability of person for whose benefit riot is committed. [4] Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156. Liability of agent of owner or occupier for whose benefit riot is committed. [4] Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Harbours persons hired for an unlawful assembly. [4] Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Being hired to take part in an unlawful assembly or riot. [4] Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

or to go armed. [4] And whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. Affray. [4] When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

160. Punishment for committing affray. [4] Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX

OFFENCES BY OR RELATING TO PUBLIC SERVANTS

161 to 165A. *Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), s. 31.*

166. Public servant disobeying law, with intent to cause injury to any person. [4] Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

¹**166A. Public servant disobeying direction under law.** [Whoever, being a public servant, [

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, ²[section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

166B. Punishment for non-treatment of victim. [Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.]

167. Public servant framing an incorrect document with intent to cause injury. [Whoever, being a public servant, and being, as ³[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

168. Public servant unlawfully engaging in trade. [Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Public servant unlawfully buying or bidding for property. [Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

170. Personating a public servant. [Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

171. Wearing garb or carrying token used by public servant with fraudulent intent. [Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

⁴[CHAPTER IXA

OF OFFENCES RELATING TO ELECTIONS

171A. Candidate's electoral right defined. [For the purposes of this Chapter [

1. Ins. by Act 13 of 2013, s. 3 (w.e.f. 03-02-2013).

2. Subs. by Act 22 of 2018, s. 2, for "section 376B, section 376C, section 376D" (w.e.f. 21-4-2018).

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

4. Ins. by Act 39 of 1920, s. 2.

¹[(a) "candidate" means a person who has been nominated as a candidate at any election;]

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171B. Bribery. ⁽¹⁾ Whoever ⁽¹⁾

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171C. Undue influence at elections. ⁽¹⁾ Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever ⁽¹⁾

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action or the mere exercise or a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171D. Personation at elections. ⁽¹⁾ Whoever at an election applies for a voting paper on votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

²[Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as a proxy for such elector.]

171E. Punishment for bribery. ⁽¹⁾ Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation. ⁽¹⁾ "Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

1. Subs. by Act 40 of 1975, s. 9, for cl. (a).
2. The proviso ins. by Act 24 of 2003, s. 5 (w.e.f. 22-9-2003).

171F. Punishment for undue influence or personation at an election. [Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.]

171G. False statement in connection with an election. [Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.]

171H. Illegal payments in connection with an election. [Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:]

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Failure to keep election accounts. [Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.]

CHAPTER X

OF CONTEMPTSOFTHE LAWFUL AUTHORITYOF PUBLIC SERVANTS

172. Absconding to avoid service of summons or other proceeding. [Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to ¹[produce a document or an electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

173. Preventing service of summons or other proceeding, or preventing publication thereof. [Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or ²[to produce a document or electronic record in a Court of Justice] with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Non-attendance in obedience to an order from public servant. [Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

1. Subs. by Act 21 of 2000, s. 91 and the First Sch., for "produce a document in a Court of Justice" (w.e.f. 17-10-2000).
2. Subs. by s. 91 and the First Sch., *ibid.*, for "to produce a document in a Court of Justice" (w.e.f. 17-10-2000).

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the ¹[High Court] at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a ²[District Judge], as a witness, in obedience to a summons issued by that ³[District Judge] intentionally omits to appear. A has committed the offence defined in this section.

³**[174A .Non-appearance in response to a proclamation under section 82 of Act 2 of 1974. §]** Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.]

175. Omission to produce document to public servant by person legally bound to produce it. § Whoever, being legally bound to produce or deliver up any ⁴[document or electronic record] to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the ⁴[document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a ⁵[District Court], intentionally omits to produce the same. A has committed the offence defined in this section.

176. Omission to give notice or information to public servant by person legally bound to give it. § Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

⁶[or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

177. Furnishing false information. § Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or

1. Subs. by the A. O. 1950, for "Supreme Court".

2. Subs. *ibid.*, for "Zila Judge".

3. Ins. by Act 25 of 2005, s. 44 (w.e.f. 23-6-2005).

4. Subs. by Act 21 of 2000, s. 91 and the First Sch., for "document" (w.e.f. 17-10-2000).

5. Subs. by the A.O. 1950, for "Zila Court".

6. Added by Act 22 of 1939, s. 2.

has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

²[Explanation. ¹In section 176 and in this section the word "offence" includes any act committed at any place out of ³[India], which, if committed in ³[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.]

178. Refusing oath or affirmation when duly required by public servant to make it. ¹Whoever refuses to bind himself by an oath ⁴[or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Refusing to answer public servant authorised to question. ¹Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Refusing to sign statement. ¹Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181. False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation. ¹Whoever, being legally bound by an oath ⁴[or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath ⁴[or affirmation], makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

²[**182. False information, with intent to cause public servant to use his lawful power to the injury of another person.** ¹Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant ¹

1. Rep. by Act 17 of 1862, s. VII and Sch.

2. Added by Act 3 of 1894, s. 5.

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. Ins. by Act 10 of 1873, s. 15.

5. Subs. by Act 3 of 1895, s. 1, for section 182.

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.]

183. Resistance to the taking of property by the lawful authority of a public servant. [§]Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184. Obstructing sale of property offered for sale by authority of public servant. [§]Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

185. Illegal purchase or bid for property offered for sale by authority of public servant. [§]Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186. Obstructing public servant in discharge of public functions. [§]Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

187. Omission to assist public servant when bound by law to give assistance. [§]Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Disobedience to order duly promulgated by public servant. [§]Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple

imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation. It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Threat of injury to public servant. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Threat of injury to induce person to refrain from applying for protection to public servant. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

191. Giving false evidence. Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1. A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2. A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Fabricating false evidence. Whoever causes any circumstance to exist or [makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement,] intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an

arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

193. Punishment for false evidence. [4]Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1. [4]A trial before a Court-martial¹ is a judicial proceeding.

Explanation 2. [4]An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3. [4]An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194. Giving or fabricating false evidence with intent to procure conviction of capital offence. [4]Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital² [by the law for the time being in force in³ [India]] shall be punished with⁴ [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

If innocent person be thereby convicted and executed. [4]And if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment. [4]Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which² [by the law for the time being in force in³ [India]] is not capital, but punishable with⁴ [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

1. The words "or before a Military Court of Request" rep. by Act 13 of 1889, s. 2 and Sch.

2. Subs. by the A.O. 1948, for "by the law of British India or England".

3. Subs. by Act 3 of 1951, s. 3 and the Sch., for "the States".

4. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is ¹[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to ²[imprisonment for life] or imprisonment, with or without fine.

³[195A. Threatening any person to give false evidence.] Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.]

196. Using evidence known to be false. [Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Issuing or signing false certificate. [Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Using as true a certificate known to be false. [Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199. False statement made in declaration which is by law receivable as evidence. [Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false. [Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation. [A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Causing disappearance of evidence of offence, or giving false information to screen offender. [Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence. [shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life. [and if the offence is punishable with ¹[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years. [and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Subs. by s. 117 and the Sch., *ibid.*, for "such transportation" (w.e.f. 1-1-1956).

3. Ins. by Act 2 of 2006, s. 2 (w.e.f. 16-4-2006).

description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202. Intentional omission to give information of offence by person bound to inform. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203. Giving false information respecting an offence committed. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹[Explanation.] In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of ²[India], which, if committed in ³[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]

204. Destruction of document to prevent its production as evidence. Whoever secretes or destroys any ³[document and electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such ³[document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. False personation for purpose of act or proceeding in suit or prosecution. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Added by Act 3 of 1894, s. 6.

2. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for "document" (w.e.f. 17-10-2000).

208. Fraudulently suffering decree for sum not due. [4]Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z, Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Dishonesty making false claim in Court. [4]Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Fraudulently obtaining decree for sum not due. [4]Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211. False charge of offence made with intent to injure. [4]Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, [imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Harboursing offender. [4]Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

if a capital offence. [4]shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment. [4]and if the offence is punishable with [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

²["Offence" in this section includes any act committed at any place out of ³[India], which, if committed in ³[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in ³[India].]

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Ins. by Act 3 of 1894, s. 7.

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951 s. 3 and the Sch., to read as above.

Exception. [§] This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to ¹[imprisonment for life], A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Taking gift, etc., to screen an offender from punishment. [§] Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence. [§] shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment. [§] and if the offence is punishable with ¹[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Offering gift or restoration of property in consideration of screening offender. [§] Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or ²[restores or causes the restoration of] any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence. [§] shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment. [§] and if the offence is punishable with ¹[imprisonment for life] or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

³[*Exception.* [§] The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.]

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215. Taking gift to help to recover stolen property, etc. [§] Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

216. Harboursing offender who has escaped from custody or whose apprehension has been ordered. [§] Whenever any person convicted of a charged with an offence, being in lawful custody for that offence, escapes from such custody,

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Subs. by Act 42 of 1953, s. 4 and the Third Sch., for "to restore or cause the restoration of".

3. Subs. by Act 8 of 1882, s. 6, for the original exception.

4. Illustrations rep. by Act 10 of 1882, s. 2 and the First Sch.

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence. If the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment. If the offence is punishable with ¹[imprisonment for life] or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

²["Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of ³[India], which, if he had been guilty of it in ³[India], would have been punishable as an offence, and for which he is, under any law relating to extradition, ⁴*** or otherwise, liable to be apprehended or detained in custody in ³[India], and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in ³[India].]

Exception. The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

⁵[216A. Penalty for harbouring robbers or dacoits.] Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation. For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without ³[India].

Exception. This provision does not extend to the case in which the harbour is by the husband or wife of the offender.]

⁵[216B. Definition of "harbour" in sections 212, 216 and 216A.] Rep. by the Indian Penal Code (Amendment) Act, 1942 (8 of 1942), s. 3.

217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Ins. by Act 10 of 1886, s. 23.

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

4. The words "or under the Fugitive Offenders Act, 1881," omitted by Act 3 of 1951, s. 3 and the Sch.

5. Ins. by Act 3 of 1894, s. 8.

that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law. ¹Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law. ¹Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221. Intentional omission to apprehend on the part of public servant bound to apprehend. ¹Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say: ²

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with ³[imprisonment for life] or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222. Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed. ¹Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence ²[or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say: ³

with ⁴[imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to ⁵[imprisonment for life] ⁶*** ⁴*** or imprisonment for a term of ten years, or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended is subject by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years ²[or if the person was lawfully committed to custody].

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Ins. by Act 27 of 1870, s. 8.

3. The words "or penal servitude for life" omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

4. The words "or to" omitted by Act 36 of 1957, s. 3 and the Second Sch.

5. The word "transportation" omitted by Act 26 of 1955, s. 117 and the Sch. (w.e.f. 1-1-1956).

6. The words "or penal servitude" omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

223. Escape from confinement or custody negligently suffered by public servant. [§] Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence¹ [or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224. Resistance or obstruction by a person to his lawful apprehension. [§] Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation. [§] The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225. Resistance or obstruction to lawful apprehension of another person. [§] Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with² [imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended, or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to² [imprisonment for life],^{3***} ^{4***} ^{5***} or imprisonment, for a term of ten years, or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with² [imprisonment for life] or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

⁶[225A. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for.] [§] Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished [§]

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225B. Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for. [§] Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in

1. Ins. by Act 27 of 1870, s. 8.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

3. The words "or to" omitted by Act 36 of 1957, s. 3 and the Second Sch.

4. The word "transportation" omitted by Act 26 of 1955, s. 117 and the Sch. (w.e.f. 1-1-1956).

5. The words "penal servitude" omitted by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

6. Subs. by Act 10 of 1886, s. 24(i), for section 225A which had been ins. by Act 27 of 1870, s. 9.

which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

226. [Unlawful return from transportation.] Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), s. 117 and the Sch (w.e.f. 1-1-1956).

227. Violation of condition of remission of punishment. [4] Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Intentional insult or interruption to public servant sitting in judicial proceeding. [4] Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[228A. Disclosure of identity of the victim of certain offences, etc.] [1] Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an [offence under section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is [4]

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation. [4] For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation. [4] The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.]

229. Personation of a juror or assessor. [4] Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Ins. by Act 43 of 1983, s. 2.

2. Subs. by Act 13 of 2013, s. 4, for "offence under section 376, section 376A, section 376B, section 376C or section 376D" (w.e.f. 3-2-2013).

3. Subs. by Act 22 of 2018, s. 3, for "section 376A, section 376B, section 376C, section 376D" (w.e.f. 21-4-2018).

¹[229A. Failure by person released on bail or bond to appear in court.]²Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation. ³The punishment under this section is⁴

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the court to order forfeiture of the bond.]

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

230. Coin defined. ¹[Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]

²[**Indian coin.** Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]

Illustrations

(a) Cowries are not coin.

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, inasmuch as they are not intended to be used as money.

(d) The coin denominated as the Company's rupee is ³[Indian coin].

⁴[(e) The "Farukhabad rupee", which was formerly used as money under the authority of the Government of India, is [Indian coin] although it is no longer so used.]

231. Counterfeiting coin. ¹Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation. ²A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Counterfeiting Indian coin. ¹Whoever counterfeits, or knowingly performs any part of the process of counterfeiting ⁴[Indian coin], shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Making or selling instrument for counterfeiting coin. ¹Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Making or selling instrument for counterfeiting Indian coin. ¹Whoever makes or mends, or performs any part of the process of making or mending or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be

1. Ins. by Act 25 of 2005, s. 44 (w.e.f. 23-6-2005).

2. Subs. by Act 19 of 1872, s. 1, for the first paragraph.

3. Subs. by the A. O. 1950, for the second paragraph.

4. Subs., *ibid.*, for "the Queen's coin".

5. Added by Act 6 of 1896, s. 1(2).

6. Subs. by the A. O. 1950, for "Queen's coin".

7. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

used, for the purpose of counterfeiting ¹[Indian coin], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Possession of instrument or material for the purpose of using the same for counterfeiting coin. [Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if Indian coin. [and if the coin to be counterfeited is ¹[Indian coin], shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Abetting in India the counterfeiting out of India of coin. [Whoever, being within ²[India] abets the counterfeiting of coin out of ²[India] shall be punished in the same manner as if he abetted the counterfeiting of such coin within ²[India].

237. Import or export of counterfeit coin. [Whoever imports into ²[India], or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

238. Import or export of counterfeits of the Indian coin. [Whoever imports into ²[India], or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of ¹[Indian coin], shall be punished with ³[Imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

239. Delivery of coin, possessed with knowledge that it is counterfeit. [Whoever, having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any persons or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. Delivery of Indian coin, possessed with knowledge that it is counterfeit. [Whoever, having any counterfeit coin which is a counterfeit of ¹[Indian coin], and which, at the time when he became possessed of it, he knew to be a counterfeit of ¹[Indian coin], fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241. Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit. [Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof. [Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

1. Subs. by the A. O. 1950, for "the Queen's coin".

2. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

243. Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof. [§] Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of ¹[Indian coin], having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Person employed in mint causing coin to be of different weight or composition from that fixed by law. [§] Whoever, being employed in any mint lawfully established in ²[India], does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245. Unlawfully taking coining instrument from mint. [§] Whoever, without lawful authority, takes out of any mint, lawfully established in ²[India], any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246. Fraudulently or dishonestly diminishing weight or altering composition of coin. [§] Whoever, fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation. [§] A person who scoops out part of the coin and puts anything else into the cavity alters the composition of the coin.

247. Fraudulently or dishonestly diminishing weight or altering composition of Indian coin. [§] Whoever fraudulently or dishonestly performs on ³[any Indian coin] any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. Altering appearance of coin with intent that it shall pass as coin of different description. [§] Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Altering appearance of Indian coin with intent that it shall pass as coin of different description. [§] Whoever performs on ³[any Indian coin] any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Delivery of coin, possessed with knowledge that it is altered. [§] Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

1. Subs. by the A. O. 1950, for "the Queen's coin".

2. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

3. Subs. by the A. O. 1950, for "any of the Queen's coin".

251. Delivery of Indian coin, possessed with knowledge that it is altered. [4]Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Possession of coin by person who knew it to be altered when he became possessed thereof. [4]Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Possession of Indian coin by person who knew it to be altered when he became possessed thereof. [4]Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered. [4]Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255. Counterfeiting Government stamp. [4]Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue shall be punished with [imprisonment for life] or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. [4]A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

256. Having possession of instrument or material for counterfeiting Government stamp. [4]Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Making or selling instrument for counterfeiting Government stamp. [4]Whoever makes or performs any part of the process of making, or buys, or sells, or disposes or, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258. Sale of counterfeit Government stamp. [4]Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259. Having possession of counterfeit Government stamp. [4]Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260. Using as genuine a Government stamp known to be counterfeit. [1]Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261. Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government. [2]Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

262. Using Government stamp known to have been before used. [3]Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263. Erasure of mark denoting that stamp has been used. [4]Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[263A. Prohibition of fictitious stamps.] [5](1) Whoever [6]

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp ²[may be seized and, if seized] shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government", when used in connection with, or in reference to any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

CHAPTER XIII

OF OFFENCES RELATING TO WEIGHTS AND MEASURES

264. Fraudulent use of false instrument for weighing. [7]Whoever, fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265. Fraudulent use of false weight or measure. [8]Whoever, fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity

1. Added by Act 3 of 1895, s. 2.

2. Subs. by Act 42 of 1953, s. 4 and the Third Sch., for "may be seized and".

as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

266. Being in possession of false weight or measure. [§] Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, ^{1***} intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267. Making or selling false weight or measure. [§] Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

268. Public nuisance. [§] A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Negligent act likely to spread infection of disease dangerous to life. [§] Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life. [§] Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Disobedience to quarantine rule. [§] Whoever knowingly disobeys any rule made and promulgated ²[by the ^{3***} Government ^{4***}] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Adulteration of food or drink intended for sale. [§] Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink. [§] Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274. Adulteration of drugs. [§] Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with

1. The word "and" omitted by Act 42 of 1953, s. 4 and the Third Sch.

2. Subs. by the A. O. 1937, for "by the G. of I., or by any Government".

3. The words "Central or any Provincial" omitted by the A. O. 1950.

4. The words "or the Crown Representative" omitted by the A. O. 1948.

imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Sale of adulterated drugs. [4]Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Sale of drug as a different drug or preparation. [4]Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Fouling water of public spring or reservoir. [4]Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Making atmosphere noxious to health. [4]Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279. Rash driving or riding on a public way. [4]Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Rash navigation of vessel. [4]Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Exhibition of false light, mark or buoy. [4]Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

282. Conveying person by water for hire in unsafe or overloaded vessel. [4]Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Danger or obstruction in public way or line of navigation. [4]Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees.

284. Negligent conduct with respect to poisonous substance. [4]Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Negligent conduct with respect to fire or combustible matter. [4] Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Negligent conduct with respect to explosive substance. [4] Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Negligent conduct with respect to machinery. [4] Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Negligent conduct with respect to pulling down or repairing buildings. [4] Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Negligent conduct with respect to animal. [4] Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Punishment for public nuisance in cases not otherwise provided for. [4] Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

291. Continuance of nuisance after injunction to discontinue. [4] Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

[292. Sale, etc., of obscene books, etc.] [4] [(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]

¹[(2)] Whoever [4]

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his

1. Subs. by Act 8 of 1925, s. 2, for s. 292.

2. Ins. by Act 36 of 1969, s. 2.

3. S. 292 renumbered as sub-section (2) thereof by s. 2, *ibid*.

possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished ¹[on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

²[Exception. ³This section does not extend to ⁴]

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure ⁵

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used *bona fide* for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in ⁶

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]]

³[293. Sale, etc., of obscene objects to young person. ⁴Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished ¹[on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees].]

⁴[294. Obscene acts and songs. ⁵Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

⁵[294A. Keeping lottery office. ⁶Whoever keeps any office or place for the purpose of drawing any lottery ⁷[not being ⁸a State lottery] or a lottery authorised by the ⁸[State] Government], shall be punished

1. Subs. by Act 36 of 1969, s. 2, for certain words.

2. Subs. by s. 2, *ibid.*, for *Exception*.

3. Subs. by Act 8 of 1925, s. 2, for section 293.

4. Subs. by Act 3 of 1895, s. 3, for section 294.

5. Ins. by Act 27 of 1870, s. 10.

6. Subs. by the A. O. 1937, for "not authorized by Government".

7. Subs. by Act 3 of 1951, s. 3 and the Sch., for "a lottery organized by the Central Government or the Government of a Part A State or a Part B State".

8. Subs. by the A. O. 1950, for "Provincial".

with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.]

CHAPTER XV

OF OFFENCES RELATING TO RELIGION

295. Injuring or defiling place of worship, with intent to insult the religion of any class. [Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

¹[295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. [Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of ²[citizens of India], ³[by words, either spoken or written, or or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ⁴[three years], or with fine, or with both.]

296. Disturbing religious assembly. [Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

297. Trespassing on burial places, etc. [Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

298. Uttering words, etc., with deliberate intent to wound religious feelings. [Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of offences affecting life

299. Culpable homicide. [Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.]

1. Ins. by Act 25 of 1927, s. 2.

2. Subs. by the A. O. 1950, for "His Majesty's subjects".

3. Subs. by Act 41 of 1961, s. 3, for certain words.

4. Subs. by s. 3, *ibid.*, for "two years".

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1. [§] A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2. [§] Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3. [§] The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Murder. [§] Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or [§]

2ndly. [§] If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or [§]

3rdly. [§] If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or [§]

4thly. [§] If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1. [§] **When culpable homicide is not murder.** [§] Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos: [§]

First. [§] That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. [§] That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. [§] That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was giving by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2. Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3. Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation. It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301. Culpable homicide by causing death of person other than person whose death was intended. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Punishment for murder. [§] Whoever commits murder shall be punished with death or ¹[imprisonment for life], and shall also be liable to fine.

²[303. Punishment for murder by life-convict. [§] Whoever, being under sentence of ¹[imprisonment for life], commits murder, shall be punished with death.]

304. Punishment for culpable homicide not amounting to murder. [§] Whoever commits culpable homicide not amounting to murder, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

³[304A. Causing death by negligence. [§] Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

⁴[304B. Dowry death. [§] (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. [§] For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

305. Abetment of suicide of child or insane person. [§] If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or ¹[imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

306. Abetment of suicide. [§] If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Attempt to murder. [§] Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to ¹[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts. [§] [When any person offending under this section is under sentence of ¹[imprisonment for life], he may, if hurt is caused, be punished with death.]

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Section 303 has been struck down by Supreme Court's Order dated 7th April, 1983 in the Mithu, Etc., Etc. vs. State of Punjab Etc., Etc. 1983 AIR 473, SCR (2) 690.

3. Ins. by Act 27 of 1870, s. 12.

4. Ins. by Act 43 of 1986, s. 10 (w.e.f. 19-11-1986).

5. Added by Act 27 of 1870, s. 11.

latter part of ¹[the first paragraph of] this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308. Attempt to commit culpable homicide. ²Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309. Attempt to commit suicide. ³Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year ²[or with fine, or with both.]

310. Thug. ⁴Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311. Punishment. ⁵Whoever is a thug, shall be punished with ³[imprisonment for life], and shall also be liable to fine.

*Of the causing of miscarriage, of injuries to unborn children, of the exposure
Of infants, and of the concealment of births.*

312. Causing miscarriage. ⁶Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation. ⁷A woman who causes herself to miscarry, is within the meaning of this section.

313. Causing miscarriage without woman's consent. ⁸Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with ³[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

314. Death caused by act done with intent to cause miscarriage. ⁹Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

if act done without woman's consent. ¹⁰And if the act is done without the consent of the woman, shall be punished either with ³[imprisonment for life], or with the punishment above mentioned.

Explanation. ¹¹It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Act done with intent to prevent child being born alive or to cause it to die after birth. ¹²Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

1. Ins. by Act 12 of 1891, s. 2 and the Second Sch.

2. Subs. by Act 8 of 1882, s. 7, for "and shall also be liable to fine".

3. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

316. Causing death of quick unborn child by act amounting to culpable homicide. [§]Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Exposure and abandonment of child under twelve years, by parent or person having care of it. [§]Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation. [§]This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Concealment of birth by secret disposal of dead body. [§]Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Hurt

319. Hurt. [§]Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

320. Grievous hurt. [§]The following kinds of hurt only are designated as "grievous": [§]

First. [§]Emasculation.

Secondly. [§]Permanent privation of the sight of either eye.

Thirdly. [§]Permanent privation of the hearing of either ear.

Fourthly. [§]Privation of any member or joint.

Fifthly. [§]Destruction or permanent impairing of the powers of any member or joint.

Sixthly. [§]Permanent disfiguration of the head or face.

Seventhly. [§]Fracture or dislocation of a bone or tooth.

Eighthly. [§]Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

321. Voluntarily causing hurt. [§]Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

322. Voluntarily causing grievous hurt. [§]Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Explanation. [§]A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending of knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Punishment for voluntarily causing hurt. [Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.]

324. Voluntarily causing hurt by dangerous weapons or means. [Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.]

325. Punishment for voluntarily causing grievous hurt. [Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.]

326. Voluntarily causing grievous hurt by dangerous weapons or means. [Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

²**326A. Voluntarily causing grievous hurt by use of acid, etc.**—Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

326B. Voluntarily throwing or attempting to throw acid.—Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]

327. Voluntarily causing hurt to extort property, or to constrain to an illegal to an act. [Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. Ins. by Act 13 of 2013, s. 5 (w.e.f. 3-2-2013).

offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Causing hurt by means of poison, etc., with intent to commit an offence. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

330. Voluntarily causing hurt to extort confession, or to compel restoration of property. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Voluntarily causing hurt to deter public servant from his duty. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Voluntarily causing grievous hurt to deter public servant from his duty. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

¹ Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

334. Voluntarily causing hurt on provocation. [4]Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Voluntarily causing grievous hurt on provocation. [4]Whoever [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation. [4]The last two sections are subject to the same provisos as *Exception 1*, section 300.

336. Act endangering life or personal safety of others. [4]Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees, or with both.

337. Causing hurt by act endangering life or personal safety of others. [4]Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others. [4]Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of wrongful restraint and wrongful confinement

339. Wrongful restraint. [4]Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception. [4]The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Wrongful confinement. [4]Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts leave the building. A wrongfully confines Z.

341. Punishment for wrongful restraint. [4]Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Punishment for wrongful confinement. [4]Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

343. Wrongful confinement for three or more days. § Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

344. Wrongful confinement for ten or more days. § Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

345. Wrongful confinement of person for whose liberation writ has been issued. § Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

346. Wrongful confinement in secret. § Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

347. Wrongful confinement to extort property, or constrain to illegal act. § Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348. Wrongful confinement to extort confession, or compel restoration of property. § Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Of Criminal Force and Assault

349. Force. § A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First. § By his own bodily power.

Secondly. § By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly. § By inducing any animal to move, to change its motion, or to cease to move.

350. Criminal force. § Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z; and if he has done so

without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z, and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a Woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Assault. [4] Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation. [4] Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Punishment for assault or criminal force otherwise than on grave provocation. [4] Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation. [4] Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

353. Assault or criminal force to deter public servant from discharge of his duty. [4] Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful

discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Assault or criminal force to woman with intent to outrage her modesty. [Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, ¹[shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].

²[354A. Sexual harassment and punishment for sexual harassment.] (1) A man committing any of the following acts [

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

354B. Assault or use of criminal force to woman with intent to disrobe. [Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

354C. Voyeurism. [Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1. [For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2. [Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D. Stalking. (1) Any man who [

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
 - (ii) monitors the use by a woman of the internet, email or any other form of electronic communication,
- commits the offence of stalking:

1. Subs. by Act 13 of 2013, s. 6, for "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both" (w.e.f. 3-2-2013).

2. Ins. by s. 7, *ibid.* (w.e.f. 3-2-2013).

Provided that such conduct shall not amount to stalking if the man who pursued it proves that [§]

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.]

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation. [§]Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356. Assault or criminal force in attempt to commit theft of property carried by a person. [§]Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357. Assault or criminal force in attempt wrongfully to confine a person. [§]Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

358. Assault or criminal force on grave provocation. [§]Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation. [§]The last section is subject to the same *Explanation* as section 352.

Of Kidnapping, Abduction, Slavery and Forced Labour

359. Kidnapping. [§]Kidnapping is of two kinds: kidnapping from ¹[India], and kidnapping from lawful guardianship.

360. Kidnapping from India. [§]Whoever conveys any person beyond the limits of ¹[India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from ¹[India].

361. Kidnapping from lawful guardianship. [§]Whoever takes or entices any minor under ²[sixteen] years of age if a male, or under ³[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation. [§]The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception. [§]This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

1. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

2. Subs. by Act 42 of 1949, s. 2, for "fourteen".

3. Subs. by s. 2, *ibid.*, for "sixteen".

362. Abduction. [4] Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

363. Punishment for kidnapping. [5] Whoever kidnaps any person from ¹[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

²[363A. Kidnapping or maiming a minor for purposes of begging.] [6] (1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section, [7]

(a) "begging" means [8]

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortunetelling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) "minor" means [9]

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.]

364. Kidnapping or abducting in order to murder. [10] Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with ³[imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A kidnaps Z from ¹[India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

⁴[364A. Kidnapping for ransom, etc.] [11] Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or ⁵[any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

1. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

2. Ins. by Act 52 of 1959, s. 2 (w.e.f. 15-1-1960).

3. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

4. Ins. by Act 42 of 1993, s. 2.

5. Subs. by Act 24 of 1995, s. 2, for "any other person".

365. Kidnapping or abducting with intent secretly and wrongfully to confine person.¹ Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.² Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

³[**366A. Procurement of minor girl.**⁴ Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

366B. Importation of girl from foreign country.⁵ Whoever imports into ³[India] from any country outside India ⁴[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, ⁵*** shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.]

367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.⁶ Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person.⁷ Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

369. Kidnapping or abducting child under ten years with intent to steal from its person.⁸ Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁹[**370. Trafficking of person.**—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.—using threats, or

*Secondly.*¹⁰ using force, or any other form of coercion, or

*Thirdly.*¹¹ by abduction, or

1. Added by Act 20 of 1923, s. 2.

2. Ins. by s. 3, *ibid.*

3. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch. to read as above.

4. Ins. by Act 3 of 1951, s. 3 and the Sch.

5. Certain words omitted by s. 3 and the Sch., *ibid.*

6. Subs. by Act 13 of 2013, s. 8, for section 370 (w.e.f. 3-2-2013).

Fourthly. ⁽¹⁾by practising fraud, or deception, or

Fifthly. ⁽²⁾by abuse of power, or

Sixthly. ⁽³⁾by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1. ⁽⁴⁾The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2. ⁽⁵⁾The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. Exploitation of a trafficked person. ⁽¹⁾Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.]

371. Habitual dealing in slaves. ⁽¹⁾Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with ⁽²⁾[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372. Selling minor for purposes of prostitution, etc. ⁽¹⁾Whoever sells, lets to hire, or otherwise disposes of any ⁽²⁾[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life".

2. Subs. by Act 18 of 1924, s. 2, for certain words.

¹[*Explanation I.*—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi-marital* relation.]

373. Buying minor for purposes of prostitution, etc. [Whoever buys, hires or otherwise obtains possession of any ²[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

³[*Explanation I.* [Whoever] Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II. [Whoever] “Illicit intercourse” has the same meaning as in section 372.]

374. Unlawful compulsory labour. [Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

⁴[*Sexual offences*

⁵[**375. Rape.** [A man is said to commit “rape” if he [

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions: [

First. [Against her will.

Secondly. [Without her consent.

Thirdly. [With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. [With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

1. Added by Act 18 of 1924, s. 3

2. Subs. by s. 2, *ibid.*, for certain words.

3. Added by s. 4, *ibid.*

4. Subs. by Act 43 of 1983, s. 3, for the heading “Of rape” and ss. 375 and 376.

5. Subs. by Act 13 of 2013, s. 9, for sections 375, 376, 376A, 376B, 376C and 376D (w.e.f. 03-02-2013).

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age.

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which ¹[shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].

(2) Whoever,

(a) being a police officer, commits rape

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

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(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

1. Subs. by Act 22 of 2018, s. 4, for "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine" (w.e.f. 21-4-2018).

2. Clause (i) omitted by s. 4, *ibid.* (w.e.f. 21-4-2018).

- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.^[1] For the purposes of this sub-section,^[2]

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

¹[(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine;

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.]

376A. Punishment for causing death or resulting in persistent vegetative state of victim.^[3] Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

²[376AB. Punishment for rape on woman under twelve years of age.^[4] Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]

376B. Sexual intercourse by husband upon his wife during separation.^[5] Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

1. Ins. by Act 22 of 2018, s. 4 (w.e.f. 21-4-2018).

2. Ins. by s. 5, *ibid.*, (w.e.f. 21-4-2018).

Explanation. ¹In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

376C. Sexual intercourse by a person in authority. ¹Whoever, being ²

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital,

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1. ¹In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2. ¹For the purposes of this section, *Explanation 1* to section 375 shall also be applicable.

Explanation 3. ¹"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4. ¹The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in *Explanation* to sub-section (2) of section 376.

376D. Gang rape. ¹Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

¹**[376DA. Punishment for gang rape on woman under sixteen years of age.]** ¹Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

376DB. Punishment for gang rape on woman under twelve years of age. ¹Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

¹ Ins. by Act 22 of 2018, s. 6 (w.e.f. 21-4-2018).

Provided further that any fine imposed under this section shall be paid to the victim.]

376E. Punishment for repeat offenders. [Whoever has been previously convicted of an offence punishable under section 376 or section 376A or ¹[section 376AB or section 376D or section 376DA or section 376DB,] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.]]

Of Unnatural Offences

377. Unnatural offences. [Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. [Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

Of Theft

378. Theft. [Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1. [A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2. [A moving effected by the same act which effects the severance may be a theft.

Explanation 3. [A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4. [A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5. [The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the

1. Subs. by Act 22 of 2018, s. 7, for "section 376D" (w.e.f. 21-4-2018).

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefor committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

379. Punishment for theft. [§] Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

380. Theft in dwelling house, etc. [§] Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. Theft by clerk or servant of property in possession of master. [§] Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft. [§] Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of Extortion

383. Extortion. [§] Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Punishment for extortion. [4] Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Putting person in fear of injury in order to commit extortion. [4] Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Extortion by putting a person in fear of death or grievous hurt. [4] Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion. [4] Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc. [4] Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with [imprisonment for life], or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with [imprisonment for life].

389. Putting person in fear or accusation of offence, in order to commit extortion. [4] Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with [imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with [imprisonment for life].

Of Robbery and Dacoity

390. Robbery. [4] In all robbery there is either theft or extortion.

When theft is robbery. [4] Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery. [4] Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation. [4] The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

391. Dacoity. [§] When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

392. Punishment for robbery. [§] Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

393. Attempt to commit robbery. [§] Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. Voluntarily causing hurt in committing robbery. [§] If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Punishment for dacoity. [§] Whoever commits dacoity shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. Dacoity with murder. [§] If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or ¹[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

397. Robbery, or dacoity, with attempt to cause death or grievous hurt. [§] If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. Attempt to commit robbery or dacoity when armed with deadly weapon. [§] If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

399. Making preparation to commit dacoity. [§] Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

400. Punishment for belonging to gang of dacoits. [§]Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with ¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. Punishment for belonging to gang of thieves. [§]Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. Assembling for purpose of committing dacoity. [§]Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property

403. Dishonest misappropriation of property. [§]Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being, joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1. [§]A dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security or a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2. [§]A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Dishonest misappropriation of property possessed by deceased person at the time of his death. § Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust

405. Criminal breach of trust. § Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

¹[*Explanation 1*.] § A person, being an employer ²[of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

³[*Explanation 2*.] § A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

1. Ins. by Act 40 of 1973, s. 9 (w.e.f. 1-11-1973).

2. Explanation numbered as Explanation 1 by Act 38 of 1975, s. 9 (w.e.f. 1-9-1975).

3. Ins. by Act 33 of 1988, s. 27 (w.e.f. 1-8-1988).

4. Ins. by Act 38 of 1975, s. 9 (w.e.f. 1-9-1975).

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Punishment for criminal breach of trust. [4]Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

407. Criminal breach of trust by carrier, etc. [4]Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

408. Criminal breach of trust by clerk or servant. [4]Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

409. Criminal breach of trust by public servant, or by banker, merchant or agent. [4]Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of the Receiving of Stolen Property

410. Stolen property. [4]Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which ^{2*** 3***}criminal breach of trust has been committed, is designated as "stolen property", [whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without ⁵[India]]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Dishonestly receiving stolen property. [4]Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Dishonestly receiving property stolen in the commission of a dacoity. [4]Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. The word "the" rep by Act 12 of 1891, s. 2 and the First Sch.

3. The words "offence of" rep by Act 8 of 1882, s. 9.

4. Ins. by s. 9, *ibid.*

5. The words "British India" have successively been subs. by the A. O. 1948, the A. O. 1950 and Act 3 of 1951, s. 3 and the Sch., to read as above.

413. Habitually dealing in stolen property. [§] Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Assisting in concealment of stolen property. [§] Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating

415. Cheating. [§] Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation. [§] A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. Cheating by personation. [§] A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.

Explanation. [§] The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

417. Punishment for cheating. [§]Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. [§]Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Punishment for cheating by personation. [§]Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property. [§]Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of Property

421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors. [§]Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

422. Dishonestly or fraudulently preventing debt being available for creditors. [§]Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration. [§]Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Dishonest or fraudulent removal or concealment of property. [§]Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Mischief

425. Mischief. [§]Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1. [§]It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2. [§]Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

- (a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.
- (b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- (d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.
- (g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Punishment for mischief. [42] Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Mischief causing damage to the amount of fifty rupees. [43] Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

428. Mischief by killing or maiming animal of the value of ten rupees. [44] Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of the ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees. [45] Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Mischief by injury to works of irrigation or by wrongfully diverting water. [46] Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Mischief by injury to public road, bridge, river or channel. [47] Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Mischief by causing inundation or obstruction to public drainage attended with damage. [48] Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

433. Mischief by destroying, moving or rendering less useful a light-house or sea-mark. [49] Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

434. Mischief by destroying or moving, etc., a land-mark fixed by public authority. [§]Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees. [§]Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards ¹[or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

436. Mischief by fire or explosive substance with intent to destroy house, etc. [§]Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden. [§]Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

438. Punishment for the mischief described in section 437 committed by fire or explosive substance. [§]Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

439. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc. [§]Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Mischief committed after preparation made for causing death or hurt. [§]Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Of Criminal Trespass

441. Criminal trespass. [§]Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass".

442. House-trespass. [§]Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation. [§]The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

1. Ins. by Act 8 of 1882, s. 10

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

443. Lurking house-trespass. [§] Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

444. Lurking house-trespass by night. [§] Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

445. House-breaking. [§] A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say: [§]

First. [§] If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly. [§] If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly. [§] If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly. [§] If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly. [§] If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly. [§] If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation. [§] Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. House-breaking by night. [§] Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

447. Punishment for criminal trespass. [§] Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Punishment for house-trespass. [§] Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. House-trespass in order to commit offence punishable with death. [§] Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. House-trespass in order to commit offence punishable with imprisonment for life. [§] Whoever commits house-trespass in order to the committing of any offence punishable with [imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. House-trespass in order to commit offence punishable with imprisonment. [§] Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

452. House-trespass after preparation for hurt, assault or wrongful restraint. [§] Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Punishment for lurking house-trespass or house-breaking. [§] Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment. [§] Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint. [§] Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description or a term which may extend to ten years, and shall also be liable to fine.

456. Punishment for lurking house-trespass or house-breaking by night. [§] Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment. [§] Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint. [§] Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking. ^[1] Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them. ^[2] If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with ¹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

461. Dishonestly breaking open receptacle containing property. ^[3] Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462. Punishment for same offence when committed by person entrusted with custody. ^[4] Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO²*** PROPERTY MARKS

463. Forgery. ^[5] Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document. ^[6] [A person is said to make a false document or false electronic record ^[7]

First. ^[8] Who dishonestly or fraudulently ^[9]

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any ⁴[electronic signature] on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the ⁴[electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or ⁴[electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly. ^[10] Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with ⁴[electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly. ^[11] Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his ⁴[electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception

1. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

2. The words "TRADE OR" omitted by Act 43 of 1958, s. 135 and Sch. (w.e.f. 25-11-1959).

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

4. Subs. by Act 10 of 2009, s. 51, for "digital signature" (w.e.f. 27-10-2009).

practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words: "I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1. A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2. The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

¹[Explanation 3. For the purposes of this section, the expression "affixing ²[electronic signature]" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]

465. Punishment for forgery. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

466. Forgery of record of Court or of public register, etc. ³Whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹[Explanation. For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).]

467. Forgery of valuable security, will, etc. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with ⁴[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating. Whoever commits forgery, intending that the ³[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Forgery for purpose of harming reputation. Whoever commits forgery, ³[intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. Forged document. A false ⁵[document or electronic record] made wholly or in part by forgery is designated "a forged ⁵[document or electronic record]".

471. Using as genuine a forged document or electronic record. Whoever fraudulently or dishonestly uses as genuine any ⁵[document or electronic record] which he knows or has reason to believe to be a forged ⁵[document or electronic record], shall be punished in the same manner as if he had forged such ⁵[document or electronic record].

472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with ⁴[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. Ins. by Act 21 of 2000, s. 91 and the First Sch. (w.e.f. 17-10-2000).

2. Subs. by Act 10 of 2009, s. 51, for "digital signature" (w.e.f. 27-10-2009).

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

4. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

5. Subs. by Act 21 of 2000, s. 91 and the First Sch., for "document" (w.e.f. 17-10-2000).

473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.^[1] Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it genuine.^[2] Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with ²[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.^[3] Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.^[4] Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating ³[any document or electronic record] other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.^[5] Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such document, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁴[477A. Falsification of accounts.]^[6] Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any ³[book, electronic record, paper, writing] valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in any such ³[book, electronic record, paper, writing] valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

1. Subs. by Act 21 of 2000, s. 91 and the First Sch., for certain words (w.e.f. 17-10-2000).

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

3. Subs. by Act 21 of 2000, s. 91 and the First Sch., for "any document" (w.e.f. 17-10-2000).

4. Added by Act 3 of 1895, s. 4.

5. Subs. by Act 21 of 2000, s. 91 and the First Sch., for "book, paper, writing" (w.e.f. 17-10-2000).

Explanation.^[1] It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.]

¹[Of²***Property and Other Marks

478. [Trade Mark.] *Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958), s. 135 and Sch. (w. e. f. 25-11-1959).*

479. **Property mark.**^[3] A mark used for denoting that movable property belongs to a particular person is called a property mark.

480. [Using a false trade mark.] *Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958), s. 135 and Sch. (w. e. f. 25-11-1959).*

481. **Using a false property mark.**^[4] Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. **Punishment for using a false property mark.**^[5] Whoever uses ³***any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. **Counterfeiting a property mark used by another.**^[6] Whoever counterfeits any ⁴***property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. **Counterfeiting a mark used by a public servant.**^[6] Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

⁵[485. **Making or possession of any instrument for counterfeiting a property mark.**^[6] Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.]

486. **Selling goods marked with a counterfeit property mark.**^[6] [Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark] affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

1. Subs. by Act 4 of 1889, s. 3, for the original heading and ss. 478 to 489.

2. The word "Trade" omitted by Act 43 of 1958, s. 135 and the Sch. (w. e. f. 25-11-1959).

3. The words "any false trade mark or" omitted by s. 135 and the Sch., *ibid.* (w. e. f. 25-11-1959).

4. The words "trade mark or" omitted by s. 135 and the Sch., *ibid.* (w. e. f. 25-11-1959).

5. Subs. by s. 135 and the Sch., *ibid.* for s. 485 (w. e. f. 25-11-1959).

6. Subs. by s. 135 and the Sch., *ibid.* for certain words (w. e. f. 25-11-1959).

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Making a false mark upon any receptacle containing goods. [Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.]

488. Punishment for making use of any such false mark. [Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.]

489. Tampering with property mark with intent to cause injury. [Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

¹[Of Currency-Notes and Bank-Notes]

489A. Counterfeiting currency-notes or bank-notes. [Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

Explanation. [For the purposes of this section and of sections 489B, ²[489C, 489D and 489E], the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.]

489B. Using as genuine, forged or counterfeit currency-notes or bank-notes. [Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

489C. Possession of forged or counterfeit currency-notes or bank-notes. [Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.]

489D. Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes. [Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with ²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

⁴[489E. Making or using documents resembling currency-notes or bank-notes. [Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.]

1. Added by Act 12 of 1899, s. 2.

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956).

3. Subs. by Act 35 of 1950, s. 3 and the Second Sch., for "489C and 489D".

4. Ins. by Act 6 of 1943, s. 2.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.]

CHAPTER XIX

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

490. [*Breach of contract of service during voyage or journey.*] *Rep. by the Workmen's Breach of Contract (Repealing) Act, 1925 (3 of 1925), s. 2 and Sch.*

491. **Breach of contract to attend on and supply wants of helpless person.** [§] Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

492. [*Breach of contract to serve at distant place to which servant is conveyed at master's expense.*] *Rep. by the Workmen's Breach of Contract (Repealing) Act, 1925 (3 of 1925), s. 2 and Sch.*

CHAPTER XX

OF OFFENCES RELATING TO MARRIAGE

493. **Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.** [§] Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. **Marrying again during lifetime of husband or wife.** [§] Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception. [§] This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495. **Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.** [§] Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. **Marriage ceremony fraudulently gone through without lawful marriage.** [§] Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497. Adultery. [§] Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

498. Enticing or taking away or detaining with criminal intent a married woman. [§] Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹[CHAPTER XXA

OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

498A. Husband or relative of husband of a woman subjecting her to cruelty. [§] Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. [§] For the purposes of this section, "cruelty" means [§]

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

CHAPTER XXI

OF DEFAMATION

499. Defamation. [§] Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. [§] It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. [§] It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. [§] An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. [§] No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says [§] "Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

¹ Ins. by Act 46 of 1983, s. 2.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception. § Imputation of truth which public good requires to be made or published. § It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception. § Public conduct of public servants. § It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception. § Conduct of any person touching any public question. § It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception. § Publication of reports of proceedings of courts. § It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation. § A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception. § Merits of case decided in Court or conduct of witnesses and others concerned. § It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says § "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says § "I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception. § Merits of public performance. § It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation. § A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z § "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception. § Censure passed in good faith by person having lawful authority over another. § It is not defamation in a person having over another any authority, either conferred by law or

arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception.

Eighth Exception. ^[§]**Accusation preferred in good faith to authorised person.** ^[§]It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Ninth Exception. ^[§]**Imputation made in good faith by person for protection of his or other's interests.** ^[§]It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business. ^[§]"Sell nothing to Z unless he pays you ready money. for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception. ^[§]**Caution intended for good of person to whom conveyed or for public good.** ^[§]It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Punishment for defamation. ^[§]Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Printing or engraving matter known to be defamatory. ^[§]Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Sale of printed or engraved substance containing defamatory matter. ^[§]Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

503. Criminal intimidation. ^[§]Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation. ^[§]A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Intentional insult with intent to provoke breach of the peace.^[1]Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹[**505. Statements conducing to public mischief.**^[2](1) Whoever makes, publishes or circulates any statement, rumour or report,^[3]

(a) with intent to cause, or which is likely to cause, any officer, soldier, ³[sailor or airman] in the Army, ⁴[Navy or Air Force] ⁵[of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to ⁶[three years], or with fine, or with both.

⁷[(2) **Statements creating or promoting enmity, hatred or ill-will between classes.**^[8]Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) **Offence under sub-section (2) committed in place of worship, etc.**^[9]Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Exception.^[10]It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it ²[in good faith and] without any such intent as aforesaid.]

506. Punishment for criminal intimidation.^[11]Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.^[12]and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or ⁸[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Criminal intimidation by an anonymous communication.^[13]Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

1. Subs. by Act 4 of 1898, s. 6, for s. 505.

2. Section 505 re-numbered as sub-section (1) of that section by Act 35 of 1969, s. 3.

3. Subs. by Act 10 of 1927, s. 2 and the First Sch., for "or sailor".

4. Subs. by s. 2 and the First Sch., *ibid.*, for "or Navy".

5. Subs. by the A. O. 1950, for "of Her Majesty or in the Imperial Service Troops" The words "or in the Royal Indian Marine" occurring after the word "Majesty" omitted by Act 35 of 1934, s. 2 and Sch.

6. Subs. by Act 41 of 1961, s. 4, for "two years".

7. Ins. by Act 35 of 1969, s. 3.

8. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation" (w.e.f. 1-1-1956).

508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure. [§] Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dharna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Word, gesture or act intended to insult the modesty of a woman. [§] Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, ¹[shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].

510. Misconduct in public by a drunken person. [§] Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII

OF ATTEMPTS TO COMMIT OFFENCES

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment. [§] Whoever attempts to commit an offence punishable by this Code with ²[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with ³[imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

1. Subs. by Act 13 of 2013, s. 10, for "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both" (w.e.f. 3-2-2013).

2. Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation" (w.e.f. 1-1-1956).

3. Subs. by s. 117 and the Sch., *ibid.*, for certain words (w.e.f. 1-1-1956).



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2522

The Medical Termination of Pregnancy Act, 1971

(Act No. 34 of 1971)



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2540

The Medical Termination Of Pregnancy Act, 1971

(Act No. 34 of 1971)

An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:

1. Short title, extent and commencement.-

- (1) This Act may be called the Medical Termination of Pregnancy Act, 1971.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

- (a) "guardian" means a person having the care of the person of a minor or a lunatic;
- (b) "lunatic" has the meaning assigned to it in Sec.3 of the Indian Lunacy Act, 1912 (4 of 1912);
- (c) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;
- (d) "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in Cl.(h) of Sec. 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under this Act.

3. When Pregnancies may be terminated by registered medical practitioners.-

- (1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.



(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is,

or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are.

Of opinion, formed in good faith, that,-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in Cl.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.

4. Place where pregnancy may be terminated.-No termination of pregnancy shall be made in accordance with this Act at any place other than,-

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government.

5. Sections 3 and 4 when not to apply.-

(1) The provisions of Sec.4 and so much of the provisions of sub-section (2) of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

6. Power to make rules.-4

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

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

(a) the experience or training, or both, which a registered medical practitioner shall have if he intends

to terminate any pregnancy under this Act ; and

(b) such other matters as are required to be or may be, provided by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made,

before each House of Parliament while it is in session for a total period of thirty days which may be

comprised in one session or in two successive sessions, and If, before the expiry of the session which it is so

laid or the session immediately following, both Houses agree in making any modification in the rule or both

Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form

or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without

prejudice to the validity of anything previously done under that rule.

7. Power to make regulations.-

(1) The State Government may, by regulations,-

(a) require any such opinion as is referred to in sub-section (2) of Sec. 3 to be certified by a registered medical practitioner or practitioners concerned in such form and at such time as be specified in such regulations, and the preservation or disposal of such certificates;

(b) require any registered medical practitioner, who terminates a pregnancy to give intimation of such termination and such other information relating to the termination as maybe specified in such regulations;

(c) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.

(2) The intimation given and the information furnished in pursuance of regulations made by virtue of C1.(b) of

Sub-section(1) of shall be given or furnished, as the case may be, to the Chief Medical Officer of the State..

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made

under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

8. **Protection of action taken in good faith.**- No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act.

THE MENTAL HEALTH ACT, 1987

(No. 14 of 1987)1



THE MENTAL HEALTH ACT, 1987
(No. 14 of 1987)1

[22nd May, 1987]

An Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

STATEMENT OF OBJECTS AND REASONS OF ACT 14 of 19872

1. The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realised that no stigma should be attached to such illness as it is curable, particularly, when diagnosed at an early stage. Thus the mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible.
2. The experience of the working of Indian Lunacy Act, 1912 (4 of 1912) has revealed that it has become out-moded. With the rapid advance of medical science and the understanding of the nature of malady, it has become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach.
3. It is considered necessary -
 - i. to regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill-persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained;
 - ii. To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;
 - iii. To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;
 - iv. To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;
 - v. To provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;
 - vi. To provide for the establishment of Central Authority and State Authorities for Mental Health Services;
 - vii. To regulate the powers of the Government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;
 - viii. To provide for legal aid to mentally ill persons at State expense in certain cases.
4. The main object of the Bill is to implement the aforesaid proposals.

COMMENTS

It is well settled that when the language of the statute is clear and admits of no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing a statutory provision is not permissible. Court must strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must,

therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case².

The law is well settled that though the Statement of objects and Reasons accompanying a legislative bill could not be used to determine the true meaning and effect of the substantive provisions of a statute, it was permissible to refer to the same for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy³.

PREAMBLE - It is established law that preamble discloses the primary intention of the statute but does not override the express provisions of the statute⁴. Although a preamble of a statute is a key to interpretation of the provisions of the Act, but the intention of Legislature is not necessarily to be gathered from the preamble taken by itself, but to be gathered from the provisions of the Act. Where the language of the Act is clear, the preamble cannot be a guide, but where the object or meaning of the provisions of the Act is not clear then an aid from the preamble can be taken into consideration for purpose of explaining the provisions of the Act⁵.

It is now well settled that the preamble of a statutory instrument cannot control the express clear language and sweep of the operating provisions of such an instrument. Nor can the express language of a statutory provision be curtailed or read down in the light of the preamble in the absence of any ambiguity in the enacted provisions⁶.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:

CHAPTER I PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT -

1. This Act may be called the Mental Health Act, 1987.
2. It extends to the whole of India
3. It shall come into force on such date¹ as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act in a State shall be construed as a reference to the coming into force of that provision in that state.

COMMENTS

The Act repeals the Indian Lunacy Act, 1912 (4 of 1912), and the Lunacy Act, 1977 (Jammu and Kashmir Act 25 of 1977). The provisions of the Indian Lunacy Act 1912 and the Amending Act which compendiously called Lunacy Act, 1912-1926 were not absolutely exhaustive².

S.O. 43 (E), DATED 11TH JANUARY, 1993 - In exercise of the powers conferred by sub-section (3) of Sec. 1 of the Mental Health Act, 1987 (14 of 1987), the Central Government hereby appoints the 1st day of April, 1993 as the date on which the said Act shall come into force in all the States and Union Territories.

RULE OF INTERPRETATION.- It is an accepted proposition of law that Acts must be construed as a whole. Guidance with regard to the meaning of a particular word or phrase may be found in other words and phrases in the same section or in other sections although the utility of an extensive consideration of other parts of the same statute will vary from case to case³.

In interpreting the provisions the exercise undertaken by the Court is to make explicit the intention of the Legislature which enacted the legislation. It is not for the Court to reframe the legislation for the very good reason that the powers to "legislate" have not been conferred on the Court⁴.

In order to sustain the presumption of constitutionality of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of fact which can be conceived existing at the time of the legislation⁵.

The principle of the interpretation that no word used by the Legislature in a legislation is useless, cannot be fitted into the situation where the question relates to the interpretation of an agreement. An agreement is not to be culled out from ambiguity⁶.

INTERPRETATION OF STATUTE-DUTY OF THE COURT - It is well settled that the Courts should read different provisions of an Act in a manner that no part thereof is held to be superfluous or surplus and that where language of statute leads to manifest contradictions the Court must construe them on the basis of which the said provisions can survive¹.

GENERALIA SPECIALIBUS NON DEROGANT- It is well-known proposition of law that when a matter falls under any specific provision, then it must be governed by that provision and not by the general provision (*Generalia specialibus non derogant*)².

CONSTRUCTION OF WORK- It is settled view that in determining the meaning or connotation of words and expressions describing an article one should be construed in the sense in which they are understood. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention³.

2. DEFINITIONS

In this Act, unless the context otherwise requires -

- a. "cost of maintenance". In relation to a mentally ill person admitted in a psychiatric hospital or psychiatric nursing home, shall mean the cost of such items as the State Government may, by general or special order, specify in this behalf;
- b. "District Court" means, in any area for which there is a city Civil Court, that Court, and in any other area the principal Civil Court of original jurisdiction, and includes any other Civil Court which the State Government may, by notification, specify as the Court competent to deal with all or any of the matters specified in this Act;
- c. "Inspecting Officer" means a person authorised by the State Government or by the licensing authority to inspect any psychiatric hospital or psychiatric nursing home;
- d. "license" means a licence granted under Sec.8;
- e. "licensee" means the holder of a licence;
- f. "licensed psychiatric hospital" or "licensed psychiatric nursing home" means a psychiatric hospital or psychiatric nursing home, as the case may be, licensed, or deemed to be licensed, under this Act;

- g. "licensing authority" means such officer or authority as may be specified by the State Government to be the licensing authority to the purposes of this Act;
- h. "Magistrate" means -
 - 1. in relation to a metropolitan area within the meaning of Cl (k) of Sec. 2 of the Code of Criminal Procedure, 1973 (2 of 1974), a Metropolitan Magistrate;
 - 2. in relation to any other area, the Chief Judicial Magistrate, Sub-Divisional Judicial Magistrate or such other Judicial Magistrate of the first class as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act;
- i. "medical officer" means a gazetted medical officer in the service of Government and includes a medical practitioner declared, by a general or special order of the State Government, to be a medical officer for the purposes of this Act;
- j. "medical officer in charge" in relation to any psychiatric hospital or psychiatric nursing home, means the medical officer who, for the time being, is in charge of that hospital or nursing home;
- k. "medical practitioner" means a person who possesses a recognised medical qualification as defined -
 - i. in Cl (h) of Sec 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in the State Medical Register, as defined in Cl. (k) of that section;
 - ii. in Cl (h) of sub-section (1) of Sec. 2 of the Indian Medicine Central Council Act, 1970 (48 of 1970), and whose name has been entered in a State Register of Indian Medicine, as defined in cl (j) of sub-section (1) of that section; and
 - iii. in Cl. (g) of sub-section (1) of Sec. 2 of the Homoeopathy Central Council Act, 1973 (59 of 1973), and whose name has been entered in a State Register of Homoeopathy, as defined in Cl. (I) of sub-section 1) of that section;
- l. "Mentally ill person" means a person who is in need of treatment by person of any mental disorder other than mental retardation;
- m. "mentally ill prisoner" means a mentally ill person for whose detention in, or removal to, a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order referred to in Sec. 27 has been made;
- n. "minor" means a person who has not completed the age of eighteen years;
- o. "notification" means a notification published in the Official Gazette;
- p. "prescribed" means prescribed by rules made under this Act;
- q. "psychiatric hospital" or "psychiatric nursing home" means a hospital, or as the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons; but does not include any general hospital or general nursing home established or

maintained by the Government and which provides also for psychiatric services;

- r. "psychiatrist" means a medical practitioner possessing a post-graduate degree or diploma in psychiatry, recognised by the Medical Council of India, constituted under Indian Medical Council Act, 1856 (102 of 1956), and includes, in relation to any State, any medical officer who, having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act;
- s. "reception order" means an order made under the provision of this Act for the admission and detention of a mentally ill person in a psychiatric Hospital or psychiatric nursing home;
- t. "relative" includes any person related to the mentally ill person by blood, marriage or adoption;
- u. "State Government" in relation to a Union territory, means the Administrator thereof.

COMMENTS

This section defines the various expressions occurring in the Act.

INTERPRETATION OF SECTION - The Court can merely interpret the section; it cannot re-write, recast or redesign the section.

RELATIVE - MEANING OF - certainly the word "relative" used in Sec. 3 of the Lunacy Act (since repealed by this Act) has to be understood in a legal sense and it has to be understood in the setting where that word is used in the provisions of the statute, particularly, the provision enabling a relative to entertain a petition under Sec. 63 of the Lunacy Act.

CHAPTER II

MENTAL HEALTH AUTHORITIES

3. CENTRAL AUTHORITY FOR MENTAL HEALTH SERVICES.

- . The Central Government shall establish an authority for mental health with such designation as it may deem fit.
- a. The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government.
- b. The authority established under sub-section (1) shall -
 - 0. be in charge of regulation, development, direction and co-ordination with respect to Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government.
 - 1. Supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in which mentally ill persons may be kept or detained) under the control of the Central Government.
 - 2. Advise the Central Government on all matters relating to mental health; and

3. Discharge such other functions with respect to matters relating to mental health as the Central Government may require.

EXPLANATION - For the purposes of this section and Sec.4 "Mental Health Services" include, in addition to psychiatric hospitals and psychiatric nursing homes, observation wards, day-care centres, in patient treatment in general hospitals, ambulatory treatment facilities and other facilities, convalescent homes and half-way-homes for mentally ill persons.

COMMENT

This section empowers the Central Government to establish Central Authority for Mental Health Services.

EXPLANATION- It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision1.

4. STATE AUTHORITY FOR MENTAL HEALTH SERVICES -

- . The State Government shall establish an authority for mental with such designation as it may deem fit.
- a. The Authority established under sub - section (1) shall be subject to the superintendence, direction and control of the State Government.
- b. The Authority established under sub - section (1) shall -
 - 0. be in charge of regulation, development and co-ordination with respect to Mental Health Service under the State Government and all other matters which, under this Act , the concern of the state Government or any officer or authority subordination to the State Government :
 - 1. supervise the psychiatric hospitals and psychiatric nursing homes and other Mental health Services Agencies (including places in which mentally ill persons may be kept or detained)under the control of the State Government :
 - 2. advise the State Government on all matters relating to mental health ; and
 - 3. discharge such other functions with respect to matters relating to mental health as the State Government may require.

COMMENT

This section empowers the State Government to established State authority for Mental Health services.

CHAPTER III

PSYCHIATRIC HOSPITALS AND PSYCHIATRIC NURSING HOMES

5. ESTABLISHED OR MAINTENANCE OF PSYCHIATRIC HOSPITALSAND PSYCHIATRIC NURSING HOMES -

- . The Central Government may, in any part of India, or the state government may, within the limits of its jurisdiction, established or maintain psychiatric hospitals hospitals or psychiatric nursing homes for the admission , and care of mentally ill persons at such places as it thinks fit ; and separate

psychiatric hospitals and psychiatric nursing homes may be established or maintained for, -

- a. those who are under the age of sixteen years;
 - b. those who are addicted to alcohol or other drugs which lead to behavioural changes in a persons ;
 - c. those who have been convicted of any offence; and
 - d. those belonging to such other or category of persons as may be prescribed .
- a. Where a psychiatric hospital or psychiatric nursing home is established or maintained by the Central Government, any reference in this Act to the State Government shall, in relation to such hospital or nursing home, be construed as a reference to the Central Government.

COMMENT

This section empowers the Central Government or the State Government to established or maintain psychiatric nursing homes.

6. ESTABLISHMENT OR MAINTENANCE OF PSYCHIATRIC HOSPITALS OR PSYCHIATRIC NURSING HOMES ONLY WITH LICENCE.

- . On and after the commencement of this Act, no person shall established or maintain a psychiatric hospital or psychiatric nursing home unless he holds a valid licence granted to him under this Act:

Provided that a psychiatric hospital or psychiatric nursing home (whether called asylum or by any other name) licensed by the central government or any state Government and maintained as such immediately before the commencement of this Act may continue to be maintained, and shall be deemed to be a licensed psychiatric hospital or licensed psychiatric nursing home, as the case may be, under this Act,-

- a. for a period of three months from such commencement,
 - b. if an application made in accordance with Sec. 7 for a licence is pending on the expiry of the period specified in Cl. (a) till the disposal of such application.
- a. Nothing contained in sub-section (1) shall apply to a psychiatric hospital or psychiatric nursing home established or maintained by a Central Government or a State Government.

COMMENT

This section prohibits establishment or maintenance of any psychiatric hospital or psychiatric nursing home by any person, unless he holds a valid licence granted to him under the Act.

7. APPLICATION FOR LICENCE. -

- . Every person, who holds, at the commencement of this Act, a valid licence authorising that person to establish or maintain any psychiatric hospital or psychiatric nursing home, shall, if the said person intends to establish or continue the maintenance of such hospital or nursing home after the expiry of the period referred to in Cl. (a) of the proviso to sub-section (1) of Sec. 6, make at least one month before the expiry of such period, an application

to the licensing authority for the grant of a fresh licence for the establishment or maintenance of such hospital or nursing home, as the case may be.

- a. A person, who intends to establish or maintain, after the commencement of this Act, a psychiatric hospital or psychiatric nursing home, shall, unless the said person already holds a valid licence, make an application to the licence authority for the grant of a licence.
- b. Every application under sub-section (1) or sub-section (2) shall be in such form and be accompanied by such fee as may be prescribed.

COMMENT

This section provides for application for licence for establishment or maintenance of psychiatric hospital or psychiatric nursing homes.

8. GRANT OR REFUSAL OF LICENCE -

On receipt of an application under Sec.7, the licensing authority shall make such inquiries as it may deem fit and where it is satisfied that -

- . the establishment or maintenance of the psychiatric hospital or psychiatric nursing home or the continuance of the maintenance of any such hospital or nursing home established before the commencement of this Act is necessary;
- a. the applicant is in a position to provide the minimum facilities prescribed for the admission, treatment and care of mentally ill persons; and
- b. The psychiatric hospital or psychiatric nursing home, will be under the charge of medical officer who is a psychiatrist.

it shall grant a licence to the applicant in the prescribed form, and where it is not so satisfied, the licensing authority shall, by order, refuse to grant the licence applied for:

Provided that, before making any order refusing to grant a licence, the licensing authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a licence shall set out therein the reasons for such refusal and such reasons shall be communicated to the applicant in such manner as may be prescribed.

COMMENT

This section empowers the licensing authority to grant or refuse licence for establishment or maintenance of psychiatric hospital or psychiatric nursing homes.

9. DURATION AND RENEWAL OF LICENCE -

- . A licence shall not be transferable or heritable.
- a. Where a licensee is unable to function as such for any reason or where a licensee dies, the licensee or, as the case may be, the legal representative of such licensee shall forthwith report the matter in the prescribed manner to the licensing authority and notwithstanding anything contained in sub-section (1), the psychiatric hospital or psychiatric nursing home concerned may continue to be maintained and shall be deemed to be a licensed psychiatric hospital or licensed psychiatric nursing home, as the case may be -

0. for a period of three months from the date of such report or in the case of the death of the licensee from the date of his death, or
1. if an application made in accordance with sub-section (3) for a licence is pending on the expiry of the period specified in Cl. (a), till the disposal of such application.
- b. The legal representative of the licensee referred to in sub-section (2) shall, if he intends to continue the maintenance of the psychiatric hospital or psychiatric nursing home after the expiry of the period referred to in sub-section (2), make, at least one month before the expiry of such period, an application to the licensing authority for the grant of a fresh licence for the maintenance of such hospital or nursing home, as the case may be, and the provisions of Sec. 8 shall apply in relation to such application as they apply in relation to an application made under Sec. 7
- c. Every licence shall, unless revoked earlier under Sec. 11, be valid for a period of five years from the date on which it is granted.
- d. A licence may be renewed from time to time, on an application made in that behalf to the licensing authority, in such form and accompanied by such fee, as may be prescribed, and every such application shall be made not less than one year before the date on which the period of validity of the licence is due to expire:

Provided that the renewal of a licence shall not be refused unless the licensing authority is satisfied that -

- e. the licensee is not in a position to provide in a psychiatric hospital or psychiatric nursing home, the minimum facilities prescribed for the admission, treatment and care therein mentally ill persons; or
- f. the licensee is not in a position to provide a medical officer which is a psychiatrist to take charge of the psychiatric hospital or psychiatric nursing home, or
- g. the licensee has contravened any of the provisions of this Act or any rule made thereunder.

COMMENT

This section empowers the licensing authority to grant or refuse licence for establishment or maintenance of the psychiatric hospital or psychiatric nursing home, under certain circumstances.

10. PSYCHIATRIC HOSPITAL AND PSYCHIATRIC NURSING HOME TO BE MAINTAINED IN ACCORDANCE WITH PRESCRIBED CONDITIONS -

Every psychiatric hospital or psychiatric nursing home shall be maintained in such manner and subject to such condition as may be prescribed.

COMMENT

This section lays down that every psychiatric hospital/nursing home shall be maintained properly according to the prescribed conditions.

11. REVOCATION OF LICENCE -

The licensing authority may, without prejudice to any other penalty that may be imposed on the licensee, by order in writing, revoke the licence if it is satisfied that -

0. the psychiatric hospital or psychiatric nursing home is not being maintained by the licensee in accordance with the provisions of this Act or the rules made thereunder; or
1. the maintenance of the psychiatric hospital or psychiatric nursing home is being carried on in a manner detrimental to the moral, mental or physical well-being of other in-patients thereof:

Provided that no such order shall be made except after giving the licensee a reasonable opportunity of being heard, and every such order shall set out therein the grounds for the revocation of the licence and such grounds shall be communicated to the licensee in such manner as may be prescribed.

- a. Every order made under sub-section (1) shall contain a direction that the in-patients of the psychiatric hospital or psychiatric nursing home shall be transferred to such other psychiatric hospital or psychiatric nursing home as may be specified in that order and it shall also contain such provisions (including provisions by way of directions) as to the care and custody of such in-patients pending such transfer. Every order made under sub-section (1) shall take effect -

0. where no appeal has been preferred against such order under Sec. 12, immediately on the expiry of the period prescribed for such appeal; and
1. where such appeal has been preferred and the same has been dismissed, from the date of the order of such dismissal.

COMMENT

This section empowers the licensing authority to revoke the licence in case the psychiatric hospital or nursing home is not maintained properly or its maintenance is detrimental to the well-being of the in-patients thereof.

12. Appeal -

- a. Any person aggrieved by an order of the licensing authority refusing to grant or renew a licence, or revoking a licence, may, in such manner and within such period as may be prescribed, prefer an appeal to the State Government:

Provided that the State Government may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

- a. Every appeal under sub-section(1) shall be made in such form and accompanied by such fee as may be prescribed.

COMMENT

This section makes provision for preferring an appeal to the State Government by any aggrieved person against the order of the licensing authority refusing to grant or renew a licence, or revoking a licence for establishment or maintenance of the psychiatric hospital/nursing home.

13. INSPECTION OF PSYCHIATRIC HOSPITALS AND PSYCHIATRIC NURSING HOME AND VISITING OF PATIENTS-

An Inspecting Officer may, at any time, enter and inspect any psychiatric hospital or psychiatric nursing home and require the production of any records, which are required to be kept in accordance with the rules made in this behalf, for inspection: Provided that any personal records of a patient so inspected shall be kept confidential except for the purposes of sub-section (3).

- a. The Inspecting Officer may interview in private any patient receiving treatment and care therein -
 0. for the purpose of inquiring into any complaint made by or on behalf of such patient as to the treatment and care.
 1. in any case, where the Inspecting Officer has reason to believe that any in-patient is not receiving proper treatment and care.
- b. Where the Inspecting Officer is satisfied that any in-patient in a psychiatric hospital or psychiatric nursing home is not receiving proper treatment and care, he may report the matter to the licensing authority and thereupon the licensing authority may issue such direction as it may deem fit to the medical officer-in-charge of the licensee of the psychiatric hospital, or, as the case may be, the psychiatric nursing home and every such medical officer-in-charge or licensee shall be bound to comply with such directions.

COMMENT

This section empowers an Inspecting Officer to inspect psychiatric hospitals / nursing homes, records thereof and to visit and interview patients receiving treatment and care therein.

14. TREATMENT OF OUT- PATIENT -

Provision shall be made in every psychiatric hospital or psychiatric nursing homes for such facilities as may be prescribed for the treatment of every mentally ill - persons, patients or who, for the time being, is not undergoing treatment as in - patients.

COMMENT

This section makes, provision for the treatment of mentally ill persons in the psychiatric hospital / nursing home, as an out - patients, in case his condition does not warrant his admission or an in - patient.

CHAPTER IV

ADMISSION AND DETENTION IN PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME

PART I

ADMISSION ON VOLUNTARY BASIS

15. REQUEST BY MAJOR FOR ADMISSION AS VOLUNTARY PATIENTS

Any persons (not being a minor), who considers himself to be a mentally ill person and desires to be admitted to any psychiatric nursing home for treatment, may request the medical officer in charge for being admitted as a voluntary patient.

COMMENT

This section makes provision for admission to a psychiatric hospital / nursing home for Treatment as a voluntary patient on request by a major mentally ill person.

16. REQUEST BY GUARDIAN FOR ADMISSION OF A WARD-

Where the guardian of a minor considers such minor to be a mentally ill person and desires to admit such minor in any psychiatric hospital or psychiatric nursing home for treatment, he may request the medical officer-in-charge for admitting such minor as a voluntary patient.

COMMENT

This section makes provision for admission of a minor mentally ill person to a psychiatric hospital/nursing home for treatment as a voluntary patient, on request by guardian of such minor.

17. ADMISSION OF, AND REGULATION WITH RESPECT TO, VOLUNTARY PATIENTS-

- On receipt of a request under Sec.15 or Sec.16, the medical officer-in-charge shall make such inquiry as he may deem fit within a period not exceeding twenty- four hours and if satisfied that the applicant or, as the case may be, the minor requires treatment as an in - patients in the psychiatric hospital or psychiatric nursing home, he may admit therein such application or, as the case may be, minor as a voluntary patient.
- a. Every voluntary patient admitted to a psychiatric hospital or psychiatric nursing home shall be bound to abide by such regulations as may be made by the medical officer - in - charge or the licensee of the psychiatric hospital or psychiatric nursing home.

This section deals with the matter relating to admission of, and regulation with respect to voluntary patients.

18. DISCHARGE OF VOLUNTARY PATIENTS -

- The medical officer-in-charge of a psychiatric hospital or psychiatric nursing home shall, on a request made in that behalf -
 - 0. by any voluntary patient; and
 - 1. by the guardian of the patient, if he is a minor voluntary patient, discharge, subject to the provisions of sub-section (3) and within twenty-four hours of the receipt of such request, the patient from the psychiatric hospital or psychiatric nursing home.
- a. Where a minor voluntary patient who is admitted as an in-patient in any psychiatric hospital or psychiatric nursing home attains majority, the medical officer-in-charge of such hospital or nursing home, shall, as soon as may be, intimate the patient that he has attained majority and that unless a request for his continuance as an in-patient is made by him within a period of one month of such intimation, he shall be discharged, and if, before the expiry of the said period, no request is made to the medical officer-in-charge for his continuance as an in-patient, he shall, subject to the provisions of sub-section (3), be discharged on the expiry of the said period.

- b. Notwithstanding anything contained in sub-section (1) or sub-section (2) where the medical officer-in-charge of a psychiatric hospital or psychiatric nursing home is satisfied that the discharge of a voluntary patient under sub-section (1) or sub-section (2) will not be in the interest of such voluntary patient, he shall, within seventy-two hours of the receipt of a request under sub-section (1), or, if no request under sub-section (2) has been made by the voluntary patient before the expiry of the period mentioned in that sub-section within seventy-two hours of such expiry constitute a Board consisting of two medical officers and seek its opinion as to whether such voluntary patient needs further treatment and if the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home the medical officer shall not discharge the voluntary patient, but continue his treatment for a period not exceeding ninety days at a time.

COMMENT

This section lays down the procedure for discharge of voluntary patient from the psychiatric hospital or psychiatric nursing home.

PART II

ADMISSION UNDER SPECIAL CIRCUMSTANCES

19. ADMISSION OF MENTALLY ILL PERSONS UNDER CERTAIN SPECIAL CIRCUMSTANCES-

Any mentally ill persons who does not, or is unable to, express his willingness for admission as a voluntary patient, may be admitted and kept as an in-patient in a psychiatric nursing hospital or psychiatric nursing home on an application made in that behalf by a relative or a friend of the mentally ill persons if the medical officers-in-charge is satisfied that in the interest of the mentally ill persons it is necessary so to do:

COMMENT

This section deals with the matters relating to admission of, and regulation with respect to voluntary patients.

20. DISCHARGE OF VOLUNTARY PATIENTS-

The medical officers-in-charge of a psychiatric hospital or psychiatric nursing home shall, on a request made in that behalf

0. by any voluntary patients; and
 1. by the guardian of the patient, if he is a minor voluntary patients, discharge, subject to the provisions of sub-section (3) and within twenty-four hours of the receipt of such request, patients from the psychiatric hospitals or psychiatric nursing home.
- a. where a minor voluntary patients who is admitted as an in-patient in any psychiatric hospital or psychiatric nursing home attains majority, the medical officer-in-charge of such hospital or nursing home shall, as soon as may be, intimate the patient that he has attained majority and that unless a request for his continuance as an in-patient is made by him within a period of one month of such intimation, he shall be discharged, and if, before the expiry of the said period, no request is made to the medical

officer-in-charge for his continuance as an in-patient, he shall, subject to the provisions of sub-section (3), be discharged on the expiry of the said period.

- b. Notwithstanding anything contained in sub-section (1) or sub-section (2), where the medical officers-in-charge of a psychiatric hospital or psychiatric nursing home is satisfied that the discharge of a voluntary patient under sub-section (1) or sub-section (2) will not be in the interest of such voluntary patient, he shall, within seventy-two hours of the receipt of a request under sub-section (1) or, if no request under sub-section (2) has been made by the voluntary patient before the expiry of the period mentioned in that sub-section within seventy-two hours of such expiry constitute a Board consisting of two medical officers and seek its opinion as to whether such voluntary patient needs further treatment and if the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home the medical officer shall not discharge the voluntary patient, but continue his treatment for a period not exceeding ninety days at a time.

COMMENT

This section lays down the procedure for discharge of voluntary patient from the psychiatric hospital or psychiatric nursing home.

PART II

ADMISSION UNDER SPECIAL CIRCUMSTANCES

21. ADMISSION OF MENTALLY ILL PERSONS UNDER CERTAIN SPECIAL CIRCUMSTANCES-

Any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient, may be admitted and kept as an in-patient in a psychiatric hospital or psychiatric nursing home on an application made in that behalf by a relative or a friend of the mentally ill person if the medical officer-in-charge is satisfied that in the interests of the mentally ill person it is necessary so to do;

Provided that no person so admitted as an in-patient shall be kept in the psychiatric hospital or psychiatric nursing home as an in-patient for a period exceeding ninety days except in accordance with the other provisions of the Act.

- a. Every application under sub-section (1) shall be in the prescribed form and be accompanied by two medical certificates, from two medical practitioners of whom one shall be a medical practitioner in the service of Government, to the effect that the condition of such mentally ill person is such that he should be kept under observation and treatment as an in-patient in a psychiatric hospital or psychiatric nursing home;

Provided that the medical officer, in charge of the psychiatric hospital or psychiatric nursing home concerned may, if satisfied that it is proper so to do, cause a mentally ill person to be examined by two medical practitioners working in the hospital or in the nursing home instead of requiring such certificates.

- b. Any mentally ill person admitted under sub-section (1) or his relative or friend may apply to the Magistrate for his discharge and the Magistrate may, after giving notice to the person at whose instance he was admitted to the psychiatric hospital or psychiatric nursing home and after making such inquiry as he may deem fit either allow or dismiss the application.
- c. The provisions of the foregoing sub-section shall be without prejudice to the powers exercisable by a Magistrate before whom the case of a mentally ill person is brought, whether under this section or under any other provision of this Act, to pass a reception order, if he is satisfied that it is necessary so to do in accordance with the relevant provision of this Act.

COMMENT

This section makes provision for admission of mentally ill persons to a psychiatric hospital/nursing home, under special circumstances. No person shall however be kept there as in-patient for a period exceeding ninety days, except in accordance with the other provisions of this Act.

PART III RECEPTION ORDERS

22. APPLICATION FOR RECEPTION ORDER

- . An application for a reception order may be made by -
 - 0. the medical officer-in-charge of a psychiatric hospital or psychiatric nursing home, or
 - 1. by the husband, wife or any other relative of the mentally ill person.
- a. Where a medical officer-in-charge of a psychiatric hospital or psychiatric nursing home in which a mentally ill- person is undergoing treatment under a temporary treatment order is satisfied that -
 - 0. the mentally ill person is suffering from mental disorder of such a nature and degree that his treatment in the psychiatric hospital or as the case may be, psychiatric nursing home is required to be continued for more than six months, or
 - 1. It is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that such person shall be detained in a psychiatric hospital or psychiatric nursing home.

He may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or, as the case may be, psychiatric nursing home is situated, for the detention of such mentally ill- person under a reception order in such psychiatric hospital or psychiatric nursing home, as the case may be.

- b. Subject to the provisions of sub-section (5), the husband or wife of a person who is alleged to be mentally ill or, where there is no husband or wife, or where the husband or wife is prevented by reason of any illness or absence from India or otherwise from making the application, any other relative of such person may make an application to the Magistrate within the local limits of whose jurisdiction the said person ordinarily resides, for

- the detention of the alleged mentally ill-person under a reception order in a psychiatric hospital or psychiatric nursing home.
- c. Where the husband or wife of the alleged mentally ill person is not the applicant, the application shall contain the reasons for the application not being made by the husband or wife and shall indicate the relationship of the applicant with the alleged mentally ill person and the circumstances under which the application is being made.
 - d. No person -
 0. who is a minor, or
 1. who, within fourteen days before the date of the application, has not seen the alleged mentally ill person, shall make an application under this section.
 - e. Every application under sub-section (3) shall be made in the prescribed form and shall be signed and verified in the prescribed manner and shall state whether any previous application had been made for inquiry into the mental condition of the alleged mentally ill person and shall be accompanied by two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government.

COMMENT

This section details the procedure for disposal of application for reception order.

23. FORM AND CONTENTS OF MEDICAL CERTIFICATES -

Every medical certificate referred to in sub-section (6) of Sec. 20 shall contain a statement -

- . that each of the medical practitioner referred to in that sub-section has independently examined the alleged mentally ill person and has formed his opinion on the basis of his own observations and from the particulars communicated to him;
- a. that in the opinion of each such medical practitioner the alleged mentally ill person is suffering from mental disorder of such a nature and degree as to warrant the detention of such person in a psychiatric hospital or psychiatric nursing home and that such detention is necessary in the interests of the health and personal safety of that person or for the protection of others.

COMMENTS

The section prescribes form and contents of medical certificates.

24. PROCEDURE UPON APPLICATION FOR RECEPTION ORDER

- . on receipt of an application under sub-section (2) of Sec. 20, the Magistrate may make a reception order, if he is satisfied that -
 0. the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment; or
 1. it is necessary in the interests of the mental and personal safety of the mentally ill person or for the protection of others that he should be so detained, and a temporary treatment order would not be adequate in the circumstances of the case and it is necessary to make a reception order.

- a. On receipt of an application under sub-section
- b. of Section.20, the Magistrate shall consider the statements made in the application and the evidence of mental illness as disclosed by the medical certificates.
- c. If the Magistrate considers that there are sufficient grounds for proceeding further, he shall personally examine the alleged mentally ill person unless, for reasons to be recorded in writing, he thinks that it is not necessary or expedient to do so.
- d. If the Magistrate is satisfied that a reception order may properly be made forthwith, he may make such order, and if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill person as he thinks fit.
- e. The notice of the date fixed under sub-section (4) shall be given to the applicant and to any other person to whom, in the opinion of the Magistrate such notice shall be given.
- f. If the Magistrate fixes a date under sub-section (4) for further consideration of the application, he may make such order as he thinks fit, for the proper care and custody of the alleged mentally ill person pending disposal of the application.
- g. On the date fixed under sub-section (4), or on such further date as may be fixed by the Magistrate, he shall proceed to consider the application in camera, in the presence of -
 0. the applicant:
 1. the alleged mentally ill person (unless the Magistrate in his discretion otherwise directs);
 2. the person who may be appointed by the alleged mentally ill person to represent him; and
 3. Such other person as the Magistrate thinks fit.
 and if the magistrate is satisfied that the alleged mentally ill person, in relation to whom the application is made, is so mentally ill that in the interests of the health and personal safety of that person or for the protection of others it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment, he may pass a reception order for that purpose and if he is not so satisfied, he shall dismiss the application and any such order may provide for the payment of the costs of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate may deem appropriate.
- h. If any application is dismissed under sub-section(7), the Magistrate shall record the reasons for such dismissal and a copy of the order shall be furnished to the applicant.

COMMENT

This section lays down the procedure for disposal of application for a reception order.

B- Reception orders on production of mentally ill Persons before Magistrate
25. POWERS AND DUTIES OF POLICE OFFICERS IN RESPECT OF CERTAIN MENTALLY ILL PERSONS -

- Every officer in charge of a police station -
 - 0. may take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself, and
 - 1. shall take or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.
- a. No person taken into protection under sub-section (1) shall be detained by the police without being informed, as soon as may be, of the grounds for taking him into such protection, or where, in the opinion of the officer taking the person into protection, such person is not capable of understanding those grounds, without his relatives or friends, if any, being informed of such grounds.
- b. Every person who is taken into protection and detained under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection of the Court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate.

COMMENT

This section empowers the police officer in charge of a police station to take action in respect of certain mentally ill persons.

26. PROCEDURE ON PRODUCTION OF MENTALLY ILL PERSON-

- Every person produced before the Magistrate under sub-section (3) of Sec.23, and if in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall -
 - 0. examine the person to assess his capacity to understand.
 - 1. Cause him to be examined by a medical officer, and
 - 2. Make such inquiries in relation to such person as he may deem necessary.
- a. After the completion of the proceeding under sub-section (1), the Magistrate may pass a reception order authorising the detention of the said person as an in-patient in a psychiatric hospital or psychiatric nursing home -
 - 0. if the medical officer certifies such person to be a mentally ill person, and
 - 1. if the Magistrate is satisfied that the said person is a mentally ill person and that in the interest of the health and personal safety of that person or for the protection of others, it is necessary to pass such order.

Provided that if any relative or friend of the mentally ill person desires that the mentally ill person be sent to any particular licensed psychiatric hospital or licensed psychiatric nursing home for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally ill person in such hospital or nursing home, the Magistrate shall, if the medical officer in charge of such hospital or nursing home consents, make a reception order for the admission of the mentally ill person into that hospital or nursing home and detention therein;

Provided further that if any relative or friend of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from doing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.

COMMENT

This section lays down procedure on production of mentally ill person before a Magistrate.

27. ORDER IN CASE OF MENTALLY ILL PERSON CRUELLY TREATED OR NOT UNDER PROPER CARE AND CONTROL -

- Very officer in charge of a police station is mentally ill and is not under proper care and control, or is mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.
- a. Any private person who has reason to believe that any person is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, may report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.
- b. If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.
- c. If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person willfully neglects to comply with the said order, he shall be punishable with fine which may extend to two thousand rupees.
- d. If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced

before him and, without prejudice to any action that may be taken under sub-section (4), proceed in the manner provided in Sec.24 as if such person had been produced before him under sub-section (3) of Sec. 23.

COMMENT

In case the Magistrate, within the local limits of whose jurisdiction the mentally ill person resides, comes to know that the said mentally ill person is being ill treated, neglected or cruelly treated, he is empowered under this section, to pass orders requiring the relative or other person to take care of such mentally ill person. This section also makes provision for punishment in case of non-compliance of the aforesaid orders.

C - Further provisions regarding admission and detention of certain mentally ill persons.

28. ADMISSION AS IN-PATIENT AFTER INQUISITION -

If any District Court holding an inquisition under Chapter VI regarding any person who is found to be mentally ill is of opinion that it is necessary so to do in the interests of such person, it may, by order, direct that such person shall be admitted and kept as an in-patient in a psychiatric hospital or psychiatric nursing home and every such order may be varied from time to time or revoked by the District court.

COMMENT

This section provides for admission of mentally ill person as in-patient in a psychiatric hospital or psychiatric nursing home.

29. ADMISSION AND DETENTION OF MENTALLY ILL PRISONER -

An order under Sec. 30 of the Prisoners Act, 1900 (3 of 1900) or under Sec. 144 of the Air Force Act, 11 1950 (45 of 1950), or under Sec. 145 of the Army Act 1950 (46 of 1950), or under Sec. 143 or Sec. 144 of the Navy Act, 1957 (62 of 1957), or under Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 (2 of 1974), directing the reception of a mentally ill prisoner into any psychiatric hospital or psychiatric nursing home, shall be sufficient authority for the admission of such person in such hospital or, as the case may be, such nursing home or any other psychiatric hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.

COMMENT

This section provides for admission of mentally ill prisoner into any psychiatric hospital or psychiatric nursing home.

30. DETENTION OF ALLEGED MENTALLY ILL PERSON PENDING REPORT BY MEDICAL OFFICER -

- When any person alleged to be a mentally ill person appears or is brought before a Magistrate under Sec. 23 or Sec. 25, the Magistrate may, by order in writing, authorise the detention of the alleged mentally ill person under proper medical custody in an observation ward of a general hospital or general nursing home or psychiatric hospital or psychiatric nursing home or in any other suitable place for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under Cl. (a) of sub-section (2) of Sec.24.

- a. The Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods not exceeding 10 day at a time as he may deem necessary:

Provided that no person shall be authorised to be detained under this sub-section for a continuous period exceeding thirty days in the aggregate.

COMMENTS

This section provides for detention of the alleged mentally ill person under proper medical custody pending receipt of medical report. The period of such detention should not exceed a period of ten days at a time and thirty days in the aggregate.

SCOPE OF THE SECTION - The provision which the Magistrate could probably have thought of to justify his action is Sec. 16 of the Lunacy Act (since repealed by this Act). No other provision gives him the power of detention before adjudging a person as lunatic. Section 16(1) confers jurisdiction on a Magistrate to deal with a person who is alleged to be lunatic when he is brought before the Magistrate under the provisions of Sec. 13 of Sec.15. Such a person can be detained by an order of the Magistrate, "for such time not exceeding 10 days as may be, in his opinion necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given". The proviso to sub-section (2) imposes a ban on the Magistrate against extension of the period of detention beyond a total period of 30 days¹.

31. DETENTION OF MENTALLY ILL PERSON PENDING HIS REMOVAL TO PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME -

Whenever any reception order is made by a Magistrate under Sec. 22, Sec. 234 or Sec. 25, he may by reasons to be recorded in writing, direct that he mentally ill person in respect of whom the order is made may be detained for such period not exceeding thirty days in such place as he may deem appropriate. Pending the removal of such person to a psychiatric hospital or psychiatric nursing home.

COMMENT

This section empowers a Magistrate to issue directions for detention of mentally ill person for a period not exceeding thirty days in an appropriate place, pending this removal to psychiatric hospital or psychiatric nursing home:

D - Miscellaneous provision in relation to orders under this chapter.

32. TIME AND MANNER OF MEDICAL EXAMINATION OF MENTALLY ILL PATIENT -

Where any other order under this Chapter is required to be made on the basis of a medical certificate, such order shall not be made unless the person who has signed the medical certificate, or where such order is required to be made on the basis of two medical certificates, the signatory of the respective certificates, has certified that he has personally examined the alleged mentally ill person -

- . in the case of an order made on an application, not earlier than ten clear days immediately before the date on which such application is made; and
- a. in any other case, not earlier than ten clear days immediately before the date of such order;

Provided that where a reception order is required to be made on the basis of two medical certificates such order shall not be made unless the certificates show that the signatory of each certificate examined the alleged mentally ill person independently of the signatory of the other certificate.

COMMENT

This section prescribes the time and manner of medical examination of mentally ill person.

33. AUTHORITY FOR RECEPTION ORDER -

- A reception order made under this Chapter shall be sufficient authority -

- for the applicant or any person authorised by him, or
- a. in the case of a reception order made otherwise than on an application, for the person authorised so to do by the authority making this order.

To take the mentally ill person to the place mentioned in such order or for his admission and treatment as an in-patient in the psychiatric hospital or psychiatric nursing home specified in the order or, as the case may be, for his admission and detention, therein or in any psychiatric hospital or psychiatric nursing home to which he may be removed in accordance with the provisions of this Act, and the medical officer-in-charge shall be bound to comply with such order:

Provided that in any case where the medical officer-in-charge finds accommodation in the psychiatric hospital or psychiatric nursing home inadequate,, he shall, after according admission, intimate that fact to the Magistrate or the District Court which passed the order and thereupon the Magistrate or the District Court, as the case may be, shall pass such order as he or it may deem fit:

Provided further that every reception order shall cease to have effect -

- b. on the expiry of thirty days from the date on which it was made, unless within that period, the mentally ill person has been admitted to the place mentioned therein, and
- c. on the discharge, in accordance with the provisions of this Act, of the mentally ill person,

COMMENT

This section makes provision for sufficient authority for a reception order. It shall however cease to have effect on the expiry of thirty days from the date of the order or on the discharge of the mentally ill person.

34. COPY OF RECEPTION ORDER TO BE SENT TO MEDICAL OFFICER-IN-CHARGE -

Every Magistrate or District Court making a reception order shall forthwith send a certified copy thereof together with copies of the requisite medical certificates and the statement of particulars to the medical officer in charge of the psychiatric hospital or psychiatric nursing home to which the mentally ill person is to be admitted.

COMMENT

This section makes provision for supply of certified copy of reception order to medical officer in charge of psychiatric hospital or psychiatric nursing home.

**35. RESTRICTION AS TO PSYCHIATRIC HOSPITALS AND
PSYCHIATRIC NURSING HOMES INTO WHICH RECEPTION ORDER
MAY DIRECT ADMISSION**

No Magistrate or District Court shall pass a reception order for the admission as an in-patient to, or for the detention of any mentally ill person, as an in-patient to, or for the detention of any mentally ill person, in any psychiatric hospital or psychiatric nursing home outside the State in which the Magistrate or the District Court exercises jurisdiction:

Provided that an order for admission or detention into or in a psychiatric hospital or psychiatric nursing home situated in any other State may be passed if the State Government has by general or special order and after obtaining the consent of the Government of such other State, authorised the Magistrate or the District Court in that behalf.

COMMENT

This section imposes restriction to the passage of reception order for admission or detention of any mentally ill person, as an in-patient in any psychiatric hospital or psychiatric nursing home outside the State, unless the State Government has by general or special order authorised for the same.

36. AMMENDMENT OF ORDER OR DOCUMENT

If, after the admission of any mentally ill person to any psychiatric hospital or psychiatric nursing home under a reception order, it appears that the order under which he was admitted or detained or any of the documents on the basis of which such order was made defective or incorrect, the same may, at any time thereafter be amended with the permission of the Magistrate or the District Court, by the person or persons who signed the same and upon such amendment being made, the order shall have effect and shall be deemed always to have had effect as if it had been originally made as so amended, or, as the case be, the documents upon which it was made had been originally furnished, also amended.

COMMENT

This section makes provision for amendment of order or document in case it is detected that any of the documents on the basis of which such order was made is defective or incorrect.

**37. POWER TO APPOINT SUBSTITUTE FOR PERSON UPON WHOSE
APPLICATION RECEPTION ORDER HAS BEEN MADE -**

- Subject to the provisions of this section the Magistrate may, by order in writing (hereinafter referred to the orders of substitution), transfer the duties and responsibilities under this Act, of the person on whose application a reception order was made, to any other person who is willing to undertake the same and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose application the reception order was made and all references in this Act to the latter person shall be construed accordingly:

Provided that no such order of substitution shall absolve the person upon whose application the reception order was made or, if he is dead, his legal

- representatives, from any liability incurred before the date of the order of substitution.
- a. Before making any order of substitution, the Magistrate shall send a notice to the person on whose application the reception order was made if he is alive, and to any relative of the mentally ill person who, in the opinion of the Magistrate, shall have notice.
 - b. The notice under sub-section (2) shall specify the name of the person in whose favour it is proposed to make the order of substitution and the date (which shall be not less than twenty days from the date of issue of the notice) on which objections, if any, to the making of such order shall be considered.
 - c. On the date specified under sub-section (3), or on any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice was sent or by any other relative of the mentally ill person, and shall receive all such evidence as may be produced by or on behalf of any such person or relative and after making such inquiry as the Magistrate may deem fit make or refrain from making the order of substitution:

Provided that, if the person on whose application the reception order was made is dead and any other person is willing and is, in the opinion of the Magistrate, fit to undertake the duties and responsibilities under this Act of the former person, the Magistrate shall, subject to the provisions contained in the proviso to sub-section (1), make an order to that effect.

- d. In making any substitution order under this section, the Magistrate shall give preference to the person who is the nearest relative of the mentally ill person, unless, for reasons to be recorded in writing the Magistrate considers that giving such preference will not be in the interests of the mentally ill person.
- e. The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person or from out of the estate of the mentally ill person as he thinks fit.
- f. Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.

COMMENTS

This section empowers Magistrate to appoint substitute for a person upon whose application reception order has been made.

Proviso - A proviso to a section is not independent of the section calling for independent of the section calling for independent consideration or construction detached from the construction to be placed on the main section as it is merely subsidiary to the main section and is to be construed in the light of the section itself].

It is settled that a proviso cannot expand or limit the clear meaning of the main provision².

38. OFFICERS COMPETENT TO EXERCISE POWERS AND DISCHARGE FUNCTIONS OF MAGISTRATE UNDER CERTAIN SECTIONS -

- In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under Secs. 23,24,25 and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer-in-charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector.

COMMENTS

Under the provisions of this section all the powers and functions of the Magistrate under Secs. 23,24,25 and 28 may be exercised or discharged by the Commissioner of Police in the area where the said office is appointed.

COMMISSIONER, IF INCLUDES "DEPUTY" OR "ASSISTANT" - It is clear that in the present case the Deputy Commissioner who acted in the matter had no power under Sec.17 of the Lunacy Act (since repealed by this Act). In any case, no such power could be conferred upon him even by the State Government. Because Lunacy Act, (since repealed by this Act) has not recognized conferment of such power upon any Deputy or Assistant to the Commissioner.

CHAPTER V

INSPECTION, DISCHARGE, LEAVE OF ABSENCE AND REMOVAL OF MENTALLY ILL PERSONS

PART I

INSPECTION

39. APPOINTMENT OF VISITORS -

- The State Government or the Central Government, as the case may be, shall appoint for every psychiatric hospital and every psychiatric nursing home, not less than five visitors, of whom at least one shall be a medical officer, preferably a psychiatrist and two social workers.
- a. The head of the Medical Services of the State or his nominee preferably a psychiatrist be an ex officio visitor of all the psychiatrist hospital and psychiatric nursing homes in the State.
- b. The qualifications of persons to be appointed as visitors under sub-section (1) and the terms and conditions of their appointment shall be such as may be prescribed.

COMMENT

This section makes provision for appointment of visitors for every psychiatric hospital/nursing home. The number of visitors should not be less than five, of whom at least one should be a psychiatrist or at least a medical officer and two social workers.

40. MONTHLY INSPECTION BY VISITORS -

Not less than three visitors shall at least once in every month, make a joint inspection of every part of the psychiatric hospital or psychiatric nursing home in respect of which they have been appointed and examine every minor admitted as a voluntary patient under Sec 17 and, as far as circumstances will permit, every other mentally ill person admitted therein and the order for the admission of and subsequent to the joint inspection immediately preceding, and shall enter in a book

kept for that purpose such remarks as they deem appropriate in regard to the management and condition of such hospital or nursing home and of the in-patient thereof:

Provided that the visitors shall not be entitled to inspect any personal records of an in-patient which in the opinion of the medical officer-in-charge are confidential in nature:

Provided further that if any of the visitors does not participate in the joint inspection of the psychiatric hospital or psychiatric nursing home in respect of which he was appointed a visitor for three consecutive months, he shall cease to hold office as such visitor.

COMMENT

This section provides for monthly joint inspection by not less than three visitors of the psychiatric hospital/nursing home, for which they have been appointed, and for recording their remarks in respect of the management and condition of such hospital or nursing home and of the in-patients thereof visitors are not empowered to inspect personal records of in-patients.

41. INSPECTION OF MENTALLY ILL PRISONERS -

- . Notwithstanding anything contained in Sec. 38, where any person is detained under the provisions of Sec. 144 of the Air Force Act, 1950 (45 of 19150), or Sec. 145 of the Army Act, 1950 (46 of 1950), or Sec. 143 or Sec. 144 of the Navy Act 1957 (62 of 19957) or Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 (2 of 1974) -

- 0. the Inspector-General of Prisons, where such person is detained in a jail ; and

- 1. all or any three of the visitors including at least one social worker appointed under sub-section (1) of Sec. 37, where such person is detained, in a psychiatric hospital or psychiatric nursing home.

Shall, once in every three months visit such person at the place where he is detained, in order to assess the state of mind of such person and make a report thereon to the authority under whose order such person is so detained.

- a. The State Government may empower any of its officers to discharge all or any of the functions of the Inspector-General of Prisons under Sub-section (1).
- b. The medical officer in charge of a psychiatric hospital or psychiatric nursing home wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.
- c. Every person who is detained in jail under the provisions of various Acts referred to in sub-section (1) shall be visited at least once in every three months by a psychiatrist, or where a psychiatrist is not available, by a medical officer empowered by the state Government in this behalf and such psychiatrist or, as the case may be, such medical officer shall make a special

report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

COMMENT

This section makes provision for inspection of mentally ill prisoners.

PART II

DISCHARGE

42. ORDER OF DISCHARGE BY MEDICAL OFFICER-IN-CHARGE -

Notwithstanding anything contained in Chapter IV., the medical officer-in-charge of a psychiatric hospital or psychiatric nursing home may, on the recommendation of two medical practitioners one of whom shall preferably be a psychiatrist, by order in writing, direct the discharge of any person other than a voluntary patient detained or undergoing treatment therein as an in-patient, and such person shall thereupon be discharged from the psychiatric hospital or psychiatric nursing home: Provided that no order under this sub-section shall be made in respect of a mentally ill prisoner otherwise than as provided in Sec.30 of the Prisoner Act, 1900 (3 of 1900), or in any other relevant law.

(2) Where any order of discharge is made under sub-section (1) in respect of a person who had been detained or is undergoing treatment as in-patient in pursuance of an order of any authority, a copy of such hospital/nursing home.

43. DISCHARGE OF MENTALLY ILL PERSONS ON APPLICATION -

Any person detained in a psychiatric hospital or psychiatric nursing home under an order and in pursuance of an application made under this Act, shall be discharged on an application made in that behalf to the medical officer in charge by the person on whose application the order was made;

Provided that no person shall be discharged under this section if the medical officer in charge certifies in writing that the person is dangerous and unfit to be at large.

COMMENT

This section lays down that mentally ill persons be discharged on application, from a psychiatric hospital/nursing home and that no person be discharged unless the medical officer certifies for the same.

44. ORDER OF DISCHARGE ON THE UNDERTAKING OF RELATIVES OR FRIENDS ETC., FOR DUE CARE OF MENTALLY ILL PERSON

Where any relative or friend of a mentally ill person detained in a psychiatric hospital or psychiatric nursing home under Sec. 22, Sec. 24 or Sec. 25 desires that such person shall be delivered over to his care and custody, he may make an application to the medical officer-in-charge who shall forward it together with his remarks thereon to the authority under whose orders the mentally ill person is detained.

- a. where an application is received under sub-section (1), the authority shall, on such relative or friend furnishing a bond, with or without sureties, for such amounts as such authority may specify in this behalf, undertaking to take proper care of such mentally ill person, and ensuring that the mentally ill person shall be prevented from causing injury to himself or to others, make an order of discharge and thereupon the mentally ill person shall be discharged.

COMMENT

The section makes provision for discharge of mentally ill person from the psychiatric hospital or psychiatric nursing home on the undertaking of relatives or friends for due care of such mentally ill person.

45. DISCHARGE OF PERSON ON HIS REQUEST -

- . Any person (not being a mentally ill prisoner) detained in pursuance of an order made under this Act who feels that he has recovered from his mental illness, may make an application to the Magistrate, where necessary under the provisions of this Act, for his discharge from the psychiatric hospital or psychiatric nursing home.
- a. An application made under sub-section (1) shall be supported by a certificate either from the medical officer incharge of the psychiatric hospital or psychiatric nursing home where the applicant is undergoing treatment or from a psychiatrist;
- b. The Magistrate may, after making such inquiry as he may deem fit, pass an order discharging the person or dismissing the application.

COMMENT

This section makes provision for the discharge of mentally ill person from psychiatric hospital or psychiatric nursing home, on his request. This section does not apply to a mentally ill prisoner.

46. DISCHARGE OF PERSON SUBSEQUENTLY FOUND ON INQUISITION TO BE OF SOUND MIND -

If any person detained in a psychiatric hospital or psychiatric nursing home in pursuance of a reception order made under this Act is subsequently found, on an inquisition held in accordance with the provisions of Chapter VI, to be of sound mind or capable of taking care of himself and managing his affairs, the medical officer-in-charge shall forthwith, on the production of a copy of such finding duly certified by the District Court, discharge such person from such hospital or nursing home.

COMMENT

This section deals with the matter relating to discharge of person, detained in a psychiatric hospital or psychiatric nursing home, subsequently found to be of sound mind.

PART III

LEAVE OF ABSENCE

47. LEAVE OF ABSENCE

- . An application for leave of absence on behalf of any mentally ill person (not being a mentally ill prisoner) undergoing treatment as an in-patient in any psychiatric hospital or psychiatric nursing home may be made to the medical officer-inc-charge,
 - 0. in the case of a person who was admitted on the application of the husband or wife, by the husband or wife of such mentally ill person, or where by reason of mental or physical illness, absence from India or otherwise, the husband or wife is not in a position to make such

application, by any other relative of the mentally ill person duly authorised by the husband or wife, or

1. in the case of any other person, by the person on whose application the mentally ill person was admitted.

Provided that no application under this sub-section shall be made by a person who has not attained the age of majority.

- a. Every application under sub-section (1) shall be accompanied by a bond, with or without sureties for such amount as the medical officer-in-charge may specify, undertaking -
 0. to take proper care of the mentally ill person,
 1. to prevent the mentally ill person from causing injury to himself or to others, and
 2. to bring back the mentally ill person to the psychiatric hospital, or, as the case may be, psychiatric nursing home, on the expiry of the period of leave.
- b. On receipt of an application under sub-section (1), the medical officers-in-charge may grant leave of absence to the mentally ill persons for such period as the medical officers-in-charge may deem necessary and subject to such condition as may, in the interests of the protection of others, be specified in the order :

Provided that the total number of days for which leave of absence may be granted to a patient under this sub-section shall not exceed sixty days.
- c. Where the mentally ill persons is not brought back to the psychiatric hospital or psychiatric nursing home on the expiry of the leave granted to him under this section the medical officer-in-charge shall forthwith report that fact to the Magistrate within the local limits of whose jurisdiction such hospital or nursing home is situate and the Magistrate may, after making such inquiry as he may deem fit, make an order directing him to be brought back to the psychiatric hospital or psychiatric nursing home, as the case may be,

48. GRANT OF LEAVE OF ABSENCE BY MAGISTRATE -

- . Where the medical officer-in-charge refuses to grant leave of absence to a mentally ill person under Sec. 45, the applicant may apply to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or psychiatric nursing home wherein the mentally ill person is detained is situate, for the grant of leave of absence to the mentally ill person and the Magistrate may if he is satisfied that it is necessary so to do, and on the applicant entering into a bond in accordance with the provisions of sub-section (2), by order grant leave of absence to the mentally ill person for such period and subject to such conditions as may be specified in the order.
- a. Every bond referred to in sub-section (1) shall be with or without sureties and for such amount as the Magistrate may decide and shall contain the undertaking referred to in sub-section (2) of sect.45.
- b. The Magistrate shall forward a copy of the order to the medical officer-in-charge and on receipt of such order the medical officer-in-charge shall

entrust the mentally ill person to the person on whose application the leave of absence was granted under this section.

COMMENT

Sections 45 and 46 deal with the matter relating to grant of leave of absence. Under Sec. 45 the medical officer is empowered to grant leave of absence. In case he refuses to grant leave of absence to a mentally ill person, Magistrate is empowered under Sec. 46 to grant leave of absence.

PART IV REMOVAL

49. REMOVAL OF MENTALLY ILL PERSON FROM ONE PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME TO ANY OTHER PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME.

- . Any mentally ill person other than a voluntary patient referred to in Sec. 15 or Sec. 16 may, subject to any general or special order of the State Government, be removed from any psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home within the State, or to any other psychiatric hospital or psychiatric nursing home in any other State with the consent of the Government of that other State:

Provided that no mentally ill person admitted to a psychiatric hospital or psychiatric nursing home under an order made in pursuance of an application made under the Act shall be so removed unless intimation thereof has been given to the applicant.

- a. The State Government may make such general or special order as it thinks fit directing the removal of any mentally ill prisoner from the place where he is for the time being detained, to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in the State or to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in any other State with the consent of the Government of that other State.

COMMENT

This section permits removal of any mentally ill person from one psychiatric hospital or psychiatric nursing home to another within the State or even to any other State with the consent of the Government of that other State.

The provisions of this section however does not apply to a voluntary patient.

50. ADMISSION, DETENTION AND RETAKING IN CERTAIN CASES -

Every person brought into a psychiatric hospital or psychiatric nursing home under any order made under this Act, may be detained or, as the case may be, admitted as an in-patient therein until he is removed or is discharged under any law, and in case of his escape from such hospital or nursing home he may, by virtue of such order, be retaken by any police officer or by the medical officer-in-charge or any officer or servant of such hospital or nursing home, or by any other person authorised in that behalf by the medical officer-in-charge and conveyed to, and received and detained or, as the case may be, kept as an in-patient in such hospital or nursing home;

Provided that in the case of a mentally ill person (not being a mentally ill prisoner) the power to retake as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of his escape.

COMMENT

This section deals with the matter relating to admission, detention or retaking of certain mentally ill persons. This section does not apply to a mentally ill prisoner.

51. APPEAL FROM ORDERS OF MAGISTRATE

Any person aggrieved by any order of a Magistrate, passed under any of the foregoing provisions may, within sixty days from the date of the order, appeal against that order to the District Court within the local limits of whose jurisdiction the Magistrate exercised the powers, and decision of the District Court on such appeal shall be final.

COMMENT

This section empowers any person aggrieved by any order of a Magistrate to appeal against it to the District Court.

JUDICIAL INQUISITION REGARDING ALLEGED MENTALLY ILL PERSON POSSESSING PROPERTY, CUSTODY OF HIS PERSON AND MANAGEMENT OF HIS PROPERTY

52. APPLICATION FOR JUDICIAL INQUISITION

Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either -

0. by any of his relatives, or
 1. by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925) or
 2. by the Advocate-General of the State in which the alleged mentally ill person resides, or
 3. where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.
- a. On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall, in like manner, serve a notice on the person having the custody of the alleged mentally person to produce such person at the said place and at the said time, for being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person: Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in

- public, the District Court may cause her to be examined by issuing a commission as provided in the Code of Civil Procedure, 1908 (5 of 1908).
- b. A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.
 - c. For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

COMMENTS

JURISDICTION - The Lunacy (Supreme Courts) Act, 1958, gives power to those Courts to direct an inquiry as to "any person subject to the jurisdiction of the Court". The preamble of the Lunacy (Districts Courts) Act of the same year states that it is expedient to make better provisions for the case of the states of lunatics "not subject to the jurisdiction of the Supreme Courts of adjudication". In 1981 the Allahabad high court decided that, under its own letters patent, it had no original jurisdiction in respect of the persons and estates of lunatics who were natives of India. In the course of that case, the Court ascertained from the Registrar of the original side of the Calcutta High Court that at that date its powers in the matters of lunacy as the successor and inheritor of the powers of the old Supreme Court were, as regards natives of India, only exercised within the limits of the town of Calcutta itself, and that in other respects the procedure directed by the Lunacy (District Court) Act, 1958, was followed in Lower Bengal. The Court expressed the view that this practice was correct. The Lunacy Act, 1912¹ repealed both the Acts of 1958, but made no alteration in the law with regard to the matter now under consideration. For a person to come under that chapter he must be not subject to the jurisdiction of a High Court, and must be resident within the jurisdiction of a District Court. The question of jurisdiction was considered in *Anila Bala Chowdhurani V. Dharendra Nath Saha*² where it was held that the jurisdiction of the Pabna District Court was ousted because the alleged lunatic (an Indian) resided both at Pabna and at Calcutta, but it is clear from that case that, but for his residence at Calcutta, the Pabna District Court would have had jurisdiction and the original side of the Calcutta High Court would not. In *in re Taruchandra Ghosh*,³ the Court held that, under Cl. 17 of the Charter, the Court had power to appoint a guardian of an Indian infant resident outside the original jurisdiction. The order was made ex parte on the father's application, it being stated there was no opposition. The attention of the Court was not drawn to 13 Geo. 3, c. 63, nor to the cases referred to above. Moreover, the language of Cl. 25 of the Charter of 1774 as regards infants, differs from its language as regards lunatics. The original side of the Calcutta High Court has no jurisdiction to direct an inquisition or appoint a guardian of person or property in the case of an Indian not resident in Calcutta⁴.

WHAT HAS TO BE FOUND UNDER THE ACT - What has to be found under the Act is that the person is of unsound mind and that the unsoundness of mind is such as to make him incapable of managing his affairs. A person who is incapable of managing his affairs is not necessarily of unsound mind and a person of unsound mind may not be incapable of managing his affairs. The Court must hold that both unsoundness of mind and incapacity to manage his affairs are present and that the latter is due to the former⁵.

DUTY OF THE COURT - It has, at the very outset to be realized that an order declaring a person to be of unsound mind and incapable on that account of managing his affairs is an order of a very serious character. It has the effect of disqualifying him from using his own property in the manner he desires and placing a drastic check on his rights and privileges which as a normal individual, he would be entitled to enjoy. In *Teka Devi V. Gopal Das*⁶, it was observed that:

"It is, therefore, the duty of the Court before proceeding further, to determine judicially whether the person alleged to be incapable of managing himself or his affairs, is really a lunatic in this sense. Secondly, it must be remembered that this finding has got very far-reaching consequences and must be given after very great care and deliberation. It may have the immediate effect of putting a human being

- d. Act 4 of 1912 repealed by Act 14 of 1987.
- e. I.L.R. 48 of Cal.577
- f. I.L.R. 57 Cal 535.
- g. In the matter of *Phanindra Chandra Set*, 35 C.W.N. 1045 at pp 1046-47; A.I.R. 1932 Cal.91.
- h. *Sesha Ammal V. Venkatanarasimha Bhattachariar* 67 M.L.J 797 at p.798; A.I.R. 1935 Mad.91
- i. A.I.R. 1930 Lah.209.

Being under restraint. It might deprive him for a time, or forever of the possession and management of his property. It will be *prima facie* evidence of his lunacy, and may be read in proof of it in other proceedings. The Legislature has, therefore, laid down an elaborate procedure for conducting an enquiry into this matter, and this procedure must be strictly followed. The Court cannot and ought not to deal lightheartedly with this important question, and it should not consider itself relieved of its responsibility by the mere circumstance that some or all the relatives of the person concerned have declared that he is lunatic".

The above is undoubtedly an accurate statement of the policy underlying the precaution enjoined by the Legislature in the various provisions of the Act as a preliminary condition to the final exercise of jurisdiction by the Court in declaring a person as a lunatic¹.

The smallest attention to the words of the Indian Lunacy Act² whether they be the words of Sec. 62 or the words of Sec. 38 shows this that the Legislature appreciates that to have an inquisition into the state of health, the state of mind, the state of property and general capacity of a person is a thing which affects that person so prejudicially that it ought not to be taken except it be first ordered upon a careful consideration of evidence³. It was said in a case reported in *Muhammad Yaqub V. Nazir Ahmad*⁴: "It is true that nothing is contained in the Act itself to direct or guide a Judge as to how he shall consider applications for an inquisition and probably no rules exist for dealing with the matter; but ordinary commonsense would appear to dictate to a tribunal before whom such an application comes that care should be exercised in a painful matter of this kind, namely, an enquiry into a man's or woman's state of mind; specially in the case of people in conformable circumstances who merely wish to lead a quiet life care should be exercised that they are not suddenly flung without sufficient reason into an elaborate inquisition

which after all is nothing more or less than a trial involving sometimes the history of a person's life back for many years, medical evidence, and all sorts of family witnesses".

INQUISITION - The Lunacy Act does not contain any procedure or permit any procedure by which a man today can be declared to be a lunatic ten years ago in the past⁵.

JURISDICTION OF THE LUNACY COURT - The jurisdiction of the Lunacy Court depends on normal residence of the alleged lunatic and not on his temporary residence except in the cases of the High Courts of Calcutta, Madras and Bombay where different rules are applicable under the Charters and Letter Patent. The principles of residence are clearly laid down by a Bench of three learned Judges consisting of Sir Ashutosh Mookerjee, Acting Chief Justice, and Fletcher and Richardson, JJ. In *Anila Bala Choudhurani V. Dharendra Natha Saha*¹. That decision is an authority on the proposition that Sec. 38 of the Lunacy Act does not define the test to be applied to determine whether a person is or is not subject to the jurisdiction of the High Court for the purpose of judicial inquisition as to lunacy. But the proceedings are directed primarily against the person and only secondarily against his property. Such authority over the person may, unless otherwise directed by statute, be ordinarily exercised in the case of residents within the local limits of the jurisdiction of the Court. No doubt it may also be exercised over non-residents, if there is statutory provision to that effect. The third proposition laid down by this decision is that before a District Court can institute inquisition of a person possessed of property and alleged to be a lunatic it must be established not merely that such person is residing within the jurisdiction of that Court but also that he is not subject to the jurisdiction of any of the High Courts mentioned in Sec. 37 of the Lunacy Act. Therefore, in a case where an alleged lunatic is subject to the jurisdiction of a High Court under Sec. 37, the District Court has no jurisdiction under Sec. 62, even though the person may reside within the local limits of the jurisdiction of the District Court. In other words, the jurisdiction of the High Court and District Court are not concurrent, but the jurisdiction of the High Court excludes that of the District Court; although if the alleged lunatic resides in two districts, the jurisdiction of the two Courts are concurrent and not mutually exclusive².

PROOF OF INSANITY - The question of insanity requires a most careful examination and it is difficult to think that bare assertion by witnesses unsupported by any details of the cause, the course and the treatment of the malady ought to be accepted as satisfactory proof³.

NOTICE - DIRECTING AN INQUISITION - The notice contemplated by Sec. 40 is a notice to be drawn up after there has been an order directing an inquisition. It is notice of such order and of the time and place at which the inquisition is to be held. It is notice of the petition. The notice prescribed is a notice that the Court has determined to hold an inquisition. So far as the alleged lunatic concerned, it is a most important notice. It is a notice which tells him that he is in such a serious position that Court has determined to enquire into his state of mind and that his liberty and his right to manage his own affairs is now in peril by virtue of a considered judgement of a District Judge. There is nothing in the Lunacy Act about general notices. There is a definite provision in the Lunacy Act for notice to be lunatics and to such relatives or other persons as the District Judge may think

it desirable to give notice to. Under the Guardians and Wards Act the provision for notice to the minor is a provision about general notice, that is to say, the notice has to be affixed in the Court-house and a copy has to be affixed to the permanent place of residence of the minor⁴.

53. ISSUES ON WHICH FINDING SHOULD BE GIVEN BY DISTRICT COURT AFTER INQUISITION -

On completion of the inquisition, the District Court shall record its findings on -

- . whether the alleged mentally ill person is in fact mentally ill or not, and
- a. Where such person is mentally ill, whether he is incapable of taking care of himself and managing his property, or incapable of managing his property only.

COMMENT

This section empowers District Court to record its findings on certain issues.

54. PROVISION FOR APPOINTING GUARDIAN OF MENTALLY ILL PERSON AND FOR MANAGER OF PROPERTY -

- . Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under Sec. 53 to take care of his person and of a manager under Sec. 54 for the management of his property.
- a. Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order under Sec.54 regarding the management of his property.
- b. Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.
- c. Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

COMMENT

This section makes provision for appointment of guardian of mentally ill person and for manager of property.

55. APPOINTMENT OF GUARDIAN OF MENTALLY ILL PERSON -

- . Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of Sec.54, the Collector of the District, may appoint any suitable person to be his guardian.
- a. In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf

COMMENT

This section empowers the District Court or the Collector to appoint guardian of mentally ill person.

56. APPOINTMENT OF MANAGER FOR MANAGEMENT OF PROPERTY OF MENTALLY ILL PERSON -

- Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.
- a. Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situate, direct the Collector to take charge of the person and such part of the property or interest therein of the mentally ill person as cannot be taken charge of by the Court of Wards.
- b. Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-Section (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property.

COMMENTS

APPOINTMENT OF MANGER - There is no prohibition in the Gwalior law and the Indian Lunacy Act (since repealed by this Act), against appointment or re-appointment of persons already acting as managers of the estate of a person during his minority who later on became a lunatic/mentally ill person either before or after attainment of majority¹. Since the vendor did not obtain any order from the competent Court under the Lunacy Act (since repealed by this Act), to have him appointed as Manager of the joint family to alienate the property, the sale is per se illegal. The sale, therefore, appears to be to defeat the statutory right of the appellant².

57. APPOINTMENT OF MANAGER BY COLLECTOR -

Where the property of a mentally ill person has been entrusted to the Collector by the District Court under sub-section (2) of Sec. 54, he may, subject to the control of the State Government or of any authority appointed by it in that behalf, appoint any suitable person for the management of the property of the mentally ill person.

COMMENT

This section empowers the Collector to appoint manager of the property of a mentally ill person.

58. MANAGER OF PROPERTY TO EXECUTE BOND -

Every person who is appointed as the manager of the property of a mentally ill person by the District Court or by the Collector shall, if so required by the appointing authority, enter into a bond for such sum, in such form and with such sureties as that authority may specify, to account for all receipts from the property of the mentally ill person.

COMMENT

This section requires the manager of property to execute bond.

59. APPOINTMENT AND REMUNERATION OF GUARDIANS AND MANAGERS -

- No person, who is the legal heir of a mentally ill person shall be appointed under Sec. 53, 54 or 55 to be the guardian of such mentally ill person or, as the case may be, the manager of his property unless the District Court or, as the case may be, the Collector, for reasons to be recorded in writing, considers that such appointment is for the benefit of the mentally ill person.
- a. The guardian of a mentally ill person or the manager of the property or both appointed under this Act shall be paid, from out of the property of the mentally ill person, such allowance as the appointing authority may determine.

COMMENT

This section deals with appointment and remuneration of guardians and managers.

60. DUTIES OF GUARDIAN AND MANAGER -

- Every person appointed as a guardian of a mentally ill person or manager of his property, or of both, under this Act shall have the care of the mentally ill person or his property or of both, and be responsible for the maintenance of the mentally ill person and of such members of his family as are dependent on him.
- a. Where the person appointed as guardian of a mentally ill person is different from the person appointed as the manager of his property, the manager of his property shall pay to the guardian of the mentally ill person such allowance as may be fixed by the authority appointing the guardian for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

COMMENT

"FAMILY" - A married daughter living with her husband and separate from her father is not entitled to a separate maintenance being allowed to her against her father's estate, when that estate is taken charge of by the Court under the provisions of Lunatic Act (since repealed by this Act).

The word "family" includes persons living with the lunatic/mentally ill person as members of his family, that is to say, persons actually depending upon him for their maintenance¹.

In the instant case, under the relevant Medical Rules, the father was a member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses².

61. POWERS OF MANAGER -

- Every manager under this Act shall, subject to the provisions of this Act, exercise the same powers in regard to the management of the property of the mentally ill person in respect of which he is appointed as manager, as the mentally ill person would have exercised as owner of the property had he not been mentally ill and shall realise all claims due to the estate of the mentally ill person and pay all debts and discharge all liabilities legally due from that estate:

Provided that the manager shall not mortgage, create any charge on, or, transfer by sale, gift, exchange or otherwise, any immoveable property of

the mentally ill person or lease out any such property for a period exceeding five years, unless he obtains the permission of the District Court in that behalf.

- a. The District Court may, on an application made by the manager, grant him permission to mortgage, create a charge on, or, transfer by sale, gift, exchange or otherwise, any immoveable property of the mentally ill person or to lease out any such property for a period exceeding five years, subject to such conditions or restrictions as that Court may think fit to impose.
- b. The District Court shall cause notice of every application for permission to be served on any relative or friend of the mentally ill person and after considering objections, if any, received from the relative or friend and after making such inquiries as it may deem necessary, grant or refuse permission having regard to the interests of the mentally ill person.

COMMENT

A manager is empowered to exercise the same powers in regard to the management of the property of the mentally ill person as the mentally ill person would have exercised as owner of the property had he not been ill.

The manager shall, however, not mortgage, create any charge on, or, transfer by sale, gift etc. any immoveable property without the prior permission of the District Court.

62. 60. MANAGER TO FURNISH INVENTORY AND ANNUAL ACCOUNTS -

- . Every manager appointed under this Act shall, within a period of six months from the date of his appointment, deliver to the authority, which appointed him, an inventory of the immoveable property belonging to the mentally ill person and of all assets and other moveable property received on behalf of the mentally ill person, together with a statement of all claims due to and all debts and liabilities due by, such mentally ill person.
- a. Every such manager shall also furnish to the said appointing authority within a period of three months of the close of every financial year, an account of the property and assets in his charge, the sums received and disbursed on account of the mentally ill person and the balance remaining with him.

COMMENT

Under this section manager has to furnish inventory and annual accounts in respect of the property of the mentally ill person to the appointing authority.

63. MANAGER'S POWER TO EXECUTE CONVEYANCES UNDER ORDERS OF DISTRICT COURT -

Every manager appointed under this Act, may, in the name and on behalf of the mentally ill person -

- . execute all such conveyance and instruments of transfers by way of sale, mortgage or otherwise of property of the mentally ill person as may be permitted by the District Court; and
- a. Subject to the orders of the District Court, exercise all powers vested in that behalf in the mentally ill person, in his individual capacity or in his capacity as a trustee or as a guardian.

COMMENT

This section empowers the manager to execute conveyances in the name and on behalf of the mentally ill person, under the orders of the District Court.

64. MANAGER TO PERFORM CONTRACTS DIRECTED BY DISTRICT COURT -

Where the mentally ill person had, before his mental illness, contracted to sell or otherwise dispose of his property or any portion thereof, and if such contract is, in the opinion of the District Court, of such a nature as ought to be performed, the District Court may direct the manager appointed under this Act to perform such contract and to do such other acts in fulfilment of the contract as the Court considers necessary and thereupon the manager shall be bound to act accordingly.

COMMENT

This section empowers the manager to perform contracts on behalf of the mentally ill person as per directions of the District Court.

65. DISPOSAL OF BUSINESS PREMISES -

Where a mentally ill person had been engaged in business before he became mentally ill, the District Court may, if it appears to be for the benefit of the mentally ill person to dispose of his business premises, direct the manager appointed under this Act in relation to the property of such person to sell and dispose of such premises and to apply the sale proceeds thereof in such manner as the District Court may direct and thereupon the manager shall be bound to act accordingly.

COMMENT

The District Court is empowered to direct disposal of business premises of a mentally ill person, who was engaged in business prior to becoming mentally ill, for the benefit of the said ill person.

66. MANAGER MAY DISPOSE OF LEASES -

Where a mentally ill person is entitled to a lease or under lease, and it appears to the manager appointed under this Act in relation to the property of such person that it would be for the benefit of the mentally ill person to dispose of such lease or under lease, such manager may, after obtaining the orders of the District Court, surrender, assign or otherwise dispose of such lease or under lease to such person for such consideration and upon such terms and conditions as the Court may direct.

COMMENT

This section empowers manager of a mentally ill person to dispose of lease for the benefit of the mentally ill person, after obtaining the orders of the District Court.

67. POWER TO MAKE ORDER CONCERNING ANY MATTER CONNECTED WITH MENTALLY ILL PERSON -

The District Court may, on an application made to mentally ill person or his property, make such order, subject to the provisions of this Chapter, in relation to that matter as in the circumstances it thinks fit.

COMMENT

This section empowers the District Court to pass order concerning any matter connected with mentally ill person.

68. PROCEEDING IF ACCURACY OF INVENTORY OR ACCOUNTS IS IMPUGNED -

If any relative of the mentally ill person or the collector impugns, by a petition to the District Court, the accuracy of the inventory or statement referred to in sub-section (1), or, as the case may be, any annual account referred to in sub-section (2) of Sec.60, the Court may summon the manager and summarily inquire into the matter and make such order thereon as it thinks fit.

Provided that the District Court may, in its discretion, refer such petition to any Court subordinate to it, or to the Collector in any case where the manager was appointed by the Collector and the petition is not presented by the Collector.

COMMENT

This section lays down the procedure for disposal of petition challenging accuracy of inventory or account.

69. PAYMENT INTO PUBLIC TREASURY AND INVESTMENT OF PROCEEDS OF ESTATE -

All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the mentally ill person or for the management of his property, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in Sec.20 of the Indian Trusts Act, 1882 (2 of 1982), unless the authority which appointed him, for reasons to be recorded in writing, directs that, in the interests of the mentally ill person such sums be otherwise invested or applied.

COMMENT

A manager of mentally ill person is required under this section, to make payment into public treasury on account of estate.

70. RELATIVE MAY SUE FOR ACCOUNT -

Any relative of a mentally ill person may, with the leave of the District Court, sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his legal representative in the case of his death, in respect of any property then or formerly under his management or of any sum of money or other property received by him on account of such property.

COMMENT

This section empowers relative of a mentally ill person, with the leave to the District Court, to sue for account from any manager.

71. REMOVAL OF MANAGERS AND GUARDIANS-

- The manager of the property of a mentally ill person may, for sufficient cause and for reasons to be recorded in writing, be removed by the authority which appointed him and such authority may appoint a new manager in his place.

- a. Any manager removed under sub-section (1) shall be bound to deliver the charge of all property of the mentally ill person to the new manager and to account for all moneys received or disbursed by him.
- b. The District Court may, for sufficient cause, remove any guardian of a mentally ill person and appoint in his place a new guardian.

COMMENT

This section makes provision for removal of managers and guardians of a mentally ill person

72. DISSOLUTION AND DISPOSAL OF PROPERTY OF PARTNERSHIP ON A MEMBER BECOMING MENTALLY ILL -

- Where a person, being a member of a partnership firm, is found to be mentally ill, the District Court may, on the application of any other partner for the dissolution of partnership or on the application of any person who appears to that Court to be entitled to seek such dissolution, dissolve the partnership.
- a. Upon the dissolution under sub-section (1), or otherwise, in due course of law, of a partnership firm to which that sub-section applies, the manager appointed under this Act may, in the name and on behalf of the mentally ill person, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the District Court may direct.

COMMENT

This section makes provision for dissolution and disposal of property of partnership firm when a member becomes mentally ill.

73. POWER TO APPLY PROPERTY FOR MAINTENANCE OF MENTALLY ILL PERSON WITHOUT APPOINTING MANAGER IN CERTAIN CASES

- Notwithstanding anything contained in the foregoing provisions, the District Court may, instead of appointing a manager of the estate, order that in the case of cash, the cash and in the case of any other property the produce thereof, shall be realised and paid or delivered to such person as may be appointed by the District Court in this behalf, to be applied for the maintenance of the mentally ill person and of such members of his family as are dependent on him.
- a. A receipt given by the person appointed under sub-section (1) shall be valid discharge to any person who pays money or delivers any property of the mentally ill person to the person so appointed.

COMMENT

This section empowers the District Court to order for application/utilization of cash and the produce of other property for maintenance of mentally ill person without appointing a manager of the estate.

74. POWER TO ORDER TRANSFER OF STOCK, SECURITIES OR SHARES BELONGING TO MENTALLY ILL PERSON IN CERTAIN CASES -

Where any stock or Government securities or any share in a company (transferable within India or the dividends of which are payable therein) is or are standing in the name of, or vested in, a mentally ill person beneficially entitled thereto, or in the manager appointed under this Act or in a trustee for him, and the manager dies intestate, or himself becomes mentally ill, or is out of the jurisdiction of the District Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over

thereof the dividends to a new manager appointed in his place, within fourteen days after being required by the Court to do so, then the District Court may direct the company or Government concerned to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as it may direct.

COMMENT

This section empowers the District Court to pass order for transfer of stock, securities or share belonging to mentally ill person, when the manager dies or himself becomes mentally ill or neglects or refuses to transfer stock, securities, etc.

75. POWER TO ORDER TRANSFER OF STOCK, SECURITIES OR SHARES OF MENTALLY ILL PERSON RESIDING OUT OF INDIA-

Where any stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of India, the District Court upon being satisfied that such person has been declared to be mentally ill and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may direct the company or Government concerned to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds, as the District Court thinks fit.

COMMENT

This section empowers the District Court to issue directions for transfer of stock, securities or shares of mentally ill person residing out of India.

76. POWER TO APPLY PROPERTY FOR MENTALLY ILL PERSON'S MAINTENANCE IN CASE OF TEMPORARY MENTAL ILLNESS -

If it appears to the District Court that the mental illness of a mentally ill person is in its nature temporary, and that it is expedient to make provision for a temporary period, for his maintenance for the maintenance of such members of his family as are dependent on him, the District Court may, in like manner as under Sec. 71, direct his property or a sufficient part thereof to be applied for the purpose specified therein.

COMMENT

The District Court is empowered, under this section, to apply property of the mentally ill person for his maintenance in case of temporary mental illness.

77. ACTION TAKEN IN RESPECT OF MENTALLY ILL PERSON TO BE SET ASIDE IF DISTRICT COURT FINDS THAT HIS MENTAL ILLNESS HAS CEASED -

- . Where District Court has reason to believe that any person who was found to be mentally ill after inquisition under this Chapter has ceased to be mentally ill, it may direct any Court subordinate to it to inquire whether such person has ceased to be mentally ill.
- a. An inquiry under sub-section (1) shall, so far as may be, conducted in the same manner as an inquisition conducted under this Chapter.
- b. If after an inquiry under this section, it is found that the mental illness of a person has ceased, the District Court shall order all actions taken in respect

of the mentally ill person under this Act to be set aside on such terms and conditions as that Court thinks fit to impose.

COMMENT

This section makes provision for setting aside the action taken in respect of mentally ill person if the District Court finds that his mental illness has ceased.

78. APPEALS -

An appeal shall lie to the High Court from every order made by a District Court under this Chapter.

COMMENT

This section makes provision for appeal in High Court from every order of the District Court.

79. POWER OF DISTRICT COURT TO MAKE REGULATIONS -

The District Court may, from time to time, make regulations for the purpose of carrying out the provisions of this Chapter.

COMMENT

This section empowers the District Court to make regulations for carrying out the provisions of this Chapter.

CHAPTER VII

LIABILITY TO MEET COST OF MAINTENANCE OF MENTALLY ILL PERSONS DETAINED IN PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME

80. COST OF MAINTENANCE TO BE BORNE BY GOVERNMENT IN CERTAIN CASES -

The cost of maintenance of a mentally ill person detained as an in-patient in any psychiatric hospital or psychiatric nursing home shall, unless otherwise provided for by any law for the time being in force, be borne by the Government of the State wherein the authority which passed the order in relation to the mentally ill person is subordinate, if -

- that authority which made the order has not taken an undertaking from any person to bear the cost of maintenance of such mentally ill person, and
- a. no provision for bearing the cost of maintenance of such a District Court under this Chapter.

COMMENT

This section makes provisions for maintenance of mentally ill person at Government cost, in certain cases.

81. APPLICATION TO DISTRICT COURT FOR PAYMENT OF COST OF MAINTENANCE OUT OF ESTATE OF MENTALLY ILL PERSON OR FROM A PERSON LEGALLY BOUND TO MAINTAIN HIM -

Where any mentally ill person detained in a psychiatric hospital or psychiatric nursing home has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Government liable to pay the cost of maintenance of such person under Sec. 78 or any local authority liable to bear the cost of maintenance of such mentally ill person under any law for the time being in force, may make an application to the District Court within whose jurisdiction the estate of the

mentally ill person is situate or the person legally bound to maintain the mentally ill person and having the means therefor resides, for an order authorising it to apply the estate of the mentally ill person to the cost of maintenance or, as the case may be, directing the person legally bound to maintain the mentally ill person and having the means therefor to bear the cost of maintenance of such mentally ill person.

- a. An order made by the District Court under sub-section (1) shall be enforced in the same manner, shall have the same force and effect and be subject to appeal, as a decree made by such Court in a suit in respect of the property or person mentioned therein.

COMMENT

When a mentally ill person has an estate or any person legally bound to maintain such person has means to maintain such ill person, application may be preferred to the District Court for payment of cost of maintenance of mentally ill person.

82. PERSONS LEGALLY BOUND TO MAINTAIN MENTALLY ILL PERSON NOT ABSOLVED FROM SUCH LIABILITY -

Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a mentally ill person from maintaining such mentally ill person.

COMMENT

The provisions of the Act do not absolve person legally bound to maintain mentally ill person from maintaining such ill person.

CHAPTER VIII

PROTECTION OF HUMAN RIGHTS OF MENTALLY ILL PERSONS

83.

0. No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty.
1. No mentally ill person under treatment shall be used for purposes of research, unless -
 - a. such research is of direct benefit to him for purposes of diagnosis or treatment, or
 - b. Such person, being a voluntary patient, has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent, by reason of minority or otherwise, to give valid consent, the guardian or other person competent to give consent on his behalf, has given his consent in writing, for such research.
2. Subject to any rules made in this behalf under Sec.94 for the purpose of preventing vexatious or defamatory communications or communications prejudicial to the treatment of mentally ill persons, no letters or other communications sent by or to a mentally ill persons under treatment shall be intercepted, detained or destroyed.

COMMENT

PENALTIES AND PROCEDURE

84. PENALTY FOR ESTABLISHMENT OR MAINTENANCE OF PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME IN CONTRAVENTION OF CHAPTER III -

- . Any person who establishes or maintains a psychiatric hospital or psychiatric nursing home in contravention of the provisions of Chapter III shall, on conviction, be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the case of a second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
- a. Whoever, after conviction under sub-section(1) continues to maintain a psychiatric hospital or psychiatric nursing home in contravention of the provisions of Chapter III shall, on conviction, be punishable with fine which may extend to one hundred rupees, for every day after the first day during which the contravention is continued.

COMMENT

This section makes provision for penalty for establishment or maintenance of psychiatric hospital/nursing home in contravention of the provisions of Chapter III.

85. PENALTY FOR IMPROPER RECEPTION OF MENTALLY ILL PERSON -

Any person who receives or detains or keeps a mentally ill person in a psychiatric hospital or psychiatric nursing home otherwise than in accordance with the provision of this Act, shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees, or with both.

COMMENT

This section makes provision for penalty for improper reception of mentally ill person.

86. PENALTY FOR CONTRAVENTION OF SOECS. 60 AND 69 -

Any manager appointed under this Act to manage the property of a mentally ill person who contravenes the provisions of Sec. 60 or sub-section (2) of Sec. 69, shall, on conviction, be punishable with fine which may extend to two thousand rupees and may be detained in a civil prison till he complies with the said provisions.

COMMENT

This section makes provision for penalty for contravention of the provisions of Secs. 60 and 69.

87. GENERAL PROVISION FOR PUNISHMENT OF OTHER OFFENCES -

Any person who contravenes any of the provisions of this Act or of any rule or regulation made thereunder, for the contravention of which no penalty is expressly provided, in this Act, shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENT

This section makes general provision for punishment of other offences.

88. OFFENCES BY COMPANIES -

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

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

EXPLANATION - For the purposes of this section -

- b. "company" means a body corporate and includes a firm or other association of individuals; and
- c. "director", in relation to a firm, means a partner in the firm. **COMMENTS**
This section deals with the offences under this Act committed by companies.

PENAL PROVISION - Penal provision is to be construed rigidly.

89. SANCTION FOR PROSECUTIONS

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no Court shall take cognizance of any offence punishable under Sec. 82, except with the previous sanction of the licensing authority.

COMMENT

Under this section previous sanction of the licensing authority has to be obtained for prosecutions.

90. PROVISION AS TO BONDS -

The provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973 (2 of 1974) shall, as far as may be apply to bonds taken under this Act.

COMMENT

This section makes provision as to bonds taken under this Act.

91. SREPORT BY MEDICAL OFFICER -

The medical officer in-charge of a psychiatric hospsital or psychiatric nursing home shall, as soon as may be, after any mentally ill person detained therein has been discharged make a report in respect of his mental and physical condition to the authority under whose orders such person had been so detained.

COMMENT

This section requires the medical officer to make a report about the mental and physical condition of the discharged person to the authority under whose orders the mentally ill person was detained in the psychiatric hospsital/nursing home.

92. PENSION, ETC. OF MENTALLY ILL PERSON PAYABLE BY GOVERNMENT -

- . Where any sum is payable in respect of pay, pension, gratuity or any allowance to any person by any Government and the person to whom the sum is payable is certified by a Magistrate under this Act to be a mentally ill person, the officer under whose authority such sum would be payable, may pay to the person having charge of the mentally ill person so much of the said sum as he thinks fit, having regard to the cost of maintenance of such person and may pay to such member of the family of the mentally ill person as are dependent on him for maintenance, the surplus, if any, or such part thereof as he thinks fit, having regard to the cost of maintenance of such members.
- a. Where there is any further surplus amount available out of the funds specified in sub-section (1) after making payments as provided in that sub-section, the Government shall hold the same to be dealt with as follows namely:
 - 0. where the mentally ill person is certified to have ceased to be mentally ill person by the District Court within the local limits of whose jurisdiction such person resides or is kept or detains, the whole of the surplus amount shall be paid back to that person;
 - 1. Where the mentally ill person dies before payment, the whole of the surplus amount shall be paid over to those of his heirs who are legally entitled to receive the same;
 - 2. Where the mentally ill person dies during his mental illness without leaving any person legally entitled to succeed to his estate, the whole of the surplus amount shall, with the prior permission of the District Court, be utilised for such charitable purpose as may be approved by the District Court.
- b. The Central Government or the State Government, as the case may be, shall be discharged of all liability in respect of any amount paid in accordance with this section.

COMMENT

This section makes provision for payment of pay, pension, gratuity, etc. of mentally ill person payable by Government.

93. LEGAL AID TO MENTALLY ILL PERSON AT STATE EXPENSE IN CERTAIN CASES -

- . Where a mentally ill person is not represented by a legal practitioner in any proceeding under this Act before a District Court or a Magistrate and it appears to the District Court or Magistrate that such person has not sufficient means to engage a legal practitioner, the District Court or Magistrate shall assign a legal practitioner to represent him at the expense of the State.
- a. Where a mentally ill person having sufficient means to engage a legal practitioner is not represented by a legal practitioner in any proceeding under this Act before a District Court or a Magistrate and it appears to the District Court or Magistrate, having regard to all the circumstances of the case, that such person ought to be represented by a legal practitioner, the

District Court, or Magistrate may assign a legal practitioner to represent him and direct the State to bear the expenses with respect thereto and recover the same from out of the property of such person.

- b. The High Court may, with the previous approval of the State Government, make rules providing for-
0. the mode of selecting legal practitioners for the purpose of Sub-section (1) and (2);
 1. the facilities to be allowed to such legal practitioners;
 2. the fees payable to such legal practitioners by the Government and generally for carrying out the purpose of sub-sections (1) and (2).

EXPLANATION - In this section "legal practitioner" shall have the meaning assigned to it in Cl. (1) of Sec. 2 of the Advocates Act, 1961 (25 of 1961).

COMMENTS

This section provides for legal and to mentally ill person at State expense in certain cases.

EXPLANATION - It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision¹.

94. PROTECTION OF ACTION TAKEN IN GOOD FAITH -

- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.
- a. No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

COMMENT

This section grants immunity from legal proceedings to persons for anything done or intended to be done under this Act in good faith.

95. CONSTRUCTION OF REFERENCE TO CERTAIN LAWS, ETC.

- Any reference in this Act to a law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.
- a. Any reference in this Act to any officer or authority shall, in relation to any area in which there is no officer or authority with the same designation, be construed as a reference to such officer or authority as may be specified by the Central Government by notification.

COMMENTS

This section provides for construction of reference to certain laws. - In construing social welfare legislation, the Courts should adopt a beneficent rule of construction and in any event, that construction should be preferred which fulfils the policy of the legislation. Construction to be adopted should be more beneficial to the purposes in favour of and in

SOCIAL WELFARE LEGISLATION whose interest the Act has been passed¹.

96. POWER OF CENTRAL GOVERNMENT AND STATE GOVERNMENT TO MAKE RULES -

- . The Central Government may, by notification, make rules providing for the qualifications of persons who may be appointed as Mental Health Authority under Sec. 3 and the terms and conditions subject to which they may be appointed under that section and all other matters relating to such authority.
- a. Subject to the provisions of sub-section (1), the State Government, with the previous approval of the Central Government may, by notification, make rules for carrying out the provisions of this Act:
Provided that the first rules shall be made by the Central Government by notification.
- b. In particular, and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may provide for all or any of the following matters, namely:
 - 0. the qualifications of persons who may be appointed as Mental Health Authority and the terms and conditions subject to which they may be appointed under Sec. 4 and all other matters relating to such authority;
 - 1. The class or category of persons for whom separate psychiatric hospitals and psychiatric nursing homes may be established and maintained under Cl (d) of sub-section (1) of Sec. 5;
 - 2. The form in which, -
 - . an application, may be made for grant or renewal of a licence and the fee payable in respect thereof under Sec. 7 or as the case may be, Sec. 9;
 - a. a licence may be granted for the establishment or maintenance of a psychiatric hospital or a psychiatric nursing home under Sec.8;
 - b. an application may be made for a reception order under Sec. 20
 - 3. the manner in which an order refusing to grant, or revoking, a licence shall be communicated under Sec. 8 or, as the case may be Sec. 11;
 - 4. the manner in which a report may be made to the licensing authority under sub-section (2) of Sec.9;
 - 5. the minimum facilities referred to in the proviso to sub-section (5) of Sec. 9 including -
 - . psychiatrist-patient ratio;
 - a. other medical or para-medical staff;
 - b. space requirement;
 - c. treatment facilities; and
 - d. equipment;

6. the manner in which and the conditions subject to which a psychiatric hospital or psychiatric nursing home shall be maintained under sec. 10.
7. The form and manner in which and the period within which an appeal against any order refusing to grant or renew a licence or revoking a licence shall be preferred and the fee payable in respect thereof under sec. 12;
8. The manner in which records shall be maintained under sub-section (1) of sec. 13.
9. The facilities to be provided under Sec. 14 of the treatment of a mentally ill person as an out-patient;
10. The manner in which application for a reception order shall be signed and verified under sub-section (6) of Sec. 20;
11. The qualification of persons who may be appointed as visitors and the terms and conditions on which they may be appointed, under Sec. 37 and their functions.
12. Prevention of vexatious or defamatory communications and other matters referred to in sub-section (3) of Sec. 81;
13. Any other matter which is required to be, or may be, prescribed.

COMMENTS

This section empowers the Central Government and State Government to make rules for carrying out the purposes of the legislation.

RULES OF CONSTRUCTION - It is well-settled canon of construction that the rules made under a statute must be treated exactly as if they were in the Act and are of the same effect as if contained in the Act. There is another principle equally fundamental to the rules of construction, namely, that the rules shall be consistent with the provision of the Act.

97. RULES MADE BY CENTRAL GOVERNMENT OR THE STATE GOVERNMENT TO BE LAID BEFORE THE LEGISLATURE -

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

COMMENT

This section provides that the rules framed by the Central Government or the State Government shall be laid before each Houses of Parliament or the State Legislature, as the case may be.

98. EFFECT OF ACT ON OTHER LAWS -

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.

COMMENT

This section lays down that the provisions of this Act shall have effect on other laws.

99. POWER TO REMOVE DIFFICULTY -

If any difficulty arises in giving effect to the provisions of this Act in any State, the State Government may, by order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

Provided that no order shall be made under this section in relation to any State after the expiry of two years from the date on which this Act comes into force in that State.

COMMENT

This section empowers the State Government to remove difficulty.

100. REPEAL AND SAVING -

- . The Indian Lunacy Act, 1912 (4 of 1912) and the Lunacy Act, 1977 [Jammu and Kashmir Act 25 of 1977 (1920 AD)] are hereby repealed.
- a. Notwithstanding such repeal, anything done or any action taken under either of the said Acts shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force until superseded by anything done or any action taken under this Act.

COMMENT

EFFECT OF IMPLIED REPEAL - If there is a repugnancy between the two pieces of legislation, to such an extent that both cannot stand together and operate simultaneously, the latter will have the effect of impliedly repealing the former¹.

SAVING PROVISION - EFFECT OF - While giving effect to a saving provision, when it provides that something which is done or issued under the repealed provision must be treated as having been treated or issued under the newly enacted provision, an earlier order can be saved only if such a direction or an order could be effectively and validly made under the new provisions of law, which had repealed the earlier provisions².

THE STATE MENTAL HEALTH RULES 1990

G.S.R. 1005 (E), DATED 29TH DECEMBER 1990 - In exercise of the powers conferred by the proviso to sub-section (2) of Sec. 94 of the Mental Health Act 1987 (14 of 1987), read with Sec. 22 of the General Clauses Act, 1897 (10 of 1897) the Central Government hereby makes the following rules namely:

CHAPTER I PRELIMINARY

b. SHORT TITLE AND COMMENCEMENT -

0. These rules may be called the State Mental Health Rules, 1990.
1. They shall come into force in a State on the date of commencement of the Act in the State.

c. DEFINITIONS

- In these rules unless the context otherwise requires -

0. "Act" means the Mental Health Act, 1987 (14 of 1987);
1. "applicant" means the person who makes an application to the licensing authority for grant of a licence;
2. "authority" means the State Mental Health Authority constituted under Sec. 4 of the Act;
3. "Chairman" means the Chairman nominated under rule 5;
4. "Form" means Form annexed to these rules;
5. "licence" means licence granted under Sec. 8 of the Act;
6. "member" means a member of the Authority appointed under rule 3;
7. "membership" means membership of the Authority established under Sec. 4 of the Act;

8. "non-official member" means a member appointed under sub-rule (2) of rule 3;
9. "official member" means a member appointed under sub-rule (1) of rule 3;
10. "secretary" means Secretary to the Authority appointed under rule 13;
11. words and expressions used herein and not defined but defined in the Act shall respectively have the meanings assigned to them in the Act.

COMMENT

"MEANS - EXPRESSION OF. - The expression "means" in a definition clause renders the definition exhaustive of the matter defined. Where an interpretation clause defines a word to mean a particular thing, the definition is explanatory and prima facie restrictive.

CHAPTER II

STATE MENTAL HEALTH AUTHORITY

- d. CONSTITUTION OF THE AUTHORITY** - The Authority shall consist of the following members, namely;

0. Official Members:

- Secretary, Department of Health;
- a. Joint Secretary, Department of Health dealing with Mental Health;
- b. Director of Health Services;
- c. Medical Superintendent, Government Mental Hospital or Head of the Department of Psychiatry, Government Medical College and Hospital.

1. Non-official Members:

Three members including one social worker, one Clinical Psychologist and one Medical Psychiatrist, who in the opinion of the State Government, have special interest in the field of Mental Health.

COMMENT

This rule provides for constitution of the Authority for purpose of the rules.

- e. DISQUALIFICATION** - A person shall be disqualified for being appointed as a member or shall be removed from membership by the State Government, if he -

0. has been convicted and sentenced to imprisonment for an offence which in the opinion of the State Government involves moral turpitude; or
1. is an undischarged insolvent; or
2. is of unsound mind and stands so declared by a competent court; or
3. has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government.

f. CHAIRMAN -

0. The State Government may nominate any official member to act as the Chairman of the Authority.

1. The Chairman shall cease to hold office when he ceases to be a member of the Authority.

g. TERM OF OFFICE OF MEMBERS -

0. Every official member shall hold office as such member so long as he holds the office by virtue of which he was so appointed.
1. Every non-official member shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment.
2. A non-official member may at any time resign from membership of the Authority by forwarding his letter of resignation to the Chairman and such resignation shall take effect only from the date on which it is accepted.
3. Where a vacancy occurs by resignation of a non-official member under sub-section (3) or otherwise, the State Government shall fill the vacancy by appointing from amongst category of persons referred to in sub-rule (2) of rule 3 and the person so appointed, shall hold office for the remainder of the term of office of the member in whose place he was so appointed.
4. Where the term of office of any non-official member is about to expire, the State Government may appoint a successor at any time within three months before the expiry of the term of such member but the successor shall not assume duty until the term of the member expires.

CHAPTER III

PROCEEDING OF THE AUTHORITY

h. MEETINGS OF THE AUTHORITY -

0. The Authority shall ordinarily meet once in every six months at such time and place as may be fixed by the Chairman: Provided that the Chairman -
 - . may call a special meeting at any time to deal with any urgent matter requiring the attention of the Authority.
 - a. shall call a special meeting if he receives a requisition in writing signed by not less than four members and stating the purposes for which they desire the meeting to be called.
1. The first meeting of the Authority to be held in any calendar year shall be the annual meeting for that year.

COMMENT

PROVISO. - It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main

enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

i. **SUBJECTS FOR SPECIAL MEETING** - Where a meeting referred to in the proviso to sub-rule(1) of rule 7 has been convened, only the subjects for the considerations of which the meeting was convened, shall be discussed.

j. **SUBJECTS FOR THE ANNUAL MEETING** - At the Annual Meeting of the Authority, the following subjects shall be considered and disposed of namely;

0. Review of the progress of implementation of the various provisions of the Mental Health Act during the preceding one year;
1. Other business brought forward with the consent of the Chairman or where he is absent with the consent of the Officer presiding at the meeting.

k. **PROCEDURE FOR HOLDING MEETINGS** -

0. Every notice calling for meeting of the Authority shall -
 - . specify the place, date and hour of the meeting;
 - a. be served upon every member of the Authority not less than twenty-one clear days in the case of annual meeting and fifteen clear days in the case of other meetings before the day appointed for the meeting.
1. The Secretary shall prepare and circulate to the members along with the notice of the meeting, an agenda for the meeting showing the business to be transacted.
2. A member who wishes to move a resolution on any matter included in the agenda, shall give notice thereof to the Secretary not less than seven days before the date fixed for the meeting.
3. A member who wishes to move any motion not included in the agenda shall give notice thereof to the Secretary not less than fourteen days before the date fixed for the meeting.

COMMENT

This rule lays down the procedure for holding the meetings.

l. **PROCEEDINGS OF THE AUTHORITY** -

0. The Chairman or in his absence any member authorised by him, shall preside at the meetings of the Authority.
1. The quorum for the meeting of the Authority shall be four members.
2. If within half an hour from the time appointed for holding a meeting of the Authority, quorum is not present, the meeting shall be adjourned to the same day in the following week at the same time

and place and the presiding officer of such meeting shall inform the members, present and send notice to other members.

3. If at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting the members present shall constitute the quorum.
4. In the adjourned meeting if the Chairman is not present and no member has been authorised to preside at such meeting, the members present shall elect a member to preside at the meeting.
5. Each member including the Chairman shall have one vote. In the case of an equality of votes, the Chairman or any member presiding over such meeting, shall in addition, have a casting vote.
6. All decisions of the meeting of the Authority shall be taken by a majority of the members present and voting.

m. APPROVAL BY CIRCULATION - Any business which may be necessary for the Authority to transact except such as may be placed before the annual meeting, may be carried out by circulation among all members and any resolution so circulated and approved by a majority of members shall be valid and binding as if such resolution had been passed at the meeting of the Authority.

n. SECRETARY TO THE AUTHORITY -

0. The Chairman shall cause to be appointed a Secretary to the Authority from amongst persons possessing post-graduate degree in Psychiatric and having three years' experience in the field of psychiatry.
1. The Secretary shall be a full-time or part-time servant of the Authority and shall function as the Administrative Officer of the Authority.
2. The Secretary shall be responsible for the control and management of office accounts and correspondence.
3. The Secretary shall attend and take notes of the proceedings of the meeting of the Authority.
4. The Secretary shall cause to be appointed such members of the ministerial and non-ministerial staff which are essential for efficient functioning of the Authority.
5. The Secretary shall exercise such other powers and discharge such other functions as may be authorised in writing by the Chairman for the efficient functioning of the Authority.

o. FORWARDING OF COPIES OF THE PROCEEDINGS OF THE AUTHORITY TO THE STATE GOVERNMENT -

The Secretary shall forward copies of the proceedings of the Authority to the State Government periodically.

CHAPTER IV LICENCE

p. APPLICATION FOR LICENCE -

0. Every application for a licence under sub-section (1) or sub-section (2) of Sec. 7 of the Act shall be -
 1. made to the licensing authority in Form I or Form II as the case may be;
 2. accompanied by a fee of rupees two hundred in the form of a bank draft drawn in favour of the licensing authority.
- q. GRANT OF LICENCE** - If the licensing authority is satisfied that the applicant fulfils the conditions laid down in Cls. (a), (b) and (c) of Sec. 8 of the Act, it shall grant the licence in Form III.
- r. REFUSAL OF LICENCE AND MANNER OF COMMUNICATING THE ORDER** -
 0. If the licensing authority is satisfied that the applicant does not fulfil the conditions laid down in Sec. 8 of the Act, it may, after giving the applicant a reasonable opportunity of being heard against the proposed refusal of licence, by order setting out the reasons therein, refuse to grant the licence.
 1. Every order refusing to grant a licence under Sec. 8 shall be communicated to the applicant by sending a copy of the order by registered post to the address given in the application.
 2. A copy of the order shall also be conspicuously displayed on the notice-board of the licensing authority.
- s. APPLICATION FOR RENEWAL** - Every application for renewal of a licence under sub-section (5) of Sec. 9 of the Act shall be -
 0. made to the licensing authority in Form IV.
 1. Accompanied by a fee of rupees one hundred in the form of a bank draft drawn in favour of the licensing authority.
- t. REFUSAL OF LICENCE** -
 0. If the licensing authority is satisfied that the conditions mentioned in the proviso to sub-section (5) of Sec. 9 of the Act are not attracted, it shall renew the licence.
 1. If the licensing authority is of the opinion that the licence should not be renewed in view of the fact the conditions mentioned in the proviso to sub-section (4) of Sec. 9 are attracted, it may, after giving the applicant a reasonable opportunity of being heard against the proposed refusal of renewal of the licence by order setting out the reasons therein, refuse to renew the licence.
 2. Every order refusing to renew the licence under the proviso to sub-section (5) of Sec. 9 shall be communicated to the applicant by sending a copy of the order by registered post to the address given in the application for renewal.
- u. MANNER AND CONDITIONS OF MAINTAINING PSYCHIATRIC HOSPITALS OR PSYCHIATRIC NURSING HOMES** - Every Psychiatric hospital or nursing home shall be maintained subject to the condition that, -

0. such hospital or nursing home is located only in an area approved by the local authority;
1. such hospital or nursing home is located in a building constructed with the approval of the local authority;
2. the building, where such hospital or nursing home is situated, has sufficient ventilation and is free from any pollution which may be detrimental to the patients admitted in such hospital or nursing home;
3. such hospital or nursing home has enough beds to accommodate the patient;
4. the nurses and other staff employed in such hospital or nursing home are duly qualified and competent to handle the work assigned to them;
5. the supervising officer-in-charge of such hospital or nursing home is a person duly qualified having a post-graduate qualification in Psychiatry recognised by the Medical Council of India.

v. TIME FOR APPEAL

0. any person aggrieved by the order of the licensing authority refusing to grant or renew a licence or revoking a licence, may prefer an appeal to the State Government within sixty days of the communication of such order: Provided that the State Government may entertain an appeal preferred after the expiry of the period specified in sub-rule (1) if it is satisfied that the applicant was prevented by sufficient cause from preferring the appeal in time.
1. The appeal shall be in "Form V" and shall be sent to the State Government by registered post or by appearing in person before and delivering the same to the Secretary to State Government, Department of Health or any other officer nominated by him in this behalf.
2. Every appeal shall be accompanied with a fee of rupees five hundred.

CHAPTER V

PSYCHIATRIC HOSPITAL AND NURSING HOME

w. MINIMUM FACILITIES FOR TREATMENT OF OUT-PATIENTS -

The minimum facilities required for every psychiatric hospital or psychiatric nursing home for treatment of patients mentioned in Sec. 14 of the Act shall be as follows:

0. Staff for 10 bedded hospital or nursing home -
 - . One full time qualified Psychiatrist.
 - a. One Mental Health Professional Assistant (Clinical) Psychologist or Psychiatrist Social Worker.
 - b. Staff Nurses in the nurse : patient ratio 1:3
 - c. Attenders in the attender: patient ratio 1:5

1. Physical features - Adequate floor space depending on the number of beds shall be provided.
2. Support/facilities - The minimum support/facilities shall be as under:-
 - . Provision for emergency care for out-patient and for handling medical emergencies for out-patients and in-patients;
 - a. A well equipped Electro Convulsive Therapy facility;
 - b. Psychodiagnostic facilities;
 - c. Provision for recreational/rehabilitation activities; and
 - d. Facilities for regular out-patient care.

x. REVOCATION OF LICENCE -

0. Where the licensing authority is satisfied that the licence of any psychiatric hospital or nursing home is required to be revoked in pursuance of Cl. (a) or (b) of sub-section (1) of Sec. 11 of the Act, it may, after giving the licensee a reasonable opportunity of being heard against the proposed revocation by order setting out the grounds therein, revoke the licence.
1. Every order revoking the licence under sub-rule (1) shall be communicated to the licensee by sending a copy of the order by registered post to the address given in the application.
2. A copy of the order shall also be conspicuously displayed on the notice-board of the office of the licensing authority and in the psychiatric hospital or nursing home.

y. MAINTENANCE OF RECORDS -

Every Psychiatric hospital or a psychiatric nursing home shall maintain the records of the treatment of patient in Form VI.

**CHAPTER VI
MISCELLANEOUS**

z. ADMISSION AND DETENTION IN PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME -

0. Application by Medical Officer-in-charge -

- . The application for reception order may be made by the Medical Officer-in-charge of a Psychiatric hospital or Psychiatric nursing home in "Form VII" or
- a. by the husband, wife or any other relative of the mentally ill person in "Form VIII".

1. Application from husband or wife:

- . Every application by the husband or wife, relative or friend of a person who is alleged to be mentally ill shall be accompanied by necessary medical certificates;
- a. Such application shall be signed either by the husband or wife or relative or friend as the case may be, and verified by two independent witnesses;

- b. The name, address, occupation and other details of all the applicants and the attesting witnesses shall be clearly given in such application.

aa. THE QUALIFICATION AND FUNCTIONS OF THE VISITORS -

- 0. The qualifications of persons to be appointed as visitors under Sec. 37 of the Act shall be as follows:

- . A degree in Medicine with post-graduate degree in psychiatry awarded by any University in India recognised by the Medical Council of India and having at least ten years' standing in the profession, who has held/is holding the post of Medical Superintendent/Professor in Psychiatric hospital or psychiatric wing of a hospital; or

- a. Experience as a social worker/clinical psychologist/psychiatric nurse connected with any mental hospital for a period of not less than ten years.

- 1. The visitors appointed by the Government under Sec. 37 of the Act shall be responsible for -

- . review of admission and discharge of patients;
 - a. inspection of the wards, outdoor patient department and kitchen;
 - b. facilities to be provided;
 - c. suggestion for improvement; and
 - d. functioning as liaison officer between the Government and hospital.

bb. LEAVE OF ABSENCE -

Every application by relative or any other person on behalf of the patient for leave of absence under Sec. 45 of the Act shall be made in "Form IX".

cc. INTERCEPTION OF THE LETTERS AND OTHER COMMUNICATIONS ADDRESSED TO THE MENTALLY ILL PERSONS -

No letter or other communication addressed to a mentally ill person intended for delivery either through the postal department or otherwise shall be intercepted, detained or destroyed except under following circumstances, namely -

- 0. any letter or other communication intended for delivery to a mentally ill person shall be opened only if the person having the supervisory control over the hospital or nursing home is of the opinion that such letter or communication contains any information or material which if communicated to such patient will be detrimental to his health; or
- 1. that the interception, detention or destruction of any letter or ocommunication intend to be delivered to the mentally ill person is necessary in the interests of the public or the State.

FORM I
(See rule 15)

To

The.....Officer,
Government.....
.....

Dear Sir/Madam,

I/We intend to establish/maintain a Psychiatric Hospital/Psychiatric Nursing Home in respect of which I am/we are holding a valid licence for the establishment/maintenance of such hospital/nursing home. The details of the hospital/nursing home are given below:

2. Name of Applicant
3. Details of licence with reference to the name of the Authority issuing the licence and date.
4. Age.....
5. Professional experience in Psychiatry
6. Permanent address of the applicant
7. Location of the proposed Hospital/Nursing Home.
8. Address of the proposed Nursing Home/Hospital
9. Proposed accommodations:
 - . Number of rooms
 - a. Number of beds

Facilities provided:

10. Out-patient
11. Emergency services
12. In-patient facilities
13. Occupational and recreational facilities
14. ECT facilities
15. X-ray facilities
16. Psychological testing facilities
17. Investigation and laboratory facilities
18. Treatment facilities.

Staff Pattern:

19. Number of Doctors
20. Number of Nurses

21. Number of Attenders
22. Others.
I am sending herewith a bank draft for Rs..... Drawn in favour of
..... as licence fee.

I hereby undertake to abide by the rules and regulations of the Mental Health Authority.

I request you to consider my application and grant the licence for establishment/maintenance of Psychiatric Hospital/nursing home.

Yours faithfully,

Signature.....

Name

Date

FORM II
(See Rule 16)

**APPLICATION FOR ESTABLISHMENT OF PSYCHIATRIC
HOSPITAL/NURSING HOME UNDER SUB SECTION (2) OF SEC. 7**

To

The.....
Government.....
.....

Dear Sir/Madam,

I/We intend to establish a Psychiatric Nursing Home/Psychiatric Hospital at
..... (mention the place). I am herewith giving you the details.

1. Name of the Applicant
2. Qualification of Medical officer to be incharge of Nursing Home/Hospital
(Certificate to be attached).
3. Age
4. Professional experience in Psychiatri
5. Permanent Address of the applicant
6. Location of the proposed Hospita/Nursing Home
7. Address of the proposed Nursing Home/Hospital
8. Proposed accommodation:
 - a. Number rooms,
 - b. Number of beds.

Facilities provided:

- i. Out-patient
- j. Emergency services
- k. In-patient facilities
- l. Occupational and recreational facilities
- m. ECT facilities
- n. X-ray facilities
- o. Psychological testing facilities
- p. Investigation and laboratory facilities
- q. Treatment facilities

Staff Pattern:

- r. Number of Doctors
- s. Number of Nurses
- t. Number of Attenders
- u. Others.

I am herewith sending a bank draft for Rs. drawn in favour of
..... as licence fee.

I hereby undertake to abide by the rules and regulations of the Mental Health Authority. I
request you to consider my application and grant licence.

Yours faithfully,

Signature.....

Date
.....

FORM III

(See rule 16)

GRANT OF LICENCE FOR ESTABLISHMENT OF PSYCHIATRIC HOSPITAL/NURSING HOME

I.....being the licensing authority under the Mental Health Act, 1987, after
considering the application received under Sec. 7 and satisfying the requirements provided
for in Sec. 8 and the other provisions of the Mental Health Act, 1987 (Central Act 14 of
1987) and the rules made thereunder, hereby grant the licence for

establishment/maintenance of a psychiatric hospital or nursing home in favour of
.....(the applicant).

2. The licence shall be valid for the period commencing from..... and ending
with..... The licence shall be subject to the conditions laid down in the Mental
Health Act, 1987 (14 of 1987) and the rules made thereunder.

Licensing Authority

Place.....

Date

FORM IV
(See rule 18)
APPLICATION FOR RENEWAL OF LICENCE

SEAL

From

Dr.....

.....

.....

To

District Health Officer

.....

.....

Sir,

Sir,

I, Dr.....of.....had applied for licence for establishing a Ppsychiatric Nursing Home/Hospital at.....(copy of the earlier application to be attached). My application was rejected by the licensing authority as per his/her letter No.----- Dated ----- with the following:

- 1.
- 2.
- 3.

(copy enclosed)

The above reason(s) appear to be not valid. I request you to reconsider my application. My justifications are:

- 4.
- 5.
- 6.

I am willing to appear before you for a personal hearing, if necessary. I am herewith enclosing a draft for Rs. 500.
Thanking you.

Yours faithfully,

Signature.....

Name

Place.....

Date.....

Subject : Renewal of Licence No.....dated..... I request you to kindly renew my licence No..... dated the.....for the next 5 years. I am providing the facilities as prescribed by the Act and the rules framed thereunder. I have herewith attached a demand draft for Rs. 100 only.

Thanking you.

Yours faithfully

Signature.....

Name

Place.....

Date.....

FORM V
(See rule 21)
APPLICATION FOR APPEAL

To,

The Appellate Authority
Government

FORM VI

(See rule 24)

PROFORMA OF CASE RECORD

Name of the hospital/nursing home.....Patient's
name..... Age.....Sex.....Date of
admission.....date of discharge..... Mode of
admission.....Voluntary.

Reception order.

Complaints (report from relative/other sources)

Mental State Examination

Physical Examination

Laboratory investigations

Provisional diagnosis.

Initial treatment

Treatment and Progress notes

Clinical State and side effect Treatment

Date

Final diagnosis

Condition at discharge

Follow-up recommendations.

FORM VII

(See rule 25)

APPLICATION FOR RECEPTION ORDER
(By Medical Officer-in charge of a Psychiatric Hospital)

From

Dr.....

To

*The Magistrate

.....

.....

Sir,

Subj: Reception order for.....son/daughter of
.....I, Dr.....maintain psychiatric hospital/nursing
home at..... Under licence No.....
dated.....

I request you to issue reception order in respect of Sh/Smt.....
son/daughter Of..... who is being treated at my hospital as a voluntary
patient and is not willing to continue. He/she has the following symptoms and/or
signs.

- 1.
- 2.
- 3.
- 4.
- 5.

He/She requires to be in the hospital for treatment/personal safety/others
Protection.

Thanking you.

Yours sincerely

Place.....

Signature.....

Date:.....

Name.....

o "Magistrate" means -

1. in relation to a metropolitan area within the meaning of CL(k) of
Sec. 2 of the Code of Criminal Procedure, 1973, a Metropolitan
Magistrate.
2. In relation to any other area, the Chief Judicial Magistrate, Sub-
Divisional Judicial Magistrate or such other Judicial Magistrate of
the first class as the State Government may, by notification,
empower to perform the functions of a Magistrate under this Act.

FORM VIII
(See rule 25)
APPLICATION FOR RECEPTION ORDER
(By relative or other)

To

.....
.....
.....

Sir,

Subject: Admission ofson/daughter of.....into psychiatry hospital/nursing home as in-patient.

I.....son/daughter of.....residing at.....request you kindly arrange for admission in respect of Sh/Smt..... Aged Yearsson/daughter of..... An in-patient To.....(name of the hospital) or any other hospital/nursing home. He/She has the following suggestive of mental illness.

- 1.
- 2.
- 3.
- 4.
- 5.

I, who is(relationship) of Sh./Smt..... have an incomeRs..... and agree to pay the charges of treatment, if any of the institution. I state that, I have/bave not made any such regard to the mental condition ofas required. I herewith enclose the two medical certificates needed for the purpose.

Witnesses:

Yours faithfully,

1. Name.....

Signature.....

address.....

Name in Capital.....
2.Occupation.....

FORM IX
(See rule 27)
APPLICATION FOR LEAVE OF ABSENCE
(By relative or others)

To
Dr.
.....

Sir,

Subject: Request for leave of absence of
Sh/Smt.....aged.....years Admitted on
.....to your Institute.

I request that Sh/Smt.....son/daughter of..... Be delivered to
my care and custody on leave of absence.

I hereby bind myself that on the said Sh/Smt.....
being made over to my care and custody, I will have him here/properly taken
care of and prevent from doing injury to himself or to others.

Yours faithfully,

Signature.....

Name

THE CENTRAL MENTAL HEALTH AUTHORITY RULES 1990

G.S.R. 1004 (E) DATED 20TH DECEMBER 1990.1 - In exercise of the powers conferred by sub-section (1) of Sec. 94 of the Mental Health Act, 1987, (14 of 1987), read with Sec. 22 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules, namely:

CHAPTER I PRELIMINARY

1. SHORT TITLE AND COMMENCEMENT

1. These rules may be called the Central Mental Health Authority Rules, 1990.
2. They shall come into force on the date of commencement of the Act.

2. DEFINITIONS

- In these rules unless the context otherwise requires -

- a. "Act" means the Mental Health Act, 1987 (14 of 1987);
- b. "Authority" means the Central Mental Health Authority established under Sec. 3 of the Act;
- c. "Chairman" means the Chairman nominated under rule 5;
- d. "Member" means member of the Authority appointed under rule 3.
- e. "Membership" means the membership of the Authority established under rule 3.
- f. "Non-Official Member" means a member appointed under sub-rule (2) of rule 3;
- g. "Official Member" means a member appointed under sub-rule (1) of rule 3;

- h. "Secretary" means the Secretary to the Authority appointed under rule 13;
- i. words and expressions used herein and not defined but defined in the Act shall respectively have the meaning assigned to them in the Act.

CHAPTER II CENTRAL MENTAL HEALTH AUTHORITY

3. CONSTITUTION OF THE AUTHORITY

- The Authority shall consist of the following members, namely;

- 0. Official Member -
 - a. Secretary or Additional Secretary, Ministry of Health and Family Welfare, Government of India.
 - b. Joint Secretary, Ministry of Health and Family Welfare dealing with Mental Health.
 - c. Additional Director-General of Health Services dealing with Mental Health.
 - d. Director, Central Institute of Psychiatry, Ranchi.
 - e. Director, National Institute of Mental Health and Neuro Sciences, Bangalore.
 - f. Medical Superintendent, Hospital for Mental diseases, Shahdara, Delhi.
- 1. Non-Official Members- Three members including one social Worker, one clinical psychologist and one Medical psychiatric who, in the opinion of the central Government, have special interest in the field of Mental Health.

COMMENT

This rule provides that the Authority under this rule shall consist of certain official and non-official members mentioned therein.

4. DISQUALIFICATION

- A person shall be disqualified for being appointed as a member or shall be removed from membership by the Central Government if he,-
 - a. has been convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude ; or
 - b. is an undischarged insolvent ;or
 - c. is of unsound mind and stands so declared by a competent court, or
 - d. has been removed or dismissed from the Government or a body corporate owned or controlled by the Government.

5. CHAIRMAN -

- 0. The Central Government may nominate any official member to act as the Chairman of the Authority.
- 1. The Chairman shall cease to hold office when he ceases to be a member of the Authority.

6. TERM OF OFFICE OF MEMBERS

0. Every official member shall hold office as such member so long as he holds the office by virtue of which he was appointed.
1. Every non-official member shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment.
2. A non-official member may at any time resign from membership of the Authority by forwarding his letter of resignation to the Chairman and such resignation shall take effect only from the date on which it is accepted.
3. Where a vacancy occurs by resignation of a non-official member under sub-rule (3) or otherwise, the Central Government shall fill the vacancy by appointing from amongst category of persons referred to in sub-clause (2) of rule 3 and the person so appointed, shall hold office for the remainder of the term of office of the member in whose place he was so appointed.
4. Where the term of office of any non-official member is about to expire the Central Government may appoint a successor at any time within three months before the expiry of the term of such member but the successor shall not assume office until the term of the member expires.

CHAPTER III

PROCEEDINGS OF THE AUTHORITY

7. MEETINGS OF THE AUTHORITY -

0. The authority shall ordinarily meet once in every six months at such time and place as may be fixed by the Chairman. Provided that the Chairman -
 - i. may call a special meeting at any time to deal with any urgent matter requiring the attention of the Authority.
 - ii. Shall call a special meeting if he receives a requisition in writing signed by not less than four members and stating the purpose for which they desire the meeting to be called.
1. The first meeting of the Authority to be held in any calendar year shall be the annual meeting for that year.

8. SUBJECTS FOR SPECIAL MEETING-

Where a meeting referred to in the proviso to sub-rule (1) of rule 7 has been convened, only the subjects for the consideration of which the meeting was convened, shall be discussed.

9. SUBJECTS FOR THE ANNUAL MEETING

- At the Annual Meeting of the Authority, the following subjects shall be considered and disposed of namely:-

0. review of the progress of implementation of the various provisions of Mental Health Act during the preceding one year.
1. Other business on the agenda; and
2. Any other business brought forward with the consent of the Chairman or where he is absent, with the consent of officer presiding at the meeting.

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0. review of the progress of implementation of the various provisions of Mental Health Act during the preceding one year.
1. Other business on the agenda; and
2. Any other business brought forward with the consent of the Chairman or where he is absent, with the consent of officer presiding at the meeting.

10. PROCEDURE FOR HOLDING MEETINGS

0. Every notice calling for a meeting of the authority shall -
 - specify the place, date and hour of the meeting:
 - a. be served upon every member of the Authority not less than twenty-one clear days in the case of annual meeting and fifteen clear days in the case of other meetings before the day appointed for the meeting.
1. The Secretary shall prepare and circulate to the members alongwith the notice of the meeting an agenda for such meeting showing the business to be transacted.
2. A member who wishes to move a resolution on any matter included in the agenda shall give notice thereof to the Secretary not less than seven days before the date fixed for the meeting.
3. A member who wishes to move any motion not included in the agenda shall give notice to the Secretary not less than fourteen days before the date fixed for the meeting.

COMMENT

This rule lays down the procedure for holding the meeting.

11. PROCEEDINGS OF THE AUTHORITY

0. The Chairman or in his absence any member authorised by him shall preside at the meetings of the Authority.
1. The quorum for the meeting of the Authority shall be four members.
2. If within half an hour from time appointed for holding a meeting of th Authority quaorum is not present, the meeting shall be adjourned to the same day in the following week at the same time and place and the presiding officer of such meeting shall inform the members present and send notice to other members.
3. If at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute the quorum.
4. In the adjourned meeting if the Chairman is not present and no member has been authorised to preside at such meeting, the members present shall elect a member to preside at the meeting.
5. Each member including the Chairman shall have one vote. In the case of an equality of votes, the Chairman or any member presiding over such meeting shall in addition, have a casting vote.
6. All decisions of the meeting of the Authority shall be taken by a majority of the members present and voting.

12. APPROVAL BY CIRCULATION

- Any business which may be necessary for the Authority to transact except as such may be placed before the annual meeting, may be circulated and approved by a majority of members, shall be valid and binding as if such resolution had been passed at the meeting of the Authority.

13. SECRETARY TO THE AUTHORITY

0. The Chairman shall cause to be appointed a Secretary to the Authority from amongst persons possessing post-graduate degree in psychiatry and having three years' experience in the field of psychiatry.
1. The Secretary shall be a full-time or part-time servant of the Authority and shall function as the Administrative Officer of the Authority.
2. The Secretary shall be responsible for the control and management of office accounts and correspondence.
3. The Secretary shall cause to be appointed such members of the ministerial and non-ministerial staff which are essential for the efficient functioning of the Authority.
4. The Secretary shall exercise such other powers and discharge such other functions as may be authorised in writing by the Chairman for the efficient functioning of the Authority.

14. FORWARDING OF COPIES OF THE PROCEEDINGS OF THE AUTHORITY TO THE CENTRAL GOVERNMENT

- The Secretary shall forward copies of the proceedings of the Authority to the Central Government periodically.



17 5029 12



MODEL PUBLIC HEALTH
ACT
DRAFT

1000. *Fl. - (L.)* *Walt.*

1703



CENTRAL BUREAU OF HEALTH INTELLIGENCE
DIRECTORATE GENERAL OF HEALTH SERVICES
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA
NEW DELHI



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CHAPTER I

SHORT TITLE, EXTENT, COMMENCEMENT AND DEFINITIONS

An Act to make provision for health services in the States/
Union Territory of

WHEREAS it is expedient to make provision for advancing/improving the health of the people of the State/Union Territory and all other purposes connected thereof—

It is hereby enacted as follows:—

1. This Act may be called the Public Health Act 19.....

2. It extends to the whole of the States/Union Territory of.....

2.1. The provisions of this Act (except chapter..... and part of chapter.....) shall come into force in the whole of the State/Union/Territory of..... at once.

2.2. The government may, from time to time, by notification extend all or any of the provisions of chapter to any local area or may cancel or modify any such notification.

3. The provisions of part of chapter shall come into effect at once, in—

(i) corporations,

(ii) municipalities.

3.1. The government may from time to time by notification.....extend the provisions of part.....of chapter... to any other local area in the State/UT and may cancel or modify any such notification.

4. Definitions

4.1. "Building" includes—

4.1.1. a house, out-house, stable, latrine, godown, shed, hut, wall (other than boundary wall not exceeding two meters in height) and any other structure whether of masonry, bricks, wood, mud, metal or any other material whatsoever;

4.1.2. structure on wheels or simply raised on the ground without foundations;

4.1.3. a ship, vessel, boat (when outside the port limits of major ports as defined under the Indian Ports Act, 1908);

4.1.4. tent, van and any other structure used for human habitation; but does not include a temporary shed erected on ceremonial or festive occasions.

4.2. "Cattle" includes elephants, camels, mules, asses, horses, cows, bulls, bullocks, buffaloes, sheep, goats and pigs and their young ones.

4.3. "City Corporation" means the Municipal Corporation of the city.

4.4. "Commencement of this Act" in relation to any provision, means the date specified in a notification under section (3) in respect of that provision.

4.5. "Communicable disease" means an infectious disease as defined in Chapter X, Part II.

4.6. "Dairy" includes—

4.6.1. any farm, cattleshed, milk store, milk shop or other place from which milk is sold or supplied for sale or in which milk is kept for sale or manufactured into butter, ghee, cheese, cream, curd, butter-milk or dried, sterilized or condensed; and;

4.6.2. in relation to a dairy-man who does not occupy any premises for the sale of milk, any place in which he keeps the vessels used by him for the storage or sale of milk; but does not include (a) a shop or place in which milk is sold for consumption on the premises only or (b) a shop or place from which milk is sold or supplied for sale in hermetically closed and unopened receptacles in the same original condition in which it was first received in such shop or place;

4.6.3. "Dairyman" includes any person who sells milk, either wholesale or by retail.

4.7. "Director of Health Services" means and includes the Chief Administrative Medical Officer of the Union Territories/States, or the Director of Medical and Health Services of the Union Territories/States or the Director of Health Services of the Union Territories/States or the Director of Public Health of the Union Territories/States.

4.8. "Drain" means a house-drain or a public drain of any other description and includes a sewer, tunnel, culvert, ditch, channel or any other device for carrying of sullage, sewage, offensive matter, polluted water, rain water, drain water, or sub-soil water.

4.9. "Dwelling House" means a building constructed, used or adopted to be used, wholly or partly for human habitation or in connection therewith.

4.10. "Executive Authority" means the executive officer or other functionary of a local authority who is vested with the general executive powers by or under the Act creating the local authority.

4.11. "Factory" means any premises as defined in the Factories Act, 1948.

4.12. "Filth" means—

- (a) nightsoil and other contents of latrines, cesspools and drains;
- (b) dung and refuse of useless or offensive material thrown out in consequence of any process of manufacture, industry or trade; and
- (c) putrid and putrefying substances.

4.13. "Government" means the Union Territories/State or Central Government.

4.14. "Guardian" includes any person who has or is presumed to have accepted the care or custody of any Child.

4.15. "Health Officer" means administrative medical officer or any other officer vested with the powers under the Act by the Government.

4.16. "House drain" means any drain actually used or intended to be used, for the drainage of one or more premises.

4.17. "Hut" means any building which is constructed principally of wood, mud, leaves, grass, thatch or metallic sheets and includes any temporary structure of whatever size of any small building and whatever material used which the local authority may declare to be a hut for the purpose of this Act.

4.18. "Latrines" includes a privy, water-closet and urinal, whether public or private, or whether open or flushout or any construction for purposes of urination or defecation.

4.19. "Local area" means the area within the jurisdiction of a local authority.

4.20. "Local authority" means—

- (a) a city corporation,
- (b) a municipal council or committee, or
- (c) any other body (not being a Cantonment authority governed by the Cantonments Act, 1924) constituted by law or the local administration of a village, town or other local areas.

4.21. "Lodging House" means a hotel, a boarding house, a choultry, dharmasala or religious place or rest house not maintained by the Government or a local authority, an unlicensed migration depot, or any place where casual visitors are received and provided with sleeping accommodation, with or without food, on payment but does not include—

- (a) a students hostel under public or private control, or
- (b) a house under section 172 for accommodating visitor to a fair or festival, or
- (c) a retiring room and rest house provided by a railway administration and normally used by passengers or railway servants or both.

4.22. "Magistrate" does not include an honorary or village magistrate;

4.23. "Milk" includes cream, skimmed milk, separated milk and condensed, sterilised, desiccated or toned or boiled milk;

4.24. "Notification" means a notification published in the official gazette.

4.25. "Nuisance" includes any act, omission, place or thing that causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or disturbance to rest or sleep or which is or may be dangerous to life or injuries to the health or property of the public or the people in general who dwell or occupy property in the vicinity or persons who may have occasion to use any public right.

4.26. "Occupier" means any person for the time being paying or liable to pay, to the owner the rent or any portion of the rent of the land or building in respect of which the word is used or for damages on account of the occupation of such land or building, and also a rent-free tenant;

Provided that (a) an owner living in or otherwise using his own land or building shall be deemed to be the occupier thereof; and

(b) includes a person having the charge, management or control of a building, or a part of a building or a house, premises or in the case of a lodging house which is let out to lodgers, the person receiving the rent payable by the tenants and lodgers either on his own account or as the agent of another person, and in the case of ship, vessel or boat, the master or other person in charge thereof; and

(c) in the case of land, building or house not occupied by any tenant or other person, the owner of the building or premises.

4.27. "Offensive matter" includes—

- (a) filth as defined in clause 4.13;
- (b) sewage as defined in clause 4.38; and
- (c) dirt, house sweepings, spittings including chewed betel and tobacco, kitchen or stables refuse, broken glass or pottery debris and waste paper.

4.28. "Offensive trade" means any trade in which the substance dealt with or are likely to become a nuisance as defined in clause 4.25.

4.29. "Owner" includes any person receiving for the time being the rent of any land or building or on any part of any land or building whether of his own account or as trustee for any person or society or for any religious or charitable purposes or as a receiver or as one who would so receive such rent if the land, building or part thereof were let to a tenant.

4.30. "Parent" means the father or mother of a child and includes foster and step parents.

4.31. "Premises" includes buildings and lands.

4.32. "Prescribed" means prescribed by the Government by rules under this Act.

4.33. "Private street" means any street, road, square, court, allays, lane, passage or riding-path which is not a "Public Street", but does not include a pathway made by the owner of premises on his own land to secure access to, or the convenient use of, such premises.

4.34. "Public Building" means a building used or adopted to be used—

(a) as a place of public workshop or as school, college or other place of instruction (not being a dwelling house so used) or as a hospital, work house, public theatre, public cinema, public hall, public library or public lecture-room, public concert-room, public exhibition room, or as a public place or assembly;

(b) for any other public purpose; or

(c) as an hotel, eating house, lodging house, refuge or shelter.

4.35. "Public Street" means any street, road, square, court, allay lane, passage or riding-path, whether a thoroughfare or not, over which the public have a right of way and includes—

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land whether covered or not by any pavement, verandah or other structure which lies on either side of the adjacent property whether that property is private property or property belonging to the Government.

4.36. "Public Health Services" or "Health Services" means services for the prevention and treatment of diseases and promotion of health and includes environmental sanitation, immunisation and any other services provided under this Act and the establishment and maintenance of any institution for the purpose of any such services.

4.37. "Registered Medical Practitioner" means a medical practitioner registered under the Indian Medical Council Act of 1956.

4.38. "Sewage" means nightsoil and other contents of latrines, cesspools or drains and includes trade effluents and discharges from manufactures of all kinds.

4.39. "Trade waste" includes industrial and factory wastes.

4.40. "Urban local areas" means the area within the jurisdiction of an urban local authority.

4.41. "Urban local authority" means a city corporation, a municipal council or committee, or a panchayat or any other local authority notified by the Government as an urban local authority for the purpose of this Act.

4.42. "Venereal disease" means syphilis, gonorrhoea, soft chancre (chanoroid), venereal granuloma (granuloma inguinale) or (lymphogranuloma venereum).

4.43. "Water course" includes any river, stream, or channel, whether natural or artificial, other than a drain.

4.44. "Work Place" means any premises including the precincts thereof "not being a factory or a workshop wherein is carried on any official business, industrial manufacturing or trade process at which not less than five persons are employed for wages or any other remuneration.

4.45. "Workshop" means any premises including the precincts thereof (not being a factory) wherein any article or part of an article is made, repaired, altered, ornamented, finished or otherwise adapted for use on a commercial basis and not less than 5 persons are employed for that purpose for wages or any other remuneration.

HEALTH AUTHORITIES AND THEIR FUNCTION

5. Board of Health

5.1. The government shall, as soon as after the commencement of this Act, by notification, constitute a Board of Health consisting of:

- (a) Minister of Health—President,
- (b) Minister of Education and Social Welfare,
- (c) Minister of Food and Agriculture,
- (d) Minister of Local Self-government,
- (e) Minister of Public Works,
- (f) Deputy Minister of Health, where any,
- (g) Two representatives from the legislature,
- (h) a representative each of IMA and IPHA,
- (i) a representative each of the Department of Planning, Finance, Industry and any other government department nominated by the government,
- (j) a behavioural scientist and a public administrator,
- (k) Secretary for Health,
- (l) Administrative Medical Officer of the State-Member Secretary—(ex-officio).

(where there are Directors of Medical Services, Director of Public Health and Preventive Medicine, Director of Public Health, Director of Medical Education, Director of Health Services, everybody shall be a member.

5.2. Meetings of the Board and the mode of transactions of business at such meetings shall be governed by such regulations as may be framed by it.

5.3. Members, unless their seats become vacant earlier by resignation, death or otherwise, shall hold office for a period of three years and shall be eligible for renomination or reappointment.

5.4. The proceedings of the Board shall not be invalidated by reason of any vacancy in the office of the President, the Secretary or a member.

5.5. The Board shall advise the Government on all matters of policy, priority, implementation and evaluation of health measures.

6. Functions of the Health Board.

6.1. Issuing of technical and administrative rules with which health services have to comply when carrying out activities,

6.2. Planning of health campaigns in accordance with Government's economic and social development plans;

6.3. Coordinating and supervising Government and private institutions carrying out health campaigns.

6.4. Supervising and verifying compliance with the rules laid down as well as effectiveness of programmes carried out by institutions and establishments in the health sector; and on such matters as the Government may from time to time refer to it.

6.5. The Board may appoint ad hoc one or more advisory committees on technical aspects of matters relating to promotion, protection and restoration of health and rehabilitation of patients including public health and family welfare services, medical education and training and research and in translating the policies of the State Board of Health into definite plan programmes and evaluation of health plans and measures.

State Coordinating Committee

7. The Board may establish a State Coordinating Health Committee consisting of—

- (a) Deputy Minister of Health (where any)—President.
- (b) Secretary for Health—Vice-President/President.
- (c) a representative each from ESIC, Defence, Railways, Cantonments/Municipalities, port and airport, and other departments as may be considered necessary from time to time by the DHS and the Board.
- (d) two representatives of state level voluntary organization.
- (e) any other representative as the Board may decide.
- (f) DHS, Secretary, *ex-officio*.

Functions of the State Coordinating Committee

7.1. The coordinating Committee shall advise on all matters pertaining to coordination of medical care and health services, training etc. with those of other organisations, conservation and control of the environment including conservation and preservation of pollution of water, prevention of spread of diseases through human movement and trade, inter-state migration, etc.

District Health Committee

8. The Government shall constitute a District Health committee consisting of:

- (a) District Collector—*Chairman*.
- (b) District Development Officer, where any.
- (c) President/Chairman of the Zila Parishad.
- (d) District Inspector and Inspectors of Schools.
- (e) a representative of the District Red Cross Society/Voluntary Organization in Health.
- (f) a representative from each of L.M.A. and IPHA.
- (g) DMO/Medical Superintendent of the hospital, DHO/District officers of F.P.P. and other programmes.
- (h) principal medical college, if any.
- (i) PHC MO elected from among those in charge of PHCs.
- (j) CMOH/DMOH—*Secretary* *ex-officio*.

8.1. Functions of the District Health Committee will include discussion of health policies and formulate planning and evaluation of various programmes on a regional basis, within the general health policy laid down at the state/UT level.

8.2. The Committee may appoint one or more ad hoc Advisory Committees to examine the questions referred to them and their recommendation will be submitted to the Committee.

Block Health Committee

9. The Government shall constitute a Block Health Committee consisting of:

- (a) Chairman of Panchayat Samithi—*Chairman*.
- (b) Health Member of the Panchayat Samithi, where any.
- (c) B.D.O.

- (d) Mukhya Sevika/Social Welfare/education officer.
- (e) Inspector of School.
- (f) One or two representatives of the public.
- (g) a representative of voluntary health organization/hospital.
- (h) M.O. in-charge Tehsil/taluk hospital.
- (i) PHO/Med. Officer..... Secretary, (ex-officio).

The Block Health Committee will have one or two woman members, if none of the above mentioned members is a woman.

9.1 Functions

Functions of
Block Health
Committee.

The Committee will discuss local health and welfare problems, associate public opinion with technical knowledge and will take steps to ensure better services in the villages, sub-centre and main centre including referral and transfer of patients and clinical/material from community health workers to the main Centre and from the main centre to the hospital/laboratories. The Committee will take steps to improve facilities and funds for improvement of health and environmental sanitation.

10. Directorate of Health Services

Directorate
of Health
Services.

10.1. The Directorate of Health Services may consist of as many divisions as the Government may consider necessary for the administration of health services in the State/Union Territory.

10.2. Subject to the control of the Government (a) the Director of Health Services shall be the chief administrative and executive officer of the Directorate, and (b) Chief-P.H. Engineer shall be in charge of the public health engineering division of the Directorate.

10.3. The DHS will be assisted by such members as Deputy and Assistant Directors and other officers at various level of administration as the Government may, from time to time, deem fit to appoint.

11. Powers of the Government and of the Directorate of Health Services.

11.1. The government shall have the power to inspect, control and supervise the operations of local authorities under this Act.

11.2. The government may from time to time define the powers to be exercised, and duties to be performed by the Directorate of Health Services or any member of the staff for purposes of section 11.1.

Powers of
the Government
and of the
Directorate
of Health
Services.

11.3. Nothing contained in sections 11.1 and 11.2 shall be deemed to effect or derogate from, any powers by the government or the District Collector under other laws from time to time in force.

Power of
Govt. to direct
performance
of district
panchayat of
any function
devolving on
panchayat,
panchayat
samithi.

11.4. The government may, by notification direct that in respect of any function to be performed by a local authority under this Act and specified in the notification, the district panchayat organisation and not the panchayat or panchayat samithi shall be the local authority in all or any areas in the district which are comprised within the jurisdiction of a panchayat/panchayat samithi.

11.5. Where a direction is used under section 11.4 in respect of any function, the government may, by general or special order—

- (i) determine or provide for the determination of the expenses incurred by the district panchayat in performing such function in the area or areas comprised within the jurisdiction of any panchayat or panchayats and panchayat samithis or panchayat samithis; and

(ii) apportion or provide for the such expenses between the district panchayat and panchayat samithi.

Power of Director of Health Services to supervise and control institutional services.

12. The DHS shall have power to supervise and control medical and health establishments including training institutions and (public) health services within the UTs/States, excepting those administered by the Central Government and will have power to recover the cost from the local authorities for carrying out measures recommended by him in respect of such institutions and services as fall within the purview of the local authorities.

Powers of the Director of Health Services over local authorities.

12.1. The DHS may, from time to time as occasion requires recommend for adoption by any local authority, such measures as may be necessary for improving the (public) health administration in the local area for safeguarding the health of the people therein. Provided that, if on account of financial or other reasons, any local authority is unable to carry out such measures or if there is any difference of opinion between the local authority and the Director the matter may be referred to the government whose decision shall be final.

Powers of DHS to make services available.

12.2. The DHS shall have the power to cause to make the services of the Directorate available to the local authorities, non-profit making voluntary organisations, free of charge in respect of planning, execution, and supervision of health measures including sanitary schemes.

Powers of DHS in emergencies.

12.3. In the case of emergency arising or threatening from outbreak of an epidemic due to communicable disease or from any other cause endangering the life or health of the public, the DHS shall have the power:

(i) to appoint additional personnel and organise public health services for such periods as he may consider necessary; and

(ii) with the approval of the Government to assume all or any of the powers and functions of a local authority under this Act and in every case, the DHS shall forthwith report the matter to the Government.

Services by local authority.

13. Subject to the provisions of this Act every local authority shall make available to the people within a reasonable distance, all necessary reasonably practical measures for promoting, protecting and restoring health and rehabilitating the patients in general and for regulating, and prohibiting throughout its area, the factors which are directly or indirectly responsible for environmental pollution and the degradation of ecosystems, and preventing the occurrence of any communicable disease and dealing with it in the event of its outbreak.

13.1. Every local authority shall exercise authority and perform the duties as conferred or imposed on it by or under this Act.

13.2. A local authority shall having regard to the needs and circumstances and the services provided by the government or any other organization, to the extent possible under financial condition, make provisions for the following services in such priorities as recommended by the government or the District Health Committee.

(a) Maternity child welfare including school health and family welfare services.

(b) Immunization centres.

(c) health education.

(d) Public health laboratory services.

(e) isolation hospitals/facilities.

(f) ambulance services facilities.

14. The local authority may and shall, if directed by the government as far as practicable provide additional health services by way of outdoor dispensaries, clinics, hospitals, and any other services including those of community health workers.

15. A local authority may make arrangements with any person or any voluntary organization for the provision of any of the services on such terms and conditions as may be agreed between a local authority or authorities and the contracting person or the voluntary organization not working for profit.

16. Any voluntary organization not working for profit may, with the approval of the government, under a licence, establish and maintain a hospital, dispensary, clinic, laboratory, blood bank, maternity home, children's home, immunization, training and rehabilitation services and also welfare services including ambulance services, etc.

The Government may assist local authority or voluntary organization not working for profit in the establishment and maintenance of the institutions by—

(a) grant-in-aid for expenditure including the cost of land, building and equipment; and

(b) recurring grants-in-aid towards the cost of employment of staff etc.

17. The Government may run such services and institutions which local authorities find difficult in running, on behalf of one or more adjacent local authorities on such terms and conditions as may be agreed to between the government and the local authority or authorities concerned.

18. (i) A local authority or, if so recommended by the government a group of local authorities shall include a post of H.O. in its establishment.

(ii) the (public) health establishment of every local authority other than the Corporation, if any, shall be on such scale as the government may from time to time direct.

(iii) Irrespective of authorities who may make appointments to the public health establishments referred to section 18(ii), the conditions of service of the members of such establishment, and the duties of such members, shall, notwithstanding anything contained in any previous Act, be governed by regulations not inconsistent with the Act, made by the government. Such regulations may lay down the extent to which the Director of Health Services shall have disciplinary control over the members of such (Public) health establishments.

19. Notwithstanding anything contained in any Act the government shall appoint health officers of all local bodies (other than corporations, if any), and may recover from such local authority, the whole or such proportion of the salary and allowances paid to the health officer and such contribution towards his leave allowances pension and provident fund to the government may by general or special order determine.

20. In the event of any emergency arising or threatening from outbreak of epidemic of a notifiable disease or from any other cause endangering the life or health of the public, the government may, by order, appoint temporarily for such period as may be specified therein, one or more additional health officers, for the treatment of such infectious disease, and preventing it from spreading and for investigating the cause of and preventing such mortality as the case may be.

20.1. For the purposes of section 20, the Government may appoint any medical practitioner under the State Medical Registration Act either on an honorary basis or on such salary or allowances or both as the government may fix. The salary and allowances shall be payable from the funds of the local authority.

21. The Government may, by general or special order, authorize any officer of the Government or of a local authority to exercise such of the powers of a Health Officer under this Act, in such area, and subject to such restrictions, limitations and conditions and to such control as may be specified in such order.

Public Health
Establishment
of Local
authority.

Appointment
of temporary
health
officers in
emergencies.

Delegation of
powers of
Health
Officer.

Appointment of persons to carry out the provisions of this Act.

22. Notwithstanding anything contained in the Act or in any other Act or Acts governing the local authority or authorities concerned, the Government may, by general or special orders, appoint any person or persons to carry out such provisions of this Act in such areas as may be specified in the order.

22.1. The expenses incurred by such person or persons in doing so shall be met from the funds of the local authority or authorities concerned, either wholly or in part, where more than one local authority is concerned, in such proportions as may be determined by the government.

Powers of Director of Health Services over health staff of local authority.

23. Subject to such rules as may be prescribed, the DMS shall have the power—

- (a) to transfer any member of the health establishment of a local authority to the health establishment of another local authority; and
- (b) in times of emergency to assign one or more members of the public health establishment of one local authority for temporary duty in the area of another local authority.
- (c) Nothing contained in clause (a) and (b) of section 23 shall apply to the corporation, if any.
- (d) The local authority within whose jurisdiction the member or members of the (public) health establishment of another local authority are working shall pay for the period of such temporary duty, the salary and allowances of such member or members and such contribution towards their leave allowances, pension and provident fund as the Government may by general or special order determine.

24. The H.O. i/c of any local area shall exercise supervision and control over all other members of the (public) health establishment in such area.

Health officers control over (PH) staff.

24.1. Save as otherwise provided in this chapter or in any rules or regulations made under it, all appointments, transfers and such punishment of the members of the (public) health establishment under the supervision and control of the H.O. shall be made by the H.O. subject to the approval of the executive authority.

24.2. If for any reason the executive authority disagrees with the orders of the H.O. under clause 24 and 24.1 the executive authority shall refer the matter to the Government, whose decision will be final.

25. Every local authority shall provide its H.O. with such clerical assistance, office accommodation furniture, equipment, stationery and forms as may be in the opinion of the DHS be necessary for the proper conduct of the business of such H.O.

Authorization of the Health Officer to perform the function of executive authority in (public) health matters.

26. Notwithstanding anything contained in any Act (Municipality, Local Boards, village panchayats) etc., the Health Officer of a local authority shall perform such of the functions, and discharge such of the duties, or exercise executive authority in regard to (public) health matters under any of the provisions applicable to such local authority contained in the Acts, subjects to such appeal and control as the Government may by general or special order determine.

CHAPTER III

PRIVATE MEDICAL AND HEALTH INSTITUTIONS

27. For the purposes of this Act, private institutions include nursing homes, maternity homes, 'X' ray institutions, blood banks, laboratories, hospitals, health clinics, baths physiotherapy centres, menstruation regulation clinics, and other institutions as may be recommended by the State Board of Health.

Definitions.

28. (1) "Medical Termination of Pregnancy clinic" means an establishment or premises where women are usually received and are accommodated for the purpose of medical termination of pregnancy under the MTP Act, 1972.

(2) "Nursing Home" means an establishment or premises used or intended to be used for the reception of, and the providing of, medical care including nursing care in any form for persons suffering from any sickness, injury or infirmity and includes a maternity home, but does not include—

- (i) any hospital or other establishment/premises maintained or controlled by government or any authority or body constituted by special Act of Parliament or state legislature;
- (ii) any institution, house or home certified or approved by the Ministry of Health under the Indian Mental Act;
- (iii) any institution for persons of unsound mind within the meaning of the Indian Mental Act.

(3) "Maternity Home" means an establishment where women are usually received and accommodated for the purpose of confinement and antenatal and post natal care in connection with child birth;

(4) "Hospital" means any premises used for the reception of the sick and their treatment.

29. (1) No person shall open or conduct a nursing home or clinical establishment or any other private medical or health institution without being registered in respect thereof and except under and in accordance with the terms of a licence granted therefor.

(2) A registration made under the section shall remain in force for a period of one year.

(3) A local authority shall not register until the Health Officer or anybody authorised by the government for the purpose has inspected and recommended its registration.

(4) A local authority may refuse to register an application for registration or for its renewal if it is satisfied that the standards laid down by government have not been complied with and premises are not suitable or the use of the premises may cause inconvenience or annoyance to persons residing in the neighbourhood.

(5) A local authority may cancel the registration in respect of any such institution on any ground which could entitle it to refuse an application for registration of that institution.

(6) If the local authority refusing or cancelling registration shall indicate in writing, the reasons of refusal or cancellation of the registration.

30. A person aggrieved by an order of a local authority under sub-section (4) of section 29 may within a period of one month from the date of receipt by him of a copy of that order, appeal to the Government against that order and the decision of the government shall be final.

Powers of
H.O. or any
authorized
person to
enter.

31. The H. O. or any other officer authorised by the local authority in this behalf or both may, at all reasonable times, enter and inspect the premises which is used or which the officer has reasonable cause to believe to be used for the purposes and inspect the records required to be kept under this Act.

Violation
of provisions
of all
offences.

32. (1) Whoever contravenes any of the provisions of this Act or violation of any rules and bye-laws made thereunder shall, on conviction be punishable with fine which may extend Rs.— and in the case of continuing offence to a further fine of Rs.— in respect of each day on which the offence continued after conviction.

(2) Where a person committing an offence under this Act is a company or other body corporate or an association of persons (incorporated or not) every person who at the time of the conviction of the offence was a director, manager, management thereof, shall unless be proved that the offence was committed without the knowledge or consent, be declared to be guilty of such offence.

33. The government shall have power to make rules providing for standards for various institutions covering the facilities, equipment, staffing running, fees to be charged etc.

CHAPTER IV

WATER SUPPLY

Local authority to provide potable water.

34. (1) Every local authority shall provide or arrange to provide sufficient supply of drinking water for consumption by the inhabitants of the area within its jurisdiction.

(2) The local authority shall, as far as may be practicable, make adequate provision for assuring so far as is reasonably practicable, that every house has available within a reasonable distance a sufficient supply of wholesome water for drinking purposes.

(a) that the water supply is at all times wholesome and fit for human consumption, and

(b) that the water supply is continuous throughout the year.

(3) A local authority may also provide or arrange to provide sufficient supply of water for other domestic purposes or for non-domestic purposes.

(4) Without prejudice to its obligation under this section to exercise its power of requiring owners of houses to provide a supply of water for domestic purposes therein.

Power of the government to direct local authority to execute water supply.

35. (1) If in the opinion of the government, a local area does not possess a sufficient supply of wholesome water fit for the consumption of its inhabitants, they may direct the local authority concerned, either singly or in combination with the local authority or authorities having jurisdiction over any local area or areas in the neighbourhood which are similarly situated to execute within such time as the government may fix, such works as may be directed by the government for providing a sufficient supply of wholesome water fit for human consumption.

(2) A local authority may, with the previous sanction of the government—

(a) construct, lay or erect filters, reservoirs, engines, conduits, pipes or other works without the limits of its area, for supply of sufficient wholesome water;

(b) purchase or take on lease any water-works or any water, or any right to store or to take or convey water, within or without the limits of its area; and

(c) contract with any local authority or other person or agency for the supply of water.

36. A local authority may, with the previous sanction of the government, by public notice, declare any lane, stream, spring, well, tank, reservoir, pond or other source of water supply within or without the limits of its local area (other than a source under the control of the government) from which water is or may be made available for the use of the public in the local area for domestic purposes, to be a source of public water supply for such purposes and every such source shall thereafter be under the control of the local authority, only to the extent necessary for such purposes.

Power of the govt to divert water from water main belonging to a local authority.

37. The government shall have power to take water from any water-main belonging to or in the control of a local authority for supplying water to any other areas, subject to such payment being made to the local authority concerned and subject also to such other conditions as the government may consider reasonable.

38. Provided that before taking action under this section, the Government shall communicate to the local authority the grounds on which they propose to do so, fix a reasonable period for the local authority to show cause against the proposal and consider its explanations and objections, if any.

39. (1) A local authority may specify suitable water source or collection for exclusive use for certain purposes like washing, bathing, laundry, etc.

In such areas as may be specified by the Government in this behalf, the supply of water for drinking and other domestic purposes shall be effected by piped system so that every house has within it or within a reasonable distance an available source of water supply for the use of the inmates of the house.

(2) In such areas as may be specified by the government along with the piped system of water supply an effective system of drainage shall be provided.

40. A local authority may, with the previous approval of the government—

- (a) enter into a contract for supply of water of good quality in the area or a part thereof with another local authority, or a water supply undertaking; or
- (b) provide a supply of water in bulk to a local authority of an adjoining area, on such terms and conditions as may be agreed;
- (c) provided a supply of water by bulk to
 - (i) any trade, manufacture or business;
 - (ii) medical or educational institutions, hostels, hotels and restaurants;
 - (iii) ports, ships, railways, cantonments and labour and other camps;
 - (iv) fountains, swimming pools and the like;
 - (v) gardens and pastures;
 on such terms as may be laid down:

Provided that the government is satisfied that the proposal is not likely to interfere with the supply in quantity or in quality of water for domestic or other purposes within the area of the supplying local authority.

41. All water-works constructed, erected or laid under this chapter shall rest in the local authority.

42. The local authority shall maintain adequate establishments for the working and maintenance engines, pipes, pumps, treatment units and fittings of water works and all appliances thereto for the supply of water.

43. Subject to the approval of the government, a local authority may have the power to raise or take loans for the implementation of water supply scheme fully or in several stages as may be approved by the Government and pay back the loan with interest as may be approved by the government.

44. Any planning, implementing, installing of any equipment or machinery shall require the technical approval of the State Chief PHE or any officer authorized by him in this behalf.

45. The State Chief PHE or other officer on his behalf shall have access to water-works of the local authority and inspect them from time to time and his recommendations will be final and have to be implemented by the local authority.

46. The services of the State Chief PHE or other authorized officers shall be free to the local authority.

47. (1) Any local authority shall levy within its area or any part thereof, any tax which may be necessary for providing water supply in such area or part.

(2) Any tax levied under sub-section (1) of section 47 may be a new tax levied on such basis assessed and realised in such manner as may be sanctioned or directed by the government, or may be a tax or additional tax levied under any head of taxation specified in any law for the time being in force governing

Levy of
water tax
and ear-
marking the
net revenue.

the local authority concerned in which case all the provisions of such law relating to the assessment or realisation of a tax under such head or in any manner connected shall be applicable to the tax or additional tax, with such modifications and restrictions, if any, as may be prescribed.

(3) (a) The rates at which any tax may be levied under this Section shall be determined by the local authority with the previous sanction of the government.

(b) The local authority may with the previous sanction of the government and shall if so directed by them, alter the rates at which any such tax is to be levied.

(4) (a) Every local authority levying a tax under this Section shall earmark the net revenue therefrom for expenditure on the execution, maintenance and improvement of water supply in the local area or part thereof within which it is levied.

(b) Such revenue shall be expended in accordance with such orders as may be issued by the Government in this behalf.

48. Nothing contained in this section shall affect the power of a corporation or of any municipality governed by the Municipalities Act if any.

The local authority shall arrange periodical examination of sources of water supply and of points of delivery.

The Government shall have power to make rules providing for the protection and periodical examination of sources of water supply in its territory.

49. In the case of railway, factories, mills, workplace and any place, structure or building processing food and drinks for consumption the Government may, by general or special order, require the authority concerned to submit for analysis to such persons or institutions, in such manner and at such intervals, as may be prescribed, samples of drinking water supplies by such authority at any station or place. For such analysis, the authority aforesaid shall pay to the government such fee as may be presented by them.

50. (1) The Collector of the district, or any officer appointed by the government in this behalf, may cause inquiries to be made in any local area or part thereof, with a view to ascertaining—

(a) whether the source of water supply for such local area or part is contaminated from any cause against which effective means of protection can be taken; and

(b) whether the provision of any additional source or sources of water supply is necessary for such local area or part.

(2) The Collector or other officer aforesaid may, after taking into consideration the result of such inquiries by notice, direct that any source of water supply be cleaned, improved, repaired or otherwise protected from contamination, or that such additional source or sources of water supply be provided, as the case may be:

Provided that before issuing a notice under this sub-section the Collector or other officer shall give the authorities or persons attached a reasonable opportunity to make any representations they may wish to make and consider the same.

(3) Against any direction issued by the Collector or other officer under sub-section (2) of section 50 an appeal shall lie to the government where decision is final.

(4) (a) Every notice issued under sub-section (2) of section 50 shall specify the nature and extent of the works to be executed, the estimated cost thereof, and the authority or authorities or the person or persons by whom, and the period within which, they are to be executed.

The notice shall either—

Power of
Collector in
regard to
water supply.

(i) be published in the prescribed manner; or
(ii) be served on the local authority or on the person owning or having control over the source of water supply, as the case may be in the prescribed manner.

(5) If the directions contained in any notice issued under sub-section (2) have not been satisfactorily complied with, the officer issuing the notice may himself cause the works specified in the notice to be executed, provided that he may on sufficient cause being shown extend the period specified in the notice or modify or rescind any direction contained therein.

(6) (a) If a water-tax is imposed in the local area, the cost of carrying out the works specified in the notice issued under sub-section (2), whether such works are executed by the authority or persons specified therein or under sub-section (5) by the officer issuing the notice, shall be borne by the local authority concerned.

(b) If no water-tax is imposed in the local area, such cost shall be borne by the inhabitants of the local area who on enquiry are found to be benefited by the works or shall be shared between such inhabitants and the local authority concerned in such proportions as may be determined by the government.

Explanation. For the purpose of this sub-section, water-tax means

- (a) a tax levied under section 47 of this Act, or
- (b) a water and drainage tax levied under section of District Municipalities Act or under section 47 of the Municipal Corporation Act,
- (c) a tax levied under section of local Boards Act, 19 for the specific purpose of executing, maintaining or improving any work for the supply of water, or
- (d) any additional house-tax levied under Local Board Act, for the purpose of providing a water-system or a combined water and drainage system.

Power of
DHS to
Direct local
authority to
improve water
supply.

51. If the Director of Health Services is satisfied upon investigation that any source of public water supply in local area is contaminated or is subject to imminent risk of contamination by reason of unsatisfactory location, protection, construction, operation or maintenance, and speedy remedy or immediate prevention is, in his opinion, desirable he may, by order, direct the local authority to take such measures as may be specified therein, and the local authority shall take action accordingly.

H.O.'s
powers in
regard to
sanitary
sources.

52. (1) The H.O. may at any time by written notice require that the owner of or any person having control over any lake, stream, spring, well, tank, reservoir, pond or other sources of water supply which is used for drinking, bathing or washing clothes, shall, whether the same is private property or not, within a reasonable time to be specified in the notice or within such time as may be specified in the notice not being less than 36 hours from the receipt thereof

- (a) keep or maintain any such source of supply in such manner as the H.O. may direct; or
- (b) cleanse any such source of water supply from silt, refuse and vegetation; or
- (c) protect any such source of water supply from pollution by surface drainage in such manner as the H.O. may direct; or
- (d) fill in, repair, protect or enclose in such manner as the H.O. may direct any such source of water supply, if for want of sufficient repair, protection or enclosure, such source of water supply is in his opinion, dangerous to the health or safety of the public or of any person having occasion to use, or to pass or approach the same; or

- (e) desist from using and from permitting others to use, for drinking purposes any such source of water supply if, in the opinion of the H. O. the water is unfit for drinking; or
- (f) close any such source of water supply either temporarily or permanently, or fill up, enclose or fence the same in such manner as the H.O. considers sufficient to prevent the use for drinking purposes, if in his opinion the water is unfit for drinking; or
- (g) drain off or otherwise remove from any such source of water supply or from any land or premises or receptacle or reservoir attached to or adjacent thereto, any stagnant water which the H.O. considers to be either injurious to health or offensive to the neighbourhood:

Provided that the provisions of clauses (a) and (b) shall not apply to a stream:

Provided further that a notice shall not be issued under clause (f) unless the notice has been issued under clause (c) and the source of water supply in question continues to be used for drinking purposes notwithstanding the issue of such notice, and the H. O. considers that use cannot be prevented otherwise than by the issue of a notice under clause (f).

(2) If the owner or person having control as aforesaid fails or neglects to comply with any notice issued under sub-section (1) of section 52 within the time specified therein, the H.O. may, if immediate action is necessary to protect the health or safety of any person or persons, at once proceed to execute the work specified in such notice, and all the expenses incurred in respect thereof by the H.O. shall be paid by the owner of, or person having control over such source of water supply, and shall be recoverable as if it were a tax due to the local authority concerned:

Provided that in the case of any private source the water of which is used by the public or by any section of the public as of right the expenses which have been incurred by the H.O. or which in the opinion of the local authority have been necessarily incurred by the owner of or person having control over the source of water supply shall be paid from the funds of the local authority.

53. Owner of any dwelling-house which may be constructed or reconstructed after the commencement of this act in any urban local area shall not occupy it, or cause or permit it to be occupied, until he has obtained a certificate from an officer of the Health Department of the local authority concerned, not below the rank of H.O. or Sanitary Inspector that there is within the house or within a reasonable distance therefrom, a supply of wholesome water sufficient for the domestic purposes of the inmates of the house.

New Houses
not to be
occupied
without
adequate
water supply.

CHAPTER V

DRAINAGE

Local authority to maintain public drains.

54. (1) Every urban local authority shall to the extent possible provide and maintain a sufficient and satisfactory system of public drains for the effectual drainage of its local area.

(2) If, in the opinion of Government, any local area or part thereof should, for any special reason be provided with a system of public drains or with any other means of drainage, they may direct the local authority to provide or execute, within such time as may be fixed by them in this behalf, such works as may be considered necessary by them.

(3) The local authority shall at all times keep in good repair all drains, cess-pools and the like vested in or belonging to it.

Power of the H.O. to require drains to be constructed.

55. (1) If any premises are, in the opinion of the H. O. without sufficient means of effective drainage he may, by notice, direct the owner of such premises to construct a drain leading therefrom to the nearest public drain or other place set apart by the local authority for the discharge of sewage:

Provided that—

- (a) the cost of constructing that portion of the drain which is situated more than one hundred feet from the said premises, shall be paid from out of the funds of the local authority concerned; and
- (b) If, there is no public drain or other place set apart for the discharge of sewage, within a reasonable distance of such premises, the H. O. may by notice require the owner of the premises to construct a closed cesspool, tank, or other suitable device for the purpose.

Drainage for huts.

56. (1) Drains for the drainage of huts shall be of such size and description, and be constructed of such materials as may be considered by the H.O. to be practicable, having regard to the circumstances of the locality and the position of the nearest public drain or other place set apart by the local authority for the drainage of sewage.

(2) If the H.O. considers that new drain should be constructed for the benefit of the occupants of any huts, he may, by notice, require the owner of the land on which such huts stand to construct such drain and such owner shall construct such drain and cause it to be cleaned and repaired to the satisfaction of the H. O.

Drainage of Courtyard, alley, passage etc.

57. For the purpose of efficient draining of any land or building the H. O. may by notice require the owner of any courtyard, alley, lane, passage or open space—

- (a) to pave the same with such materials and in such manner as may be approved by the H.O. and to keep such paving in proper repair; and
- (b) to raise the level of such courtyard, alley, lane, passage or open space.

58. No person shall construct a cesspool—

- (a) beneath any part of any building or within fifteen metres of any tank, reservoir, water course or well or within such outer distance therefrom as the H. O. may consider to be practicable having regard to the circumstances of the locality; or

(b) within any local area, or outside such area but within one hundred metres of any reservoir area for the storage of filtered water to be supplied to such area, except upon a site and in a position which has been approved in writing by the H. O.

(c) The H. O. may at any time by notice, require any person within whose premises any cesspool is constructed in contravention of Section 55 to remove such cesspool or to fill it up with such material as may be approved by him.

Prohibition of
occupation of
new building
without drains.

59. No owner of any building constructed or reconstructed after the commencement of this Act in any urban local areas shall occupy it, or cause or permit it to be occupied until he has obtained a certificate from the H. O. that the building has been provided with sufficient means of drainage.

Sullage of
sewage not to
be let out
into street.

60. (1) No persons having control over any building or land shall cause or allow—

(a) the water of any sink, sewer, latrine or sanitary convenience, or any other liquid or other matter which is, or is likely to become offensive to run into drain, or to be thrown or put upon any street or open space or to soak through any external wall; or

(b) any offensive matter from any sewer, latrine or sanitary convenience to run, drain or be thrown into a surface drain in any street.

Drains in
private
streets.

(2) Where a local authority is changing its system of drainage or undertaking a new system of drainage it becomes necessary for the owner of any premises to reconstruct or alter any drain, the cost of the reconstruction or alteration of such drain shall be borne wholly by the local authority or wholly by the owner, or partly by the local authority or partly by the owner in accordance with such rules as may be prescribed.

(3) Where a house-drain belonging to one or more premises has been laid in any private street which is common to more than one premises and H.O. considers it desirable that any other premises should be drained into such premises to connect its house drain with such first-mentioned drain; and the owner or owners of such first-mentioned drain shall thereupon be bound to permit such connection to be made:

Provided that no such connection shall be made—

(a) except upon such terms as may be agreed upon between or among the owners concerned or;

(b) in default of such agreement, except on such terms as may be laid down by the local authority and in particular, until any payment which may be directed by the local authority to be made to the owner or owners concerned, has been duly made.

Injurious
refuse not to
be
discharged
into public
drain.

61. No person shall as may be generally or specifically prescribed throw, empty or turn or permit to be thrown, emptied or turned or to pass into any public drain or into any drain communicating with a public drain—

(a) any matter likely to injure the drain or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of such contents; or

(b) any liquid or refuse or steam or other liquid which is either alone or in combination with the contents of the drain may cause nuisance or may be prejudicial to health; or

(c) any explosive or inflammable substance.

Prohibition
of pollution
of water
source

62. No person shall, as may be generally or specifically prescribed—

(1) put or cause to be put or cause to fall or flow or be carried or permit to be put or to fall or flow or be carried into any water-course—

(a) any solid or liquid sewage matter, or

- (b) any poisonous, noxious or polluting liquid proceeding from any manufacturing process, or
- (2) put or cause to be put or cause to fall or be carried or permit to be put or to fall or be carried into any water-course, so as, either singly or in combination with other similar acts of the same or any other person, to interfere with the due flow of such water-course, or to pollute the water therein, the solid refuse of any manufacturing process or quarry, or any rubbish or cinders or any other waste or putrid solid matter; or
- (3) commit nuisance in or in the neighbourhood of any water-course.

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CHAPTER VI

SANITARY CONVENIENCES

Obligation of local authority to provide public sanitary conveniences.

63. Every local authority shall provide and maintain in proper and convenient places a sufficient number of sanitary conveniences for the use of the public and cause all such places to be kept in proper order so as not to be a nuisance or injurious to health.

New houses to be provided with sanitary conveniences.

64. If in any local area any building intended for human habitation is constructed or is reconstructed after being pulled down to or below the ground floor, the owner thereof shall provide such sanitary conveniences and in such positions as the Health Officer may, by notice, require.

Additional sanitary conveniences.

65. (1) If any building intended for human habitation is without any sanitary convenience or if, in the opinion of the Health Officer, the sanitary convenience or conveniences provided therein are insufficient having regard to the number of persons occupying the building, or are inefficient, or are objectionable on sanitary grounds, he may, by notice in writing, require the owner of such building—

- (a) to provide such sanitary conveniences or such additional sanitary conveniences and in such positions as may be specified in the notice; or
- (b) to make such structural or other alterations as may be specified in the notice.

(2) Every owner of the ground on which a group of six or more huts stand shall provide such latrine accommodation, in such positions, and within such time as the Health Officer may, by notice, require, for the use of the inhabitants of such group of huts.

Mode of construction of latrines.

66. (1) All latrines shall—

- (a) be so constructed as to screen persons using the same and the filth from the view of persons passing by or residing in the neighbourhood; and
- (b) be maintained, repaired, altered and used in accordance with the rules and bye-laws made under this Act.

(2) If any latrine opening on any street, whether such latrine be erected before or after the commencement of this Act, is so placed or constructed as to be nuisance or offensive to public decency, the Health Officer may, by notice in writing, require the owner to remove it or to carry out such improvements therein and within such time as may be specified in notice.

(3) When any latrine is used in common by the occupiers of two or more premises or by the members of two or more families, no person shall injure or improperly foul any such latrine or anything used in connection therewith.

CHAPTER VII

BUILDINGS

A. Residential Areas

67. A local authority may, and when so directed by the Government shall, undertake a survey of the housing and accommodation of the inhabitants of its area in order to ascertain whether the different kinds of accommodation are suitable and sufficient for the persons living therein and whether they are provided with adequate water supply and essential sanitary conveniences in accordance with the provisions of this Act and shall as far as is reasonably practicable take steps to remedy the defects, if any, as revealed by such surveys.

68. (1) A (urban) local authority may and when so directed by the Government shall, notify areas within its jurisdiction which shall be reserved for residential purpose.

(2) A notification issued under section 5, sub-section (1) may declare that operations of any factory, workshop or work place or the carrying of any specified offensive trade, in the notified area, shall be subject to such restrictions, limitations and conditions as may be specified in the notification.

(3) Before issuing a notification under Section 68 sub-section (1) the local authority shall obtain the approval of the D.H.S. and Director, Town and Village Planning, where exists, in regard to the suitability of the areas to be reserved and the restrictions, limitations and conditions to be imposed under sub-section (2).

69. Any person aggrieved by the issue of a notification under section may appeal to the Government whose decision shall be final.

70. Upon the issue of a notification under section 68 the construction or establishment of any new factory, workshop or work-place or the carrying on of any specified offensive trade in the notified area shall be prohibited and in the case of any factory, workshop or workplace or of any offensive trade in existence at the time when the notification comes into force the restrictions, limitations and conditions specified in the notification shall be observed.

71. No scheme of planning of new residential areas or of improvement of existing areas shall be approved or executed by a local authority unless the scheme makes suitable provisions in respect of—

- (a) water supply to the inhabitants of the areas for drinking and other purposes.
- (b) drainage and sewage disposal including the provision of public sanitary conveniences.

B. Control of Insanitary Buildings

72. (1) No person shall erect a new building on any ground which has been filled up with faecal or offensive vegetable or offensive animal matter or on which any such matter has been deposited, unless and until the H. O. certified that the matter has been properly removed by excavation or otherwise, or has become or been rendered innocuous.

(2) Against the refusal of the H. O. to issue a certificate under sub-section (1), an appeal shall lie with the government whose decision shall be final.

73. (1) If any court-yard or passage which is used in common by the occupants of two or more buildings, but is not a public street, is not regularly swept and kept clean and free from rubbish or other accumulation to the satisfaction of the H.O. he may cause such court-yard or passage to be swept and cleaned.

(2) The local authority may recover any expenses reasonably incurred by the H.O. under Section 73 sub-section (1) from the occupants of the buildings to which the passage affords access, in such proportions as may be determined by the H. O.

74. (1) If any dwelling house or portion thereof appears to the H. O. to be unfit for the purpose of human habitation he may apply to the local authority to prohibit the use thereof for such purpose, and such authority shall make an order prohibiting the use of such dwelling house or portion thereof for human habitation, until in the opinion of the H. O. it is rendered fit therefor:

Provided that before making an order under this sub-section the local authority shall give the owner and the occupier or occupiers, if any, concerned a reasonable opportunity of showing cause why it should not be made and of undertaking such measures as may be necessary to the satisfaction of the H. O.

(2) The executive authority shall cause a copy of the order made under sub-section (1) to be communicated to the owner as well as to every occupier concerned and every such occupier shall be bound to cease to inhabit the dwelling house or portion thereof, as the case may be, within 30 days after the communication of the order to him.

(3) The owner of any dwelling house or portion of a dwelling house in respect of which an order under sub-section (1) is in force, shall not let out or occupy or permit to be let out or occupied as a human habitation.

C. Abatement of Overcrowding

75. In this part:—

(1) "tenement" means a dwelling house and includes—

(a) any part of a dwelling house which is capable of separate occupation; and

(b) a students hostel under public recognised control, but does not include a dwelling house or part of a dwelling house not occupied by the owner thereof; and

(2) "landlord" means the immediate landlord or the occupier or occupiers of a tenement.

76. A landlord of a tenement—

(a) shall maintain it in a habitable condition; and

(b) except temporarily on occasions such as marriage and the like shall not cause or permit the tenement to be overcrowded;

Provided that no proceeding shall be instituted against the landlord in respect of any infringement by him of the provisions of this section, unless notice in writing that the tenement is not in a habitable condition, or that it is overcrowded, has been served upon the landlord or his agent by the H. O. and the

landlord fails within such time as may be specified in such notice to take such steps as may be reasonable open to him for putting the tenement in habitable condition or for securing the abatement of the overcrowding therein, as the case may be, including, if necessary, the taking of legal proceedings for possession of the tenement.

77. The Government shall have the power to make rules for determining—

- (a) whether a tenement or any class of tenement is or is not maintained in a habitable condition within the meaning of our Act;
- (b) whether a tenement or any class of tenement is or is not overcrowded within the meaning of this Act.

FOOD SANITATION

Provision
supplementary
to other
enactments.

The provisions of this chapter are in addition and supplementary to the provisions in central enactments, orders, rules, and regulations in force and shall not mean or be interpreted to mean anything contrary to or in contravention of any such provision, order, rule or regulation.

78. No person shall, without or otherwise than in conformity with the terms of a licence granted by the executive authority in this behalf—

- (a) keep within the local area any eating, drinking or catering establishment, hotel, teashop, coffee-house, cafe, restaurant, refreshment room, mobile canteen; or any place or mobile structure where food is sold or prepared or stored for sale or to which the public are admitted for the consumption of any food; or
- (b) slaughter within the local area except in a public or a licensed slaughter house any cattle, horse, sheep, goat or pig for sale as food or skin or cut up any carcass or dry or permit to be dried any skin in such manner as to cause a nuisance or
- (c) carry on within the local area the trade of a butcher, fish manager or poulterer; or
- (d) use any place within the local area for the sale of flesh or fish intended for human food; or
- (e) keep or open a dairy; or
- (f) open or run a market;

Provided that the local authority may authorise a person to slaughter without licence any animal for the purpose of a religious ceremony:

Provided further that no licence should be required for a place used for the selling or storing for sale of preserved flesh or fish contained in airtight or hermetically sealed receptacles:

Provided also that no licence shall be required for any place included in a public market licensed under the law governing the local authority.

79. The executive authority, on receiving from any person an application for a licence or renewal of licence alongwith payment by him of such fee as may be prescribed for the purpose shall grant a licence or renew a licence as the case may be in respect of the purpose mentioned in the application:

Provided that the executive authority shall not grant a licence or renew a licence until the H.O. or any person authorised by him has recommended such licence or renewal after inspecting:

Provided further that the executive authority may refuse to grant a licence or to renew a licence if he is satisfied that the building, mobile van, vehicle or place is not suitable for the purpose mentioned in the application or does not satisfy the minimum requirements as regards sanitation.

(2) The licence or renewal of the licence granted under sub-section (1) shall expire at the end of the year for which it is granted unless the executive authority, acting on the advice of the H.O. considers for special reasons that it should expire at an earlier date in which case such earlier date shall be specified in the licence as the date of expiry of the licence or renewal of licences.

(3) When the executive authority, is at any time of opinion that any of the terms or conditions of the licence or the provision of rules is contravened, he may, without prejudice to any other action which may be taken in respect of

such contravention, cause or suspend such licence after giving the holder of the licence a reasonable opportunity of showing cause against the proposed cancellation or suspension.

(4) If the executive authority refuses to grant or renew or cancels or suspends a licence under this section he shall deliver to the applicant, a statement in writing of the grounds on which his application is refused or his licence is cancelled or suspended.

(5) Any person aggrieved by the refusal or grant or renew, or by the cancellation or suspension of a licence by an executive authority under the section, may appeal to the local authority and the appeal shall be disposed of in accordance with the rules prescribed by the government.

Power to make rules for fixing requirements as regards sanitation and personnel working.

80. The government shall have power to make rules—

- (a) for fixing the requirements as regards sanitation for different types of buildings, mobile vans, vehicles or places licensed under sub-section (1) of section 79;
- (b) for fixing qualifications and standards of health for personnel working in the establishment for which the licence under sub-section (1) of section 79 has been issued;
- (c) for preventing food infections and food poisoning. Spread through food sold or prepared or stored for sale in any building, mobile van, vehicle or places licensed under sub-section (1) of section 79;
- (d) generally for effective control over the preparation storage and distribution of food in any building, mobile van, vehicle or place licensed under sub-section (1) of section 79.

Prohibition of sale of unwholesome food.

81. (1) No person shall—

- (a) expose or hawk about for sale or keep or store or prepare for sale, any animal intended for human consumption which is diseased, or the flesh of any animal which has died on account of natural causes; or
- (b) shall expose or hawk about for sale or keep, store, manufacture or prepare for sale, any food intended for human consumption which is unfit for such purpose or is unwholesome.

(2) In any prosecution under sub-section (1), the court shall unless and until the contrary is proved presume—

- (a) that any animal found in the possession of a person who is in the habit of keeping animals of that class for sale for human consumption has been kept by such person for sale; and
- (b) that any food found in the possession of a person who is in the habit of keeping, storing, manufacturing or preparing such food or drug for sale for human consumption, has been kept, stored, manufactured or prepared by such person for sale.

Punishment for contravening provision of section 81 through others.

82. Any person who does any of the acts mentioned in sub-section (1) of section 21 or the clauses through others employed by him, whether the latter be adults or children, shall be liable to punishment for such act as if he had himself done the same.

Flesh of dead animal not to be consumed.

83. No person shall knowingly consume the flesh of any animal which has died on account of natural causes.

Explanation.—It shall be no defence to a prosecution under this section that the flesh was consumed as a matter of custom or as a matter of right on account of services rendered in removing dead cattle or on any other ground.

Importing
meat into
local areas.

84. (1) No person shall bring into any local area, without the permission in writing of the Health Officer thereof, the flesh of any animal slaughtered outside the local area other than in a slaughter-house maintained or licensed by the Government or by a local authority.

(2) Any flesh brought into local area in contravention of sub-section (1) may be seized by the Health Officer or any officer or servant of the local authority authorised by him in that behalf, and sold or otherwise disposed of as the Health Officer may direct; and in case of sale, the sale-proceeds shall be credited to the funds of the local authority.

(3) Nothing in this section shall be deemed to apply to—

- (a) cured or preserved meat, or
- (b) flesh or meat carried through any local area for consumption outside the limits thereof and not stored anywhere within such limits in the source of transit, or
- (c) flesh or meat brought into the local area by any person for immediate domestic consumption and not for sale:

Provided that the local authority may, by public notice, direct that the provisions of this section shall apply to cured or preserved meat of any specified description or brought from any specified place.

85. A court convicting a licensee of an offence under this chapter may cancel the licence for such a period as the court may think fit.

Power of H.O.
to enter
premises of
food trade.

86. (1) The Health Officer or any person duly authorised by him or any food inspector appointed under the Act may without notice enter any place at any time by day or at night where any article of food is being manufactured, prepared, exposed or stored for sale, inspect and seize any animal or food and any utensil or vessel used for manufacturing, preparing or containing the same during manufacture, stores, sale, distribution or in the course of transit of such animal or food.

(2) Samples of any article of food or any vessel or utensil in which such articles of food are kept may be taken and examined by the H.O. or any person duly authorised by him as often as may be necessary for the detection of unwholesomeness. If on such examination he finds any such article of food to be unwholesome he may condemn it and forbid its sale.

(3) Whoever obstructs the H.O. or person duly authorised by him in the discharge of his duties under this section shall be punishable with fine which may extend to five hundred rupees.

Power of the
H.O. in regard
to unwhole-
some food.

87. (1) If any article of food intended for sale appears to the H.O. or to persons duly authorised by him to be unfit for human consumption or unwholesome or the utensil or vessel used in manufacturing preparing or keeping appear to be of such kind or in such state as to render the article unwholesome or noxious he may take away or secure such articles or utensils or vessels in order that the same may be dealt with as hereinafter provided.

(2) No person shall remove or in any way interfere with an article, utensil or vessel seized, taken away or secured under sub-section 87(1).

(3) Any article of food so seized, taken away or secured with the consent amount of the owner or person in whose possession it was found, be forthwith destroyed in such manner as to prevent its being used for human food or exposed for sale and if the article is perishable, without such consent.

(4) Any expenses incurred in destroying any article of food under sub-section (3) shall be paid by the owner or person in whose possession it was at the time when it was seized, taken away or secured.

(5) Articles of food seized, taken away or secured under sub-section (b) and not destroyed under sub-section (2) and utensils and vessels seized, taken away or secured under sub-section (1) shall as soon possible, be produced before a Magistrate.

(6) Whether or not any complaint is laid before a Magistrate of any offence under IPC or under this Act, if it appears to the Magistrate on taking such evidence as he thinks necessary that any such article is unwholesome or noxious or any such utensil or vessel is of such kind or in such state as is described in sub-section (1) he may order the same—

(a) to be forfeited to the local authority; and

(b) to be destroyed at the charge of the owner or any person in whose possession it was at the time when it was seized, taken away or secured in such manner as to prevent the same being again exposed or hawked about for sale or used for human food.

(c) Every person on whom any requisition is made under sub-section (1) or sub-section (2) shall be bound to comply therewith.

88. (1) The Health Officer may inspect any dairy, the milch-cattle and the employees therein and if, on such inspection, the Health Officer is of opinion that any infectious disease is caused or is likely to be caused by the consumption of the milk or dairy produce supplied from such dairy he may order prohibiting the supply of any milk or dairy produce for human consumption from such dairy.

(2) An order made under sub-section (1) shall be forthwith cancelled by the Health Officer on his being satisfied that the milk supply has been changed, or the employees objected to by him have ceased to work at the dairy or that the cause of infection has been removed.

(3) If an order made under sub-section (1) or cancelled under sub-section (2) relates to a dairy situated outside the limits of the local area, the Health Officer shall also inform the local authority within whose jurisdiction the dairy is situated.

(4) When an order is made under sub-section (1), the Health Officer may either—

(a) permit the milk or other produce of the dairy, after being boiled or treated in such manner as he may direct to be sold or used as animal food subject to any reasonable restrictions he may impose; or

(b) cause such milk or dairy produce to be destroyed.

(5) No person shall sell or supply any milk or dairy produce in contravention of the provisions of this section.

89. (1) The Health Officer may at any time, examine any person engaged in selling or in manufacturing or preparing for sale, or in any person handling any article of food intended for sale.

(2) When a reasonable suspicion arises as to the possibility of transmission of infection from any person who is employed in any of the places of employment, namely, eating, drinking, or catering establishment, hotel, tea-shop, coffee-house, cafe, restaurant, refreshment room, mobile canteen, stall or a place or vehicle where food is sold or prepared or stored for sale, or to which the public are admitted for the consumption of any food the Health Officer may require any or all of the following measures to be taken, namely:—

(i) the immediate exclusion of the employee from such place of employment;

(ii) the immediate closure of the business in such place of employment until no further threat of outbreak of disease exists in the opinion of the Health Officer; and

(iii) medical examination of the employee and of his associates.

90. (1) If the Health Officer has reason to believe—

- (a) that any person within the local area over which he has jurisdiction is suffering from an infectious disease attributable to milk or dairy produce supplied within such area; or
- (b) that the consumption of any milk or dairy produce supplied within such local area is likely to cause any person to suffer from an infectious disease, the Health Officer may require the person supplying the milk or dairy produce to furnish within such time as may be fixed by the Health Officer, a complete list of all dairies (whether situated within or outside the limits of the local area) from which that person's supply of milk or dairy produce is derived or been derived during the six weeks immediately proceeding.

Investigation of diseases caused by milk or dairy produce.

ABATMENT OF NUISANCES (CONTROL OF OFFENSIVE TRADES)

91. Without prejudice to the generality of the definition of the expression "Nuisance" following shall be deemed specifically to be nuisances for the purpose of this Chapter:—

- (1) any premises which is in such a state as to be prejudicial to health or a nuisance;
- (2) any pond, pool, ditch, gutter, water course, water trough, latrine, cess-pool, drain or ashpit which is so foul or in such a state as to be prejudicial to health or a nuisance;
- (3) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (4) any accumulation or deposit of refuse or other matter which is prejudicial to health or a nuisance;
- (5) any factory (not being a factory governed by the provision of the Factories Act, 1948 (Central Act LXIII of 1948), workshop or workplace, which is not provided with sufficient means of ventilation, or in which sufficient ventilation is not maintained, or which is not kept clean or not kept free from noxious effluent or which is not so overcrowded, while work is carried on, as to be prejudicial to the health of those employed therein;
- (6) any fireplace or furnace which does not, as far as practicable, consume the smoke arising from combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, breweries, bake-house, or gaswork or in any manufacturing or trade process whatever;
- (7) any chimney sending forth smoke in such quantity as to be a nuisance; and
- (8) any noise, vibration dust, cinders, irritating smell or offensive odour produced by a factory, workshop or work-place which is a nuisance to the neighbourhood.

92. Every urban local authority shall—

- (a) cause its area to be inspected from time to time with a view to ascertain what nuisance exist therein calling for abatement under the powers conferred on such authority by the Act; and
- (b) enforce the provisions of this Act in order to abate such nuisances.

93. Any person aggrieved by a nuisance in any local area may give information of the same to the H.O. or any other officer of the Health establishment of the local authority.

If the H.O. is satisfied, whether on information given under section 23 or otherwise, of the existence of a nuisance, he may by notice, require the person by whose act, default or sufferance the nuisance arises or continues, or if that person cannot be found, the owner or occupier of the premises on which the

nuisance arises or continues, to abate the nuisance and to execute such works and take such steps as may be necessary for that purpose:

Provided that—

- (a) where the nuisance arises from any defect of a structural character, the notice shall be served on the owner of the premises; and
- (b) where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner of the premises, the H.O. may himself forthwith do what he considers necessary to abate the nuisance and to prevent recurrence thereof.

Power of
the local
authority
to abate.

95. If the person on whom a notice to abate a nuisance has been served under 94 makes default in complying with any of the requirements within the time specified therein, or if the nuisance although abated within such time is, in the opinion of the local authority, likely to recur on the same premises, the local authority may arrange for the execution of recurrence, as the case may be, and may recover the cost from such person as if it were a tax due to the local authority.

96. Where a house or other building is, in the opinion of the H.O., unfit for human habitation by reason of a nuisance existing therein, he may apply to a Magistrate (not below a magistrate of the third class) to prohibit the use of such house or building for human habitation until it is rendered fit therefor.

Disposal of
articles
removed
while abating
nuisances.

97. (1) A local authority may sell materials which have been removed by it from any premises (including any street) when executing works under this chapter or otherwise carrying into effect the provisions thereof, if such materials are not claimed and taken away by the owner before the expiration of seven days from the date on which they were removed by the local authority, from the date on which they were removed by the local authority.

(2) A local authority selling any materials under sub-section (1) shall pay the sale-proceeds to the person to whom the materials belonged, after deducting therefrom the amount of any expenses recoverable from him by such authority.

(3) The provisions of this section shall not apply to any offensive matter removed by a local authority under the Act govern in such authority.

98. No person shall use or permit the use, except under permission from the local authority, any premises, building, or structure for the purpose of any trade, industry or manufacture or for any other purpose which is dangerous to health or to cause nuisance.

Notification
of offensive
trade.

99. A local authority may, by notification, specify the offensive trades, which in its opinion are or are likely to be dangerous to life and health and to which provisions under Sections 92, 93, 94, 95 shall apply:

Provided that no notice under this section shall take effect before the expiry of sixty days from the date of publication of the notice or, except with the previous sanction of the government in any place outside the limits of the local area.

Licensing
of offensive
trade.

100. (1) After a notice under section 99 has taken effect, no person shall use or permit to be used any premises in the local area for carrying on any offensive trade specified on the notices except under and in accordance with the terms and conditions of a licence granted by the executive authority on payment of a charge as may be decided from time to time.

(2) The licence shall expire at the end of the year for which it is granted unless, for special reasons, the executive authority considers that it should expire at an earlier date when it shall expire at such earlier date which shall be specified in the licence or renewal of licence.

(3) If an executive refuses to grant or renew licence under this section, he shall deliver to the applicant a statement in writing of the grounds on which his application is refused, after giving the licence an opportunity of being heard.

(4) If a licence contravenes any of the terms and condition of the licence, the local authority may after giving the licence an opportunity of being heard, cancel the licence.

101. (1) Every local authority may and if so required by the government shall within the time specified by the government notify in the prescribed manner the locality or localities which shall be reserved for establishment or carrying on any of the offensive trades as may be notified by the government from time to time and may at any time notify additional localities for the purpose.

102. For the purposes aforesaid, the local authority may purchase, acquire, take lease of or otherwise provide sufficient land suitable for the purpose and approve, allot it to the traders on such terms and conditions as the government may approve.

103. The local authority may direct the removal of any offensive trade in any area other than a reserved area, existing on the date of notification, to a reserved area, and the expenses for such removal shall be borne by the local authority. In case of dispute about the expenses of removal of offensive matter, the matter shall be referred to the government whose decision will be final.

104. (1) The local authority may provide or arrange for sufficient supply of safe and potable water for drinking and domestic purposes in all such reserved areas and may also provide and arrange for water for trade purposes on payment of such charges as the local authority may determine with the approval of the government.

(2) With the permission of the local authority the traders or business concerns may themselves provide or arrange for the supply of water in such quantity and of such quality and purity as may be specified by the Health Officer.

105. There shall be adequate provision of sanitary conveniences in all premises and houses used for offensive trade and they shall be provided and maintained by the trade or business concerns.

106. (1) The local authority may make special provision for drains and sewers and for special provision of collection and disposal of trade wastes.

(2) The local authority may levy charges for the use of its drains and sewers and for special provision of collection and disposal of trade wastes.

107. The executive authority or any officer of Health Department of the Government or of the local authority not below the rank of Health/Sanitary Inspector, may enter and inspect any premises for the purpose of enforcing any of the provisions contained in this chapter.

Provided that—

- (a) no such entry shall be made between sunset and sunrise except when a nuisance is caused by anything done or omitted to be done in the premises between sunset and sunrise;
- (b) no dwelling house shall be so entered without the consent of the occupier thereof, unless he has received at least twenty-four hours previous notice of the intention to make such entry;
- (c) sufficient notice shall be given to enable the inmates of any apartment appropriated to women to withdraw to some part of the premises where their privacy may be preserved; and

Notification of areas for offensive trades and licensing for such purposes.

Sanitary conveniences.

Powers of entry and inspection.

- (d) due regard shall be paid so far as may be compatible with the exigencies of the purpose of the entry to the social and religious usages of the persons residing in the premises; and
- (e) that no such notice or consent of the occupier is required in any premises of enclosure or area where any of the offensive trades or processes mentioned in the schedule is being or suspected to be carried out.

Power of
Govt. in
case of
defaults
by local
authority.

108. If the local authority or its Health Officer makes default in doing its or his duty under this Act in regard to the abatement or prevention of nuisances, the Government may authorize any of their officers to perform such duty and for that purpose to exercise any specified powers of the local authority or of its Health Officer or of both, in the local area concerned and the expenses incurred by such officers shall be met from the funds of the local authority.

Nuisance
caused by
act or omis-
sion outside
local area.

109. If a nuisance, under this Act, affecting any part of a local area, appears to be wholly or partly caused by some act or default committed or taking place outside such local area, the local authority may take or cause to take action against any person in respect of such act or default in relation to nuisance authorised by this Act, as if the act or default were committed or took place wholly within such local area.

Prohibition
of the
deposit of
rubbish, etc.,
in streets, etc.

110. No person shall deposit or cause any member of his family or household to deposit any carcass of animals, any dust, dirt, dung, ashes or refuse or filth of any kind, any animal matter, any broken glass, earthenware or other rubbish, or any other thing which is or may be a nuisance, in any street or in any arch under a street, or in any drain beside a street, or on any open space (not being private property) or on any quay, jetty or landing place of or any part of the sea-shore, or on the bank of any watercourse, except in such receptacles as may be provided or at such places in such manner and such hours as may be fixed by the Health Officer.

111. The Government may make Rules generally for the purpose of this chapter and in particular for:

- (a) the manner of giving information to the local authority about a nuisance;
- (b) manner in which the notices will be served on owners and occupiers of premises;
- (c) grant, refusal and cancellation of licences and the fees chargeable;
- (d) restrictions of use of houses and premises;
- (e) the charges for the abatement and removal of
- (f) notification and reservation of areas for offensive trades;
- (g) removal and any compensation for such removal of existing offensive trades in areas other than reserved areas;
- (h) provision of water supply, drain and sewerage, sanitary conveniences and other amenities and the scale of charges therefor;
- (i) disposal of trade wastes and the levy of charges.

PREVENTION, TREATMENT AND CONTROL OF COMMUNICABLE DISEASES

PART I

General

112. For purposes of this Act, "Communicable Diseases" means: anthrax, cerebrospinal fever, chickenpox, cholera, diphtheria, enteric group of fevers, filariasis, influenzal pneumonia, infective hepatitis, leprosy, malaria, measles, plague, poliomyelitis, rabies, relapsing fever, smallpox, tuberculosis of lungs and intestines, typhus, whooping cough or any other disease the Government may, from time to time by notification, declare to be an infectious disease either throughout the territory or in such part or parts thereof as may be specified in the notification.

113. (1) In the event of the prevalence or threatened outbreak of any communicable disease in any local area, or of any unusual mortality therein, the local authority concerned shall provide such additional staff including nurses, medicines, appliances, equipment and other requirements as may in the opinion of the H.O. be necessary for preventing its occurrence, treating such diseases, for investigating the cause of such an outbreak, preventing the spread of such diseases as the case may be. If the local authority is not in a position to provide such facilities in the opinion of the H.O., the matter shall be referred to the Director of Health Services whose decision shall be final.

(2) If the H.O. considers that immediate action is necessary in the interests of health of the public, he may, notwithstanding anything contained in the sub-section (1) above appoint such additional staff and obtain such material, appliances, equipment and other requirements as may be necessary and the expenses incurred in respect thereof shall be met from the funds of the local authority.

(3) Every appointment made under sub-section (2) shall be reported to the executive authority and by such authority to the local authority concerned at its next meeting.

114. (1) The local authority shall provide facilities for vaccination and immunization for such disease as the H.O. may decide.

(2) The local authority may, and if so required by the Government shall, provide or cause to provide, hospitals, roads or other places for the reception and treatment of persons suffering from communicable diseases. For the purposes of the reception and treatment of such persons, a local authority may,

- (i) itself build such hospitals, roads or places of reception; or
- (ii) contract for the use of any such hospital or part of a hospital or place of reception; or
- (iii) enter into an agreement with any person having the management of any such hospital for the reception and treatment therein of persons suffering from communicable diseases;
- (iv) for the purpose aforesaid, two or more local authorities may in combination provide a common hospital or place of reception.

115. A local authority shall not be deemed to have discharged its obligation under Section 114 (sub-section (2)) and the hospitals, wards or places of reception in question are not maintained in accordance with such general or special orders as may from time to time be issued by the Director of Health Services.

Provision &
maintenance of
laboratories.

116. (1) The local authority may, and if so required by the Government shall provide or cause to provide diagnostic laboratory facilities for persons suspected to be suffering from any communicable disease.

(2) For the purpose of diagnoses a local authority may

- (i) itself run and maintain a laboratory;
- (ii) contract or enter into an agreement with any organization or person having the management of any such laboratory.

117. The provision of this chapter shall apply to inland ship, vessel, boat or van lying within the jurisdiction of the local authority and a tent or shed or structure used for human transport or habitation.

Ambulance
and dis-
infection
facilities.

118. A local authority may, and if so required by the Director of Health Services shall

- (i) provide and maintain suitable conveyances, with sufficient attendants and other requisites for the carriage of persons suffering from any communicable disease; and
- (ii) provide proper places and apparatus and establishment for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection and cause them to be disinfected when brought to any such place either free of charge or on payment of such fee as it may fix.

119. (1) If the H.O. thinks that water in any tank, well or other sources if used for drinking or any other domestic purpose is likely to endanger health or cause the spread of any communicable disease he may, by public notice, prohibit the use of the said water generally or for any specific domestic purpose.

(2) No person shall remove or use any water in respect of which any such notice has been issued in contravention of the terms thereof.

120. (1) If it appears to the H.O. that any person is suffering from a communicable disease and that such person—

- (i) is without proper lodging or accommodation; or
- (ii) is lodged in a place occupied by more than one family;
- (iii) is without medical supervision directed to the prevention of the spread of the disease; or
- (iv) is in a place where his presence is a danger to the people in the neighbourhood; and
- (v) should be removed to a hospital or other place where patients suffering from such disease are received for treatment, the H.O. may remove such person or cause him/her to be removed to such hospital or place.

(2) If a woman is to be removed:

- (i) special accommodation should be provided for her in such hospital or place.

(3) No person shall leave, or be taken away from any hospital or other place referred to in section 120 (sub-section (1)) without the permission of the medical officer-in-charge or the H.O.

(4) Whoever—

- (i) obstructs the removal of any person to any hospital or other place under Section 120 (sub-section (1)) or
- (ii) leaves or takes away any person from any such hospital or place in contravention of section 120 (sub-section (3)) shall be punished with imprisonment which may extend to 3 months or fine or with both.

Exposure to infection.

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121. No person who knows that he is suffering from communicable disease specified in Part II of this chapter shall expose other person to the risk of infection by his presence or conduct in—

- (i) any market, cinema or any place of entertainment of assembly; or
- (ii) any school, college, playground, gymnasium, swimming pool or such other place; or
- (iii) any hotel, hostel, boarding house, choultry, rest house or club; or
- (iv) any factory or shop.

Explanation.—(1) A person shall be deemed to know that he is suffering from a communicable disease within the meaning of this sub section if he has been informed by the H.O. or any other office of the Health Department of the Government or of a local authority, not below the rank of Health/Sanitary Inspector or Health Supervisor (male or female) or a medical practitioner registered under the State Medical Registration Act, that he is so suffering.

(2) No person who has the case of a person whom he knows to be suffering from a communicable disease specified in Part II of this chapter shall cause or permit that person to expose others to the risk of infection by his presence or conduct in any place referred to in this section.

122. No person shall give, lend, sell, transmit or expose without previous disinfection any clothing article or rags which he knows to have been exposed to infection from any communicable disease and which is liable to carry infection.

123. No person shall while suffering from or in circumstances in which he is likely to spread any communicable diseases—

- (i) make carry or offer for sale, or take any part in the business of making, carrying or offering for sale, any article of food for human consumption; or
- (ii) engage in any other occupation without a special permit from the H.O. of the local authority concerned or otherwise than in accordance with the conditions specified therein.

124. If in any local area any infectious disease transmissible to man breaks out, or is in the opinion of H.O. likely to break out, among cattle or other animals, the H.O. of the local area shall recommend to the local authority the adoption of such measures as he may deem necessary for suppressing or mitigating the disease or for preventing the outbreak or threatened outbreak thereof; and the local authority shall consider such recommendations and take such action thereon as it may seem suitable.

PART II

Notified Communicable Diseases

125. In this part "notified disease" means (a) cerebrospinal fever, (b) chickenpox, (c) cholera, (d) diphtheria, (e) enteric group of fevers, (f) infective hepatitis (g) Leprosy, (h) measles (i) plague (j) Poliomyelitis, (k) rabies, (l) smallpox, (m) tuberculosis, (n) tetanus (o) whooping cough or any other disease which the government may from time to time by notification declare to be a notified disease throughout the state or in such part or parts thereof as may be specified in the notification.

126. (1) Every medical practitioner, who in course of his practice becomes cognizant of the existence of any notified disease in any private or public dwelling other than a public hospital and every manager of any factory or public building, every keeper of a lodging house, every head of a family and every owner or occupier of a house, who knows or has reason to believe that

Infected person not to engage in certain trades, and occupation.

Information to be given about the incidence of notified disease.

any person in any premises under his management, control or occupation is suffering from or has died of a notified disease he shall if the case has not been already reported, give information of the same without the least practical delay—

- (a) in municipal areas to the executive authority, H.O. or a Health or Sanitary Inspector and
- (b) in non-municipal areas to the H.O., PHC, M.O., Health or Sanitary Inspector/Supervisor, Chowkidar or village watchman or the village headman.

Explanation.—In this Section "Medical practitioner" includes all persons practising profession of healing or treatment of diseases under any system.

(i) at all reasonable hours enter and inspect with or without assistants, as may be appointed in this behalf to keep himself informed of the incidence of notified diseases from day to day and to report the incidence and prevalence of the disease till the epidemic completely subsides in such manner as the government may prescribe

(ii) In non-municipal areas, it shall be the duty of every chowkidar or village watchman or village headman to keep himself informed of the incidence of notified diseases from day to day and to report the incidence and prevalence of the disease, till the epidemic completely subsides in such manner as the government may prescribe.

127. The H.O. or any person duly authorized by him in this behalf may—

- (i) at all reasonable hours enter and inspect with or without assistants, any land or premises in which he has reason to believe that any person who is suffering or who has recently suffered from any communicable disease is or has recently been present, or any inmate of which has recently been exposed to the infections of such disease without notice in the case of factories, workshops, workplaces, offices, business places and the like and after giving such notice as may appear to him reasonable in other cases, including dwelling houses and
- (ii) take such measures as he may consider necessary to prevent the spread of such diseases beyond such place.

128. (1) No person other than a medical practitioner, nurse or attendant shall—

- (a) enter any place where a person has developed cholera, plague or any other dangerous disease or wherefrom a patient has been removed to hospital or a place of isolation; or
- (b) otherwise come in contact with such a case unless he forthwith gets himself vaccinated or inoculated against the disease.

(2) Any person violating the restriction under Section 128 (sub-section (1)) may be placed under isolation in such manner as the H.O. or any person authorized in this behalf, directs.

129. (1) If the H.O. or any person authorised in this behalf is of opinion that any house, building or part thereof is in insanitary condition or any article contained therein or any tank, pool, well or water collection within or adjacent to a building would tend to spread the infection of any notified disease, he may direct the owner or occupier to cleanse, disinfect, disinsecticide or white-wash in such a manner as would check the spread of the infection; where the owner or occupier of such house, building or part thereof is unable to carry out the requirements specified in the order, the H.O. may arrange for the

Restriction of entry into house in which a notified case has or is suspected to have occurred.

H.O. may direct owner or occupier to take simple sanitary measures and in default carry out the same.

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cleaning, disinfection, disinsection of such house, building or part thereof, article, tank, pool, well or water collection and the owner or occupier of such house, building or any part thereof, or the water collection shall afford necessary facilities for such cleaning, disinfection, disinsection and other measures.

(2) The costing of cleansing and whitewashing of any building or part thereof, under Section 129 (sub-section (1)) shall be paid by the person in actual possession or if there be no such person, by the owner thereof:

(3) Provided that if in the opinion of the H.O. the owner or occupier is unable to pay the said cost or if the tank, pool or well is open to use by the public, it shall be paid from the fund of the local authority.

130. (1) If a case of notified disease occurs in any premises, the H.O. may, whether the person suffering from the disease has been removed or not, make an order prohibiting any work of the nature mentioned in sub-section (3) of this Section to be given out to any person living or working in those premises or in such part thereof and any order so made shall be posted at the entrance of the house or otherwise displayed on the house.

(2) An order under this Section may be expressed to be operative for a period specified in the order or as long as any other precautions specified in the orders are necessary.

(3) This Section applies to the making, cleaning, washing, altering, ornamenting, finishing or repairing of wearing apparel of any kind and any work incidental thereto and the preparation and packing of food stuffs, and such other classes of work as may be from time to time notified by the Govt.

131. If the H.O. is of opinion that the destruction of any hut or shed is necessary to prevent the spread of any notified disease, he may with the approval of the local authority, after giving to the owner and the occupier of such hut or shed such previous notice of his intention as may, in the circumstances of the case appear to him reasonable, take measures for having such hut or shed and any other infected material therein destroyed.

Such compensation not exceeding the value of the hut or shed, as the local authority may consider reasonable, shall be paid by the local authority to any person who sustains loss by the destruction of any such hut or shed but save as provided in this sub-section, no claim for compensation shall be for any other reason or for any loss or damage caused by any exercise of the powers conferred by this Section.

132. If, on the application of the H.O. a magistrate (not below a magistrate of second/third class) is satisfied that it is necessary in the interest of public health that a dwelling or lodging house or any place where articles of food are sold be prepared, stored or exposed for sale, or distributed should be closed on account of the existence of recent occurrence of a case of notified disease in such premises or in an adjacent premises, the magistrate may, by order direct it to be closed until the expiry of such period as may be specified in the order or until it is certified by the H.O. that there is no further risk of spread of infection.

133. No person shall—

(i) send or take to any laundry or public wash-houses, or any public water-courses, tanks or well, for the purpose of being washed, or to any place for the purpose of being cleaned, any clothing, bedding or other article which has been exposed to infection from any notified diseases, unless such articles has been cleared and disinfected by or to the satisfaction of the H.O. or a person authorized by him or a registered medical practitioner;

Prohibition
of certain
works in
an affected
premises.

Closure of
places where
food is
manufactured.

Restrictions
on infected
clothing and
articles.

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- (5) place or cause or permit to be placed in any dust-bin or other receptacle for the deposit of refuse, any matter which he knows to have been exposed to infection from a notified disease and which has not been disinfected.

134. (1) No person shall let or sublet for hire any house, room or part of the house in which any person has been suffering or has died from a notifiable disease within 3 months immediately preceding unless such house, room or part of the house and all articles therein likely to retain the infection are cleansed and disinfected to the satisfaction of the H.O.

(2) Any person violating the provision of Section 134 sub-section (1) or making false statements when questioned in this connection shall be liable to prosecution.

135. No person who knows that he is suffering from a notified disease shall take any book or cause any book to be taken for his use, or use any book taken from any public or circulating library.

136. No person who knows that he is suffering from a notified disease shall expose other persons to the risk of infection by his presence or conduct in—

- (i) any street or public place;
- (ii) any market, theatre or other place of entertainment at assembly; or
- (iii) any school, cottage, playground or such other place; or
- (iv) any hotel, hostel, boarding house, choultry, resthouse or club;
- (v) any factory or shop.

137. (1) No person who knows that he is suffering from notified disease shall—

- (i) enter any public conveyance used for the conveyance of passengers at separate fares, or
- (ii) enter any other public conveyance, without previously notifying the owner, driver or conductor thereof that he is so suffering.

(2) No person having the care of a person whom he knows to be suffering from a notified disease shall permit that person to be carried—

- (i) in any public conveyance used for the conveyance of passengers at separate fares, or
- (ii) in any other public conveyance, without previously notifying the owner, driver or conductor thereof that the person is so suffering.

(3) The owner, driver or conductor of a public conveyance used for the conveyance of passengers at separate fares shall not convey therein a person who he knows to be suffering from a notified disease at any time when a passenger not suffering from such disease is being conveyed therein.

Provided that a person suffering from a notified disease may be conveyed in the public conveyance aforesaid in such cases of emergency and subject to such restrictions and safeguards as may be notified by the government.

(4) The owner or driver of any other public conveyance may refuse to convey therein any person suffering from a notified disease until he has been paid a sum sufficient to cover loss and expense which will be incurred by reason of the provisions of the next succeeding sub-section.

(5) If a person suffering from a notified disease is conveyed in a public conveyance, the person in charge thereof shall as soon as practicable give notice to the H.O. of the local area in which the conveyance is usually kept and before permitting any other person to enter the conveyance shall cause it to be disinfected.

Prohibition
of exposure
of other
persons to
infection.

Restrictions
of the use
of public
conveyance
by infected
persons.

(6) The local authority when so requested by the person in charge of a public conveyance in which a person suffering from a notified disease has been conveyed shall provide for its disinfection. In the event of the prevalence of a notified disease in any local area on the application of the H.O. any magistrate (not below a magistrate of the third class) having local jurisdiction shall have power to prohibit either generally or by special order in any individual case, assemblages consisting of any number of persons exceeding fifty, in any place, whether public or private or in any circumstances or for any purpose if in his opinion such assemblages in such places in such circumstances or for any purpose would be likely to become a means of spreading the disease.

Disposal of
bodies of
persons dying
while suffering
from notified
disease.

138. (1) No person having the charge or control of the body of any person who has died while suffering from a notified disease shall permit or come unnecessarily into contact with or proximity to the body.

(2) No person shall, without the sanction in writing of an officer of the Health Department of the local authority concerned, not below the rank of Health/Sanitary Inspector, retain in any premises (elsewhere than in a public mortuary) for more than twelve hours the body of any person who has died while suffering from any notified disease.

(3) (i) If any such body not being a body kept in a mortuary, remains undisposed of for more than 12 hours without the sanction referred to in Section 138 sub-section (2) or if the dead body of any person is retained in any building so as to endanger the health of inmates of such building or of any adjoining neighbouring building any magistrate on the application of any officer referred to in sub-section (2) order the body to be removed and disposed of within a specified time.

(ii) A magistrate may, in the case of the body of a person who has died while suffering from a notified disease, or in any other case in which he considers the immediate disposal of the body necessary, direct the body to be disposed of, unless the friends or the relatives of the deceased undertake the disposal of the body within a time specified in the order.

(iii) The expenses of the removal and disposal of any body under this clause shall be borne by the local authority; but such expenses may be recovered by the local authority from any person who would have been legally liable therefor for such removal and disposal, unless in the opinion of the local authority he is too poor to do so.

(iv) If any person dies in a hospital or a place of temporary accommodation for the sick while suffering from a notified disease, and the H.O. certified that in his opinion it is desirable, in order to prevent the spread of infection, that the body should not be removed from such hospital or place except for the purpose of being taken direct to a burial or burning ground or a crematorium for being forthwith buried or cremated, no person shall remove the body from the hospital or place except for such a purpose.

(v) When a body is removed for the purpose as aforesaid it shall forthwith be taken direct to a burial or burning ground or a crematorium and there buried or cremated with the least practicable delay.

139. Without the permission of the H.O. or a magistrate no person shall cause or permit to be carried in a public conveyance the dead body of any person who has died while suffering from a notified disease.

Power of the
Government to
confer special
powers on the
officers to
control notified
diseases.

140.1 (i) In the event of the prevalence or threatened outbreak of a notified disease in any place or area, Government may declare that such place or area is visited by or threatened with an outbreak of such disease.

(ii) The power conferred on the Govt. by clause 140 1(i) may also be exercised, in the case of a place or area situated in a district by the collector of the district subject to the consent of the Government.

(iii) Any declaration made by the government under clause 140 1(i) or withdrawn thereof in whole or in part shall be published in the (State) gazette and shall come into operation on the date of such publication.

(iv) Any declaration made by the collector under clause 140, 1 (ii) or withdrawn thereof in whole or in part shall be published in the district gazette and shall come into operation on the date of such publication.

(2) When a declaration under clause 140, 1 (i) or clause 140, 1 (ii) comes into operation and until it is withdrawn, the collector of the district or any person duly authorized by him by general or special order or if empowered in this behalf by rules made under this Act, the H.O. or any other officer of the local authority concerned or any officer of the government other than the collector may subject to such exceptions, restrictions, limitations and conditions and to such control as may be prescribed either generally or in the case of the notified diseases to which the declaration relates, exercise the following powers namely:—

- (a) power to order the evacuation from infected houses and houses adjoining them or in their neighbourhood, or generally of all houses in an infected locality;
- (b) power to make vaccination and preventive inoculations compulsory subject to the provisions of sub-sections.
- (c) power to direct—
 - (i) that persons arriving from places outside the local area, or residing in any building, adjacent to, or in the neighbourhood of, an infected building shall be examined by any specified medical officer or by anyone of a specified class of medical officers.
 - (ii) that the clothing, bedding or other articles belonging to such persons shall be disinfected, if there is reason to suspect that they have been exposed to infection; and
 - (iii) that any such person shall give his address and present himself daily for medical examination at a specified time and place, for a period not exceeding ten days;
- (d) Power to take such measures as may be necessary:—
 - (i) in respect of or in relation to persons exposed to infection from any notified disease, or likely to infect persons with any such diseases including the case, the placing of restrictions on the movements of such persons, and
 - (ii) the destruction of such articles and the placing of restrictions on their export from import into or transport within the local area;
- (e) power to direct that at any place within or outside the local area, any consignment of grain and if necessary, be unloaded and disinfected in any specified manner; and
- (f) power to close all or any existing markets and to appoint special places where markets may be held.

141. (i) If any person who, or a child who is sought to be vaccinated or inoculated declares before a magistrate specially empowered by the government in this behalf that as a result of a careful inquiry into the subject, he believed that such vaccination or inoculation will be injurious to his health or the health of the child, as the case may be, the Magistrate may, after giving notice to the H.O. and hearing any representation by him or on his behalf exempt such person or child from vaccination or inoculation, on condition of the person or child undertaking to subject himself and the members of his family to isolation of such description and for such period and to such further restrictions, if any, as may be directed by the magistrate:

Provided that any exemption granted under this clause shall cease to have effect after a conviction and no exemption, shall be granted to any person who has been so convicted.

(ii) Any person who commits a breach of any undertaking given by him under clause (i) shall be punished with imprisonment which may extend to 3 months or fine, or with both.

Isolation of
patients
suffering from
notified
disease.

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142. (1) When in the opinion of the H.O. or of any person duly authorized by him, any person suffering from a notified disease is without proper lodging or accommodation or is lodged in such manner that he cannot in the opinion of the H.O. be properly isolated in his home so as to prevent the spread of infection, the H.O. may direct or cause the removal of such person to a hospital or place where patients suffering from such notified disease are received for treatment.

Provided that, if any such person is a female she shall not be removed to any hospital or place where there is no accommodation or arrangement for females.

(2) No person who has been ordered to be in home isolation shall leave the place until he has received permission from the health officer or any person duly authorised by him.

PART III

Special Provisions Regarding Selected Communicable Diseases

Tuberculosis.
Special
arrangement
for detec-
tion and
treatment.

143. (1) Without prejudice to the foregoing provisions of this Chapter, a local authority may make such arrangement as he thinks desirable or as the Government may direct for mass case detection and domiciliary treatment of persons suffering from tuberculosis as also for mass BCG vaccination of infants and young children through all the existing medical and health institutions, TB clinics and other TB institutions in their area of responsibility. For this, a comprehensive TB Control Programme may be organised under a Central authority of the local body through the above mentioned institutions, making the TB beds available for the problem cases of domiciliary treatment and for emergencies etc.

Provision
by public
bodies.

(2) The Government or local body authority may permit a public body or voluntary institution not working for profit to establish or maintain in accordance with such rules as may be made for this behalf, TB clinics or TB hospitals for detection, treatment and care of persons suffering from tuberculosis subject to their working as a part of the organised TB control programme of the area providing for case finding and domiciliary treatment and hospitalisation of deserving cases.

Detection of
contacts and
isolation.

(3) A local authority may and when so directed by the Government arrange in all institutions participating in the TB control programme for providing free case-finding and treatment facilities for tuberculosis cases and also for contact examination and immunization of the persons referred by private medical practitioners.

Rules.

(4) The Government or local authority may make rules—

- (a) for regulating the establishment, working and maintenance of TB clinics, TB Hospitals and sanatoria or places for the accommodation and treatment of persons suffering from tuberculosis;
- (b) for case-finding and treatment of tuberculosis cases;
- (c) prohibition of persons or children or teachers suffering from infectious forms of tuberculosis to attend schools;
- (d) prohibition of tubercular patients in infectious stage from seeking avocations;
- (e) qualifications of the staff who are required for any institution or organisation and their duties and responsibilities.

Rabies

144. **Special Provisions regarding Rabies:**—(1) The State Government or local health authority shall make such arrangements, as is desirable or as the government directs, for the detection, isolation, care and treatment of persons suffering or suspected to be suffering from rabies.

(2) The State Government or local health authority shall make arrangements for anti-rabic treatment at the headquarters of the state and district and as far as possible at taluk and sub-divisional levels.

(3) The local health authority,—

- (i) may licence possession of pet dogs at a charge;
- (ii) If licensing is enforced, shall arrange for free vaccination of dogs against rabies at periodical intervals.

(4) No person shall possess a dog which has not been registered and licenced by the local authority and it shall be the duty of every such owner of a dog to have the dog vaccinated at periodical interval against rabies as required by the local health authority.

(5) The local authority shall have the power to seize and detain all dogs at large and if any dog is in the opinion of the H.O. found or suspected to be suffering from rabies arrange for destruction in a humanistic manner.

S.T. Diseases

145. **Special provisions regarding S.T. diseases and yaws:**—(1) A local authority may, and if so required by the Government shall make such arrangements in its local area as may be required by the Government for—

- (a) detection of persons suffering or suspected to be suffering from STD.
- (b) prevention of infection from such diseases.
- (c) free and confidential treatment of such persons, and
- (d) free diagnostic facilities to private medical practitioners.
- (e) detection, diagnosis, treatment of persons suffering from yaws.

(2) The local authority may for the purpose mentioned in sub-section (1) enter into a contract with—

- (a) any other local authority, or
- (b) a hospital or medical institution recognised by the government in its behalf,
- (c) a medical practitioner registered under the State Registration Act.

(3) A local authority may on the advice of the H.O. enforce diagnosis and treatment of a suspected case of STD and his/her contact.

Prohibition of prostitution in certain areas and places.

(4) The government or the local authority may at any time and for any local area or part thereof, prohibit the practice of prostitution and may for this purpose—

- (a) declare the limits of such area where prostitution shall be prohibited; and
- (b) order the removal of any brothel and all prostitutes to such place or locality and within such time as may be specified in the order.

(5) No person being the owner, lessee or occupier of any house, building, shed, barrack or structure or any premises or any shop, store, lodging house, beauty clinic, massage clinic, hammam, baths or any such institution, shall permit prostitution in any room, flat or part of such house or premises and other places under his/her control.

(6) The Government or the local authority shall have the power to inspect, supervise, and control the operation of the measures against S.T.D. and prostitution.

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(7) The Government or local health authority shall make arrangements and take action so that all persons seeking employment be examined serologically for syphilis.

Special provisions regarding leprosy.—

146. (1) The State government shall provide one or more state leprosy hospitals or asylums at suitable places within the state for accommodation and treatment of infective leprosy cases.

(2) The State government shall establish in any district where the incidence of leprosy is high, one or more leprosy clinics or hospitals as may be necessary which may be attached to hospitals, clinics, health centres etc.

(3) The State Government shall provide diagnostic facilities at State, district, taluka and block levels, which should be available to private medical practitioners free or on payment of such fees as the government may prescribe.

147. (1) The Government shall encourage and permit the establishment and maintenance of clinics, centres, hospitals, asylum, homes, colony, work centres and missionary societies, under conditions as may be laid down by the Government from time to time.

(2) The Government may make, in suitable cases, grants-in-aid, both initial and recurrent, including free supply of drugs to any such institutions approved by the government.

148. (1) Persons found to be suffering from an infective stage of leprosy may be directed to remain in home isolation to the extent possible and to take such other precautions as may be advised by the M.O. of clinics, under the supervision of the local nurse.

(2) Such persons shall continue with the treatment to the satisfaction of the M.O. of the clinic.

(3) The parent or guardian of any individual (who has not attained the age of 18 years) shall be responsible for the continued treatment.

149. The Government shall have the power to:—

(i) subject a person suspected to be suffering from leprosy to diagnosis, detection, treatment if the person refuses to undergo such exercises.

(ii) take action against anybody obstructing such exercises or any family member of the patient not cooperating in such exercises.

150. The Government may prescribe regulations prohibiting or restricting employment in specific avocations of persons suffering from infective stage of leprosy where he is likely to come in contact with healthy population. In cases where such persons are not likely to come in contact with healthy population the Government or local health authority, may allow him to follow the avocation provided he takes regular treatment and undergoes periodical medical check up.

151. (1) Government or local health authority shall have the power to regulate that no infectious patient of leprosy be allowed to work in establishments like school, food establishments etc. where they are likely to come in contact with healthy population.

(2) Government or local health authorities shall have the power to restrict the movement of infectious patients of leprosy in crowded places, in public conveyance etc.



Special provision regarding other diseases

152. (1) The government may, by notification, declare that the incidence of diseases like Beri-beri, epidemic dropsy, scurvy and such diseases as the government may think necessary shall be reported to the H.O. or

(2) (a) The H.O. shall, on receipt of information of a person suffering from a disease notified under section 152 (1) either himself or by a competent person authorized by him (a) make a thorough investigation about the cause or causes leading to the incidence of the disease and

(b) take such preventive measures as may be considered necessary to check the incidence of more cases.

CONTROL OF INSECTS AND VECTOR-BORNE DISEASES

153. For purposes of this chapter "insects" include mosquitoes, flies, lice, mite, sandfly, tick and any other insect detrimental to health.

154. (1) Every local authority shall take steps to eliminate places where insects are breeding or likely to breed and to control or destroy insects.

(2) The Government or the local authority shall take measures for the prevention, control and removal of any cause or causes of breeding of insects.

155. (1) Every owner or occupier of lands or premises shall take measures to prevent the breeding of insects and when directed such measures as may be specified by the local authority.

(2) No person shall interfere with any work on land or a building already undertaken by the Government or by any authority or by the owner for the purpose of preventing the breeding of insects.

SPECIAL PROVISION FOR MOSQUITOES

156. No person or local authority shall.

- (a) have, keep, or maintain within such area any collection of standing or flowing water in which mosquitoes breed or are likely to breed, or
- (b) cause, permit or suffer any water, within such area to form a collection in which mosquitoes breed or are likely to breed, unless such collection has been so treated as effectively to prevent such breeding.

Explanation.—Troughs for cattle not to be considered. The natural presence of mosquito in any standing or flowing water not be considered.

157. (1) The H.O. may by notice in writing, require the owner or the occupier of any place containing any collection of standing or flowing water in which mosquitoes breed or likely to breed, within such time as may be specified in the notice, not being less than 24 hours, to take such measures with respect to the same, or to treat the same by such physical, chemical or biological method or a method, approved by the DHS, as the H.O. may consider suitable in the circumstances.

(2) If the notice under sub-section 157 (1) is served on the occupier, he shall, in the absence of a contract, expressed or implied, to the contrary, be entitled to recover from the owner the reasonable expenses incurred by him in taking measures or adopting the method of treatment specified in the notice and may deduct the amount of such expenses from the rent which is then or which thereafter be due from to the owner.

158. If the person on whom a notice is served under section 157 fails or refuses to take the measures or adopt the method of treatment, specified in such notice within the time specified therein, the H.O. may himself recover the cost of doing so from the owner or occupier of the property, as the case may be, in the same manner as if it were a property tax.

159. Where, with the object of preventing the breeding of mosquitoes in any land or building, the Government or any local authority, or the owner or occupier at the instance of the Government or any local authority, has constructed any works in such land or building, the owner for the time being as well as the occupier for the time of such land or building shall prevent its being used in any manner which causes, or is likely to cause, the deterioration of such work or which impairs or is likely to impair their efficiency.

160. (1) No person shall without the consent of the H.O. interfere with or misuse, destroy or render useless any work executed or any material or thing placed in, under or upon any land or building, by or under the orders of H.O. with the object of preventing the breeding of mosquitoes therein.

(2) If the provisions under sub-section 160(1) are contravened by any person the H.O. may execute the work or replace the materials or things, as the case may be, and the cost of doing shall be recovered from such person in the same manner as if it were a property tax.

Power of the health staff to enter and inspect premises.

161. Inspection of premises. H.O. or any subordinate not below the rank of H/S Inspector may at all reasonable times, after giving such notice in writing as may appear to him reasonable, enter and inspect any land or building within his jurisdiction and the occupier or the owner, as the case may be, of such land or building shall give all facilities necessary for such entry and inspection and supply all such information as may be required of him for the purpose aforesaid.



THE PRE- NATAL DIAGNOSTIC TECHNIQUES (PNDT) ACT & RULES

Act No. 57 of 1994.



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2532

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (PNDT) ACT & RULES

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, was enacted and brought into operation from 1st January, 1996, in order to check female foeticide. Rules have also been framed under the Act. The Act prohibits determination and disclosure of the sex of foetus. It also prohibits any advertisements relating to pre-natal determination of sex and prescribes punishment for its contravention. The person who contravenes the provisions of this Act is punishable with imprisonment and fine.

Recently, PNDT Act and Rules have been amended keeping in view the emerging technologies for selection of sex before and after conception and problems faced in the working of implementation of the ACT and certain directions of Hon'ble Supreme Court after a PIL was filed in May, 2000 by CEHAT and Ors, an NGO on slow implementation of the Act. These amendments have come into operation with effect from 14th February, 2003



THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994

ACT NO. 57 OF 1994

[20th September, 1994]

An Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

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

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

(a) "Appropriate Authority" means the Appropriate Authority appointed under section 17;

(b) "Board" means the Central Supervisory Board constituted under section 7;

(c) "Genetic Counseling Centre" means an institute, hospital, nursing home or any place, by whatever name called, which provides for genetic counselling to patients;

(d) "Genetic Clinic" means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures;

(e) "Genetic Laboratory" means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test;

(f) "Gynecologist" means a person who possesses a post-graduate qualification in gynecology and obstetrics;

(g) "Medical geneticist" means a person who possesses a degree or diploma or certificate in medical genetics in the field of pre-natal diagnostic techniques or has experience of not less than two years in such field after obtaining—

(i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956); or

(ii) a post-graduate degree in biological sciences;

(h) "Pediatrician" means a person who possesses a post-graduate qualification in pediatrics;

(i) "pre-natal diagnostic procedures" means all gynecological or obstetrical or medical procedures such as ultrasonography foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting pre-natal diagnostic test;

(j) "pre-natal diagnostic techniques" includes all pre-natal diagnostic procedures and pre-natal diagnostic tests;

(k) "pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;

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

- (m) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, (102 of 1956) and whose name has been entered in a State Medical Register;
- (n) "regulations" means regulations framed by the Board under this Act.

CHAPTER II

REGULATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics - On and from the commencement of this Act,--

(1) no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;

(2) no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall employ or cause to be employed any person who does not possess the prescribed qualifications;

(3) no medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

CHAPTER III

REGULATION OF PRE-NATAL DIAGNOSTIC TECHNIQUES

4. Regulation of pre-natal diagnostic techniques - On and from the commencement of this Act,--

(1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

(2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:--

- (i) chromosomal abnormalities;
- (ii) genetic metabolic diseases;
- (iii) haemoglobinopathies;
- (iv) sex-linked genetic diseases;
- (v) congenital anomalies;
- (vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied that any of the following conditions are fulfilled, namely:--

- (i) age of the pregnant woman is above thirty-five years;
- (ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;

- (iv) the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;
- (v) any other condition as may be specified by the Central Supervisory Board.

(4) no person, being a relative or the husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purpose specified in clause (2).

5. Written consent of pregnant woman and prohibition of communicating the sex of foetus. (1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless—

- (a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;
- (b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands, and
- (c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

(2) No person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives the sex of the foetus by words, signs or in any other manner.

6. Determination of sex prohibited. - On and from the commencement of this Act,—

- (a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;
- (b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

CHAPTER IV

CENTRAL SUPERVISORY BOARD

7. Constitution of Central Supervisory Board. - (1) The Central Government shall constitute a Board to be known as the Central Supervisory Board to exercise the powers and perform the functions conferred on the Board under this Act.

(2) The Board shall consist of—

- (a) the Minister in charge of the Ministry or Department of Family Welfare, who shall be the Chairman, ex officio;
- (b) the Secretary to the Government of India in charge of the Department of Family Welfare, who shall be the Vice-Chairman, ex-officio;
- (c) two members to be appointed by the Central Government to represent the Ministries of Central Government in charge of Woman and Child Development and of Law and Justice, ex-officio;
- (d) the Director General of Health Services of the Central Government, ex officio;
- (e) ten members to be appointed by the Central Government, two each from amongst—
 - (i) eminent medical geneticists;
 - (ii) eminent gynaecologists and obstetricians;
 - (iii) eminent paediatricians;
 - (iv) eminent social scientists; and
 - (v) representatives of women welfare organisations;

- (f) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States;
- (g) four members to be appointed by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order;

Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union territory;

- (h) an officer, not below the rank of a Joint Secretary or equivalent of the Central Government, in charge of Family Welfare, who shall be the Member-Secretary, ex officio.

8. Term of office of members. - (1) The term of office of a member, other than an ex officio member, shall be,--

- (a) in case of appointment under clause (e) or clause (f) of sub-section (2) of section 7, three years; and
- (b) in case of appointment under clause (g) of the said subsection, one year.

(2) If a casual vacancy occurs in the office of any other members, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled by the Central Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairman shall perform such functions as may be assigned to him by the Chairman from time to time.

(4) The procedure to be followed by the members in the discharge of their functions shall be such as may be prescribed.

9. Meetings of the Board. - (1) The Board shall meet at such time and place, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be provided by regulations.

Provided that the Board shall meet at least once in six months.

(2) The Chairman and in his absence the Vice-Chairman shall preside at the meetings of the Board.

(3) If for any reason the Chairman or the Vice-Chairman is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.

(4) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.

(5) Members other than ex officio members shall receive such allowances, if any, from the Board as may be prescribed.

10. Vacancies, etc., not to invalidate proceedings of the Board. - No act or proceeding of the Board shall be invalid merely by reason of--

- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person acting as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

11. Temporary association of persons with the Board for particular purposes. (1) The Board may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with it by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member for any other purpose.

12. Appointment of officers and other employees of the Board. - (1) For the purpose of enabling it efficiently to discharge its functions under this Act, the Board may, subject to such regulations as may be made in this behalf, appoint (whether on deputation or otherwise) such number of officers and other employees as it may consider necessary;

Provided that the appointment of such category of officers, as may be specified in such regulations, shall be subject to the approval of the Central Government.

(2) Every officer or other employee appointed by the Board shall be subject to such conditions of service and shall be entitled to such remuneration as may be specified in the regulations.

13. Authentication of orders and other instruments of the Board - All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf, and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary or any other officer of the Board authorised in like manner in this behalf.

14. Disqualifications for appointment as member - A person shall be disqualified for being appointed as a member if, he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or
- (e) has, in the opinion of the Central Government, such financial or other interest in the Board as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has, in the opinion of the Central Government, been associated with the use or promotion of pre-natal diagnostic technique for determination of sex.

15. Eligibility of member for reappointment - Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for reappointment as such member.

16. Functions of the Board - The Board shall have the following functions, namely:—

- (i) to advise the Government on policy matters relating to use of pre-natal diagnostic techniques;
- (ii) to review implementation of the Act and the rules made thereunder and recommend changes in the said Act and rules to the Central Government;
- (iii) to create public awareness against the practice of pre-natal determination of sex and female foeticide;
- (iv) to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics;
- (v) any other functions as may be specified under the Act.

CHAPTER V

APPROPRIATE AUTHORITY AND ADVISORY COMMITTEE

17. Appropriate Authority and Advisory Committee - (1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.

(2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. (3) The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—

- (a) when appointed for the whole of the State or the Union territory, of or above the rank of the Joint Director of Health and Family Welfare; and
- (b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

(4) The Appropriate Authority shall have the following functions, namely:—

- (a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;
- (b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;
- (c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action; and
- (d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration.

(5) The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

(6) The Advisory Committee shall consist of—

- (a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists;
- (b) one legal expert;
- (c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;
- (d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

(7) No person who, in the opinion of the Central Government or the State Government, as the case may be, has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex shall be appointed as a member of the Advisory Committee.

(8) The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon.

Provided that the period intervening between any two meetings shall not exceed the prescribed period.

(9) The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.

CHAPTER VI

REGISTRATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

16. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics. (1)

No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic after the commencement of this Act unless such Centre, Laboratory or Clinic is duly registered separately or jointly under this Act.

(2) Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.

(3) Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged, either partly or exclusively, in counselling or conducting pre-natal diagnostic techniques for any of the purposes mentioned in section 4, immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement.

(4) Subject to the provisions of section 6, every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged in counselling or conducting pre-natal diagnostic techniques shall cease to conduct any such counselling or technique on the expiry of six months from the date of commencement of this Act unless such Centre, Laboratory or Clinic has applied for registration and is so registered separately or jointly or till such application is disposed of, whichever is earlier.

(5) No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless the Appropriate Authority is satisfied that such Centre, Laboratory or Clinic is in a position to provide such facilities, maintain such equipment and standards as may be prescribed.

19. Certificate of registration - (1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

(2) If, after the inquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the rules, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.

(4) The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

20. Cancellation or suspension of registration - (1) The Appropriate Authority may *suo moto*, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is, of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

21. Appeal The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to—

- (i) the Central Government, where the appeal is against the order of the Central Appropriate Authority; and
- (ii) the State Government, where the appeal is against the order of the State Appropriate Authority, in the prescribed manner.

CHAPTER VII

OFFENCES AND PENALTIES

22. Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention - (1) No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue or cause to be issued any advertisement in any manner regarding facilities of pre-natal determination of sex available at such Centre, Laboratory, Clinic or any other place.

(2) No person or organisation shall publish or distribute or cause to be published or distributed any advertisement in any manner regarding facilities of pre-natal determination of sex available at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation --For the purposes of this section, "advertisement" includes any notice, circular, label wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas.

23. Offences and penalties. - (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

(2) The name of the registered medical practitioner who has been convicted by the court under sub-section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or of a medical geneticist, gynaecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on any pregnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

24. Presumption in the case of conduct of pre-natal diagnostic techniques - Notwithstanding anything in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman has been compelled by her husband or the relative to undergo pre-natal diagnostic technique and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.

25. Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided. - Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

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

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

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

Explanation --For the purposes of this section, --

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

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

27. **Offence to be cognizable, non-bailable and non-compoundable** - Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

28. **Cognizance of offences.** (1) No court shall take cognizance of an offence under this Act except on a complaint made by—

- (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority, or
- (b) a person who has given notice of not less than thirty days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.—For the purpose of this clause, "person" includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

CHAPTER VIII

MISCELLANEOUS

29. **Maintenance of records.** (1) All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the records and all other documents of such Centre, Laboratory or Clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf.

30. **Power to search and seize records, etc.** - (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

31. **Protection of action taken in good faith.** - No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorised by the Central or State Government or by the Authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

32. **Power to make rules.** - (1) The Central Government may make rules for carrying out the provisions of this Act.

(2) in particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (1) of section 3;
- (ii) the form in which consent of a pregnant woman has to be obtained under section 5;
- (iii) the procedure to be followed by the members of the Central Supervisory Board in the discharge of their functions under sub-section (4) of section 8;
- (iv) allowances for members other than ex officio members admissible under sub-section (5) of section 9;
- (v) the period intervening between any two meetings of the Advisory Committee under the proviso to sub-section (8) of section 17;
- (vi) the terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee under sub-section (9) of section 17;
- (vii) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 18;
- (viii) the facilities to be provided, equipment and other standards to be maintained by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under sub-section (5) of section 18;
- (ix) the form in which a certificate of registration shall be issued under sub-section (1) of section 19;
- (x) the manner in which and the period after which a certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 19;
- (xi) the manner in which an appeal may be preferred under section 21;
- (xii) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 29;
- (xiii) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under sub-section (1) of section 30;
- (xiv) any other matter that is required to be, or may be, prescribed

33 Power to make regulations— The Board may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for—

- (a) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 9;
- (b) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 11;
- (c) the method of appointment, the conditions of service and the scales of pay and allowances of the officer and other employees of the Board appointed under section 12;
- (d) generally for the efficient conduct of the affairs of the Board.

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

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) RULES, 1996

1. Short title and commencement. - (1) These rules may be called the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - In these rules, unless the context otherwise requires -

- (a) "Act" means The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994);
- (b) "employee" means a person working in or employed by a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic, and includes those working on part-time, contractual, consultancy, honorary or on any other basis;
- (c) "Form" means a Form appended to these rules;
- (d) "Schedule" means a Schedule appended to these rules;
- (e) "Section" means a section of the Act;
- (f) words and expressions used herein and not defined in these rules but defined in the Act, shall have the meanings, respectively, assigned to them in the Act.

3. Minimum requirements. - (1) The minimum qualifications of the employees, the minimum equipment and minimum place for a Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic shall be as specified in Schedules I, II and III.

(2) Where an institute, hospital, nursing home, or any place, by whatever name called, provides services jointly of Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, or any combination of these, it shall conform to the requirements as specified in Schedules I, II and III.

4. Registration of Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic. - (1) An application for registration shall be made to the Appropriate Authority, in duplicate, in Form A.
(2) The Appropriate Authority, or any person in his office authorized in this behalf, shall acknowledge receipt of the application for registration, in the acknowledgement slip provided at the bottom of Form A, immediately if delivered at the office of the Appropriate Authority, or not later than the next working day if received by post.

5. Application Fee. - (1) Every application for registration under rule 4 shall be accompanied by an application fee of:-

- (a) Rs.2000.00 for Genetic Counselling Centre;
- (b) Rs.3000.00 for Genetic Laboratory;
- (c) Rs.3000.00 for Genetic Clinic; and
- (d) Rs.4000.00 for an institute, hospital, nursing home, or any place providing jointly the services of a Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic or any combination of such Centre, Laboratory or Clinic.

(2) The application fee shall be paid by a demand draft drawn in favour of the Appropriate Authority, on any scheduled bank located at the headquarters of the Appropriate Authority.

6. Certificate of registration. - (1) The Appropriate Authority shall, after making such enquiry and after satisfying itself that the applicant has complied with all the requirements, place the application before the Advisory Committee for its advice.

(2) Having regard to the advice of the Advisory Committee the Appropriate Authority shall grant a certificate of registration, in duplicate, in Form B to the applicant. One copy of the certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic at a conspicuous place at its place of business.

Provided that the Appropriate Authority may grant a certificate of registration to a Genetic Laboratory or a Genetic Clinic to conduct one or more specified pre-natal diagnostic tests or procedures, depending on the availability of place, equipment and qualified employees, and standards maintained by such laboratory or clinic.

(3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for the reasons to be recorded in

writing, reject the application for registration and communicate such rejection to the applicant as specified in Form C

(4) An enquiry under sub-rule (1), including inspection at the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, shall, be carried out only after due notice is given to the applicant by the Appropriate Authority

(5) Grant of certificate of registration or rejection of application for registration shall be communicated to the applicant as specified in Form B or Form C, as the case may be, within a period of ninety days from the date of receipt of application for registration

(6) The certificate of registration shall be non-transferable. In the event of change of ownership or change of management or on ceasing to function as a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, both copies, of the certificate of registration shall be surrendered to the Appropriate Authority

(7) In the event of change of ownership or change of management of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the new owner or manager of such Centre, Laboratory or Clinic shall apply afresh for grant of certificate of registration

7 Validity of registration. - Every certificate of registration shall be valid for a period of five years from the date of its issue

8 Renewal of registration - (1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgement of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of rule 4.

(2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the Advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.

(3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in Form C

(4) The fees payable for renewal of certificate of registration shall be one half of the fees provided in sub-rule (1) of rule 5.

(5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication of rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

(6) In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed.

9 Maintenance and preservation of records - (1) Every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic shall maintain a register showing, in serial order, the names and addresses of the women given genetic counseling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their husbands or fathers and the date on which they first reported for such counseling, procedure or test.

(2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counseled shall be as specified in Form D

(3) The record to be maintained by every Genetic Laboratory, in respect of each woman subjected to any pre-natal diagnostic test, shall be as specified in Form E

(4) The record to be maintained by every Genetic Clinic, in respect of each woman subjected to any pre-natal diagnostic procedure, shall be as specified in Form F

(5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved as permanent records.

(6) All case related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic for a period of two years from the date of completion of

counseling, pre-natal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings, or till the expiry of the said period of two years, whichever is later.

(7) In case the Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

10. Conditions for conducting pre-natal diagnostic procedures - (1) Before conducting any pre-natal diagnostic procedure, a written consent, as specified in Form G, in a language the pregnant woman understands, shall be taken from her.

Provided that where a Genetic Clinic has taken a sample of any body tissue or body fluid and sent it to a Genetic Laboratory for analysis or test, it shall not be necessary for the Genetic Laboratory to obtain a fresh consent in Form G.

(2) All the State Governments and Union Territories may issue translation of Form G in languages used in the State or Union Territory and where no official translation in a language understood by the pregnant woman is available, the Genetic Clinic may translate Form G into a language she understands.

11 Facilities for inspection - Every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic shall afford reasonable facilities for inspection of the place, equipment and records to the Appropriate Authority or to any other person authorized by the Appropriate Authority in this behalf.

12 Procedure for search and seizure - (1) The Appropriate Authority or any officer authorized in this behalf may enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, in the presence of two or more independent and respectable persons for the purposes of Section 30.

(2) A list of any document, record, register, book, pamphlet, advertisement or any other material object found in the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and seized shall be prepared in duplicate at the place of effecting the seizure. Both copies of such list shall be signed on every page by the Appropriate Authority or the officer authorized in this behalf and by the witnesses to the seizure.

Provided that the list may be prepared, in the presence of the witnesses, at a place other than the place of seizure if, for reasons to be recorded in writing, it is not practicable to make the list at the place of effecting the seizure.

(3) One copy of the list referred to in sub-rule (2) shall be handed over, under acknowledgement, to the person from whose custody the document, record, register, book, pamphlet, advertisement or any other material object have been seized.

Provided that a copy of the list of such document, record, register, book, pamphlet, advertisement or other material object seized may be delivered under acknowledgement, or sent by registered post to the owner or manager of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, if no person acknowledging custody of the document, record, register, book, pamphlet, advertisement or other material object seized is available at the place of effecting the seizure.

(4) If any material object seized is perishable in nature, the Appropriate Authority, or the officer authorized in this behalf shall make arrangements promptly for sealing, identification and preservation of the material object and also convey it to a facility for analysis or test, if analysis or test be required.

Provided that the refrigerator or other equipment used by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic for preserving such perishable material object may be sealed until such time as arrangements can be made for safe removal of such perishable material object and in such eventuality, mention of keeping the material object seized, on the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be made in the list of seizure.

(5) In the case of non-completion of search and seizure operation, the Appropriate Authority or the officer authorized in this behalf may make arrangement, by way of mounting a guard or sealing of the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, for safe keeping, listing and removal of documents, records, book or any other material object to be seized, and to prevent any tampering with such documents, records, books or any other material object.

13 Intimation of changes in employees, place or equipment - Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority within a period of thirty days of such change.

14. Conditions for analysis or test and pre-natal diagnostic procedures. - (1) No Genetic Laboratory shall accept for analysis or test any sample, unless referred to it by a Genetic Clinic.
(2) Every pre-natal diagnostic procedure shall invariably be immediately preceded by locating the foetus and placenta through ultrasonography, and the pre-natal diagnostic procedure shall be done under direct ultrasonographic monitoring so as to prevent any damage to the foetus and placenta.

15. Meetings of the Advisory Committees. - The intervening period between any two meetings of Advisory Committees constituted under sub-section (5) of Section 17 to advise the Appropriate Authority shall not exceed sixty days.

16. Allowances to members of the Central Supervisory Board. - (1) The ex-officio members, and other Central and State Government officers appointed to the Board will be entitled to Travelling Allowance and Daily Allowance for attending the meetings of the Board as per the Travelling Allowance rules applicable to them.

(2) The non-official members appointed to, and Members of Parliament elected to the Board will be entitled to Travelling Allowance and Daily Allowance for attending the meetings of the Board as admissible to non-official and Members of Parliament as the case may be, under the Travelling Allowances rules of the Central Government.

17. Public Information. - (1) Every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic shall prominently display on its premises a notice in English and in the local language or languages for the information of the public, to effect that disclosure of the sex of the foetus is prohibited under law.

(2) At least one copy each of the Act and these rules shall be available on the premises of every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, and shall be made available to the clientele on demand for perusal.

(3) The Appropriate Authority, the Central Government, the State Government, and the Government/Administration of the Union Territory may publish periodically lists of registered Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics and findings from the reports and other information in their possession, for the information of the public and for use by the experts in the field.

SCHEDULE I

[See Rule 3 (1)]

REQUIREMENTS FOR REGISTRATION OF A GENETIC COUNSELLING CENTRE

A. PLACE

A room with an area of seven (7) square meters.

B. EQUIPMENT

Educational charts/models.

C. EMPLOYEES

Any one of the following-

- (1) Medical Geneticist.
- (2) Gynaecologist with 6 months' experience, in genetic counseling, or having completed 4 weeks' training in genetic counseling.
- (3) Paediatrician with 6 months' experience in genetic counseling, or having completed 4 weeks' training in genetic counseling.

SCHEDULE II

[See Rule 3(1)]

REQUIREMENTS FOR REGISTRATION OF A GENETIC LABORATORY

A. PLACE

A room with adequate space for carrying out tests.

B. EQUIPMENT

These are categorized separately for each of the under-mentioned studies.

Chromosomal studies:

- (1) Laminar flow-hood with ultraviolet and fluorescent light or other suitable culture hood.
- (2) Photo-microscope with fluorescent source of light.
- (3) Inverted microscope.
- (4) Incubator and oven.
- (5) Carbon-dioxide incubator or closed system with 5% CO₂ atmosphere.
- (6) Autoclave.
- (7) Refrigerator.
- (8) Water bath.
- (9) Centrifuge.
- (10) Vortex mixer.
- (11) Magnetic stirrer.
- (12) PH meter.
- (13) A sensitive balance (preferable electronic) with sensitivity of 0.1 milligram.
- (14) Double distillation apparatus (glass).

Biochemical studies:

(requirements according to tests to be carried out)

- (1) Laminar flow-hood with ultraviolet and fluorescent light or other suitable culture hood.
- (2) Inverted microscope.
- (3) Incubator and oven.
- (4) Carbon-dioxide incubator or closed system with 5% CO₂ atmosphere.
- (5) Autoclave.
- (6) Refrigerator.
- (7) Water bath.
- (8) Centrifuge.
- (9) Electrophoresis apparatus and power supply.
- (10) Chromatography chamber.
- (11) Spectro-photometer and Elisa reader or Radio-immunoassay system (with gamma betacounter) or fluorometer for various biochemical test.
- (12) Vortex mixer.
- (13) Magnetic stirrer.
- (14) PH meter.
- (15) A sensitive balance (preferable electronic) with sensitivity of 0.1 milligram.
- (16) Double distillation apparatus (glass).
- (17) Liquid nitrogen tank.

Molecular studies:

- (1) Inverted microscope.
- (2) Incubator.
- (3) Oven.
- (4) Autoclave.
- (5) Refrigerators (4 degree and minus 20 degree Centigrade).
- (6) Water bath.
- (7) Microcentrifuge.

- (8) Electrophoresis apparatus and power supply.
- (9) Vortex mixer.
- (10) Magnetic stirrer.
- (11) PH meter.
- (12) A sensitive balance (preferable electronic) with sensitivity of 0.1 milligram.
- (13) Double distillation apparatus (glass).
- (14) P.C.R. machine.
- (15) Refrigerated centrifuge.
- (16) U.V. Illuminator with photographic attachment or other documentation system.
- (17) Precision micropipettes.

C.EMPLOYEES

- (1) A Medical Geneticist.
- (2) A laboratory technician having a B.Sc. degree in Biological Sciences or a degree or a diploma in medical laboratory course with at least one year's experience in conducting appropriate pre-natal diagnostic tests.

SCHEDULE III

[See Rule 3(1)]

REQUIREMENTS FOR REGISTRATION OF A GENETIC CLINIC

A.PLACE

A room with an area of twenty (20) square metres with appropriate aseptic arrangements.

B.EQUIPMENT

- (1) Equipment and accessories necessary for carrying out clinical examination by an obstetrician/gynaecologist.
 - (2) Equipment, accessories necessary for other facilities required for operations envisaged in the Act.
 - (a) An ultra-sonography machine.*
 - (b) Appropriate catheters and equipment for carrying out chorionic villi aspirations per vagina or per abdomen.*
 - (c) Appropriate sterile needles for amniocentesis or cordocentesis.*
 - (d) A suitable foetoscope with appropriate accessories for foetoscopy, foetal skin or organ biopsy or foetal blood sampling shall be optional.
- (* These constitute the minimum requirement of equipment for conducting the relevant procedure)
- (3) Equipment for dry and wet sterilization.
 - (4) Equipment for carrying out emergency procedures such as evacuation of uterus or resuscitation in case of need.

C.EMPLOYEES

- (1) A gynaecologist with adequate experience in pre-natal diagnostic procedures (should have performed at least 20 procedures under supervision of a gynaecologist experienced in the procedure which is going to be carried out, for example chorionic villi biopsy, amniocentesis, cordocentesis and others indicated at B above).
- (2) A Radiologist or Registered Medical Practitioner for carrying out ultrasonography. The required experience shall be 100 cases under supervision of a similarly qualified person experienced in these techniques.

FORM A
[See rules 4(1) and 8(1)]
(To be submitted in Duplicate)

WITH SUPPORTING DOCUMENTS AS ENCLOSURES, ALSO IN DUPLICATE FORM OF APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION OF A GENETIC COUNSELLING CENTRE/GENETIC LABORATORY/GENETIC CLINIC

1. Name of the applicant

(specify Sh./Smt./Kur./Dr.)

2. Address of the applicant

3. Capacity in which applying

(specify owner/partner/managing director/other-to be stated)

4. Type of facility to be registered

(specify Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/any combination of these)

5. Full name and address/addresses of Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic with Telephone/Telegraphic Telex/Fax E-mail numbers.

6. Type of ownership and Organisation (specify individual ownership/partnership/company/co-operative/any other). In case of type of organization other than individual ownership, furnish copy of articles of association and names and addresses of other persons responsible for management, as enclosure.

7. Type of Institution (Govt. Hospital/Municipal Hospital/Public Hospital/Private Hospital/Private Nursing Home/Private Clinic/Private Laboratory/any other to be stated.) 8. Specific pre-natal diagnostic procedures/tests for which approval is sought (for example amniocentesis, chorionic villi aspiration/chromosomal/biochemical/molecular studies etc.)

Leave blank if registration sought for Genetic Counselling Centre only.

9. (a) Space available for the Counselling Centre/Clinic/Laboratory give total work area excluding lobbies, waiting rooms, stairs etc. and enclose plan)

10. Equipment available with the make and model of each equipment. List to be attached on a separate sheet.

11. (a) Facilities available in the Counselling Centre.

(b) Whether facilities are available in the Laboratory/Clinic for the following tests:

- (i) Ultrasound
- (ii) Amniocentesis
- (iii) Chorionic villi aspiration
- (iv) Foetoscopy
- (v) Foetal biopsy
- (vi) Cordocentesis

(a) (b) Whether facilities are available in the Laboratory, Clinic for the following:

- (i) Chromosomal studies
- (ii) Biochemical studies
- (iii) Molecular studies

12. Names, qualifications, experience and registration number of employees may be furnished as an enclosure (Refer Schedules I, II or III).

13. State whether the Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic¹¹¹ qualifies for registration in terms of minimum requirements laid down in Schedule I, II and III and if not, reasons therefore.

14. For renewal applications only:

(a) Registration No.

(b) Date of issue and date of expiry of existing certificate of registration.

15. List of Enclosures:

Please attach a list of enclosures giving the supporting documents enclosed to this application.

Date:

Place

(.....)
Name and signature of applicant

¹¹¹ Strike out whichever is not applicable or not necessary. All enclosures are to be authenticated by signature of the applicant.

DECLARATION

I, Sh./Smt./Kum./Dr. son/daughter/wife of aged
..... years resident of

..... hereby declare that I have read and understood the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994) and the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1995.

I also undertake to explain the said Act and Rules to all employees of the Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic in respect of which registration is sought and to ensure that Act and Rules are fully complied with.

Date:

Place

(.....)
Name and signature of applicant

ACKNOWLEDGEMENT

[See Rules 4(2) and 8(1)]

The application in Form A in duplicate for grant*/renewal* of registration of Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic* by (Name and address of applicant) has been received by the Appropriate Authority On (date).

*The list of enclosures attached to the application in Form A has been verified with the enclosures submitted and found to be correct.

OR

On verification it is found that the following documents mentioned in the list of enclosures are not actually enclosed.

This acknowledgement does not confer any rights on the applicant for grant or renewal of registration.

(.....)
Signature and Designation of Appropriate Authority, or authorized person in the Office of the Appropriate Authority.

Date:

SEAL

ORIGINAL
DUPLICATE FOR DISPLAY

FORM B
[See Rules 6(2), 6(5) and 6(2)]
CERTIFICATE OF REGISTRATION

(To be issued in duplicate)

1. 1. In exercise of the powers conferred under Section 19 (1) of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994), the Appropriate Authority hereby grants registration to the Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic* named below for purposes of carrying out Genetic Counselling/Pre-natal Diagnostic Procedures*/Pre-natal Diagnostic Tests as defined in the aforesaid Act for a period of five years ending on
2. 2. This registration is granted subject to the aforesaid Act and Rules thereunder and any contravention thereof shall result in suspension or cancellation of this Certificate of Registration before the expiry of the said period of five years.
- A. Name and address of the Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*
- B. Name of Applicant for registration
- C. Pre-natal diagnostic procedures approved for (Genetic Clinic).
 - (i) Ultrasound
 - (ii) Amniocentesis
 - (iii) Chorionic villi biopsy
 - (iv) Foetoscopy
 - (v) Foetal skin or organ biopsy
 - (vi) Cordocentesis
 - (vii) Any other (specify)
- D. D. Pre-natal diagnostic tests* approved (for Genetic Laboratory)
 - (i) Chromosomal studies
 - (ii) Biochemical studies
 - (iii) Molecular studies
3. 3. Registration No. allotted
4. 4. For renewed Certificate of Registration only
Period of validity of earlier Certificate From To Or Registration.

Signature, name and designation of
The Appropriate Authority

Date:

SEAL

DISPLAY ONE COPY OF THIS CERTIFICATE AT A CONSPICUOUS PLACE AT THE PLACE OF BUSINESS

FORM C

[See Rules 6(3), 6(5) and 8(3)]

REJECTION OF APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION

In exercise of the powers conferred under Section 19(2) of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Appropriate Authority Hereby rejects the application for grant*/renewal* of registration of the Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic* named below for the reasons stated.

Name and address of the Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*

Name of Applicant who has applied for registration

Reasons for rejection of application for registration

Signature, name and designation of

The Appropriate Authority

Date:

SEAL

*Strike out whichever is not applicable or necessary.

FORM D
[See rule 9(2)]

NAME, ADDRESS AND REGISTRATION No. OF GENETIC COUNSELLING CENTRE
RECORD TO BE MAINTAINED BY THE GENETIC COUNSELLING CENTRE

1. Patient's name
2. Age
3. Husband's/Father's name
4. Full address with Tel. No. if any
5. Referred by (Full name and address of Doctor(s) with registration No(s) (Referred note to be preserved carefully with case papers)
6. Last menstrual period/weeks of pregnancy
7. History of genetic/medical disease in the family (specify) Basis of diagnosis:
 - (a) Clinical
 - (b) Bio-chemical
 - (c) Cytogenetic
 - (d) Other (e.g. radiological)
8. Indication for pre-natal diagnosis
 - A. Previous child/children with:
 - (i) Chromosomal disorders
 - (ii) Metabolic disorders
 - (iii) Congenital anomaly
 - (iv) Mental retardation
 - (v) Haemoglobinopathy
 - (vi) Sex linked disorders
 - (vii) Any other (specify)
 - B. Advanced maternal age (35 years)
 - C. Mother/father/sibling has genetic disease (specify)
 - D. Others (specify)
9. Procedure advised²²⁾
 - (i) Ultrasound
 - (ii) Amniocentesis
 - (iii) Chorionic villi biopsy
 - (iv) Foetoscopy
 - (v) Foetal skin or organ biopsy
 - (vi) Cordocentesis
 - (vii) Any other (specify)
10. Laboratory tests to be carried out
 - (i) Chromosomal studies
 - (ii) Biochemical studies
 - (iii) Molecular studies
11. Result of pre-natal diagnosis
If abnormal give details. Normal/Abnormal
12. Was MTP advised?
13. Name and address of Genetic Clinic* to which patient referred
14. Dates of commencement and completion of genetic counseling

Name, Signature and Registration No. of the
Medical Geneticist/Gynaecologist/Paediatrician

Date:

²²⁾ Strike out whichever is not applicable or necessary.

FORM E
[See Rule 9(3)]

**NAME, ADDRESS AND REGISTRATION No. OF GENETIC LABORATORY RECORD TO
BE MAINTAINED BY THE GENETIC LABORATORY**

1. Patient's name
2. Age
3. Husband's/Father's name
4. Full address with Tel. No., if any
5. Referred by/sample sent by (full name and address of Genetic Clinic) (Referral note to be preserved carefully with case papers)
6. Type of sample: Maternal blood/Chorionic villus sample/amniotic fluid/Foetal blood or other foetal tissue (specify)
7. Specify indication for pre-natal diagnosis
 - A. Previous child/children with
 - (i) Chromosomal disorders
 - (ii) Metabolic disorders
 - (iii) Malformation(s)
 - (iv) Mental retardation
 - (v) Hereditary haemolytic anaemia
 - (vi) Sex linked disorder
 - (vii) Any other (specify)
 - B. Advanced maternal age (>35 years)
 - C. Mother/father/sibling has genetic disease (specify)
 - D. Other (specify)
8. Laboratory tests carried out (give details)
 - (viii) Chromosomal studies
 - (ix) Biochemical studies
 - (x) Molecular studies
9. Result of pre-natal diagnosis
If abnormal give details. Normal/Abnormal
10. Date(s) on which tests carried out.
The results of the Pre-natal diagnostic tests were conveyed to on
.....

**Name, Signature and Registration No. of the
Medical Geneticist**

Date:

FORM F

[See Rule 9(4)]

**NAME, ADDRESS AND REGISTRATION No. OF GENETIC CLINIC
RECORD TO BE MAINTAINED BY THE GENETIC CLINIC**

1. Patient's name
2. Age
3. Husband's/Father's name
4. Full address with Tel. No., if any
5. Referred by (full name and address of Doctor(s)/Genetic Counselling Centre (Referral note to be preserved carefully with case papers)
6. Last menstrual period/weeks of pregnancy
7. History of genetic/medical disease in the family (specify) Basis of diagnosis:
 - (a) Clinical
 - (b) Bio-chemical
 - (c) Cytogenetic
 - (d) Other (e.g. radiological-specify)
8. Indication for pre-natal diagnosis
 - A. Previous child/children with:
 - (i) Chromosomal disorders
 - (ii) Metabolic disorders
 - (iii) Congenital anomaly
 - (iv) Mental retardation
 - (v) Haemoglobinopathy
 - (vi) Sex linked disorders
 - (vii) Any other (specify)
 - B. Advanced maternal age (35 years)
 - C. Mother/father/sibling has genetic disease (specify)
 - D. Other (specify)
9. Procedures carried out (with name and registration No. of Gynaecologist/Radiologist/Registered Medical Practitioner) who performed it.
 - (i) Ultrasound
 - (ii) Amniocentesis
 - (iii) Chorionic Villi aspiration
 - (iv) Foetal biopsy
 - (v) Cordocentesis
 - (vi) Any other (specify)
10. Any complication of procedure – please specify
11. Laboratory tests recommended⁽¹⁾⁽²⁾
 - (i) Chromosomal studies
 - (ii) Biochemical studies
 - (iii) Molecular studies
12. Result of pre-natal diagnostic procedure and specify Normal/Abnormal abnormality detected, if any
13. Was MTP advised/conducted?
14. Date(s) on which procedures carried out

⁽¹⁾⁽²⁾ Strike out whichever is not applicable or not necessary.

15. Date on which MTP carried out.

16. Date on which consent obtained.

17. The result of pre-natal diagnostic procedure were conveyed toon

**Name, Signature and Registration number of the
Gynaecologist/Radiologist/Registered Medical
Practitioner**

**Date:
Place**

FORM G
[See Rule 10]
FORM OF CONSENT

I, wife/daughter of Age years
residing at hereby state that I have been explained fully the
probable side effects and after effects of the pre-natal diagnostic procedures. I wish to undergo the
pre-natal diagnostic procedures in my interest to find out the possibility of any abnormality (i.e.
deformity or disorder) in the child I am carrying.

I undertake not to terminate the pregnancy if the pre-natal procedure and any pre-natal tests
conducted show the absence of deformity or disorders. I understand that the sex of the foetus will not
be disclosed to me.

I understand that breach of this undertaking will make me liable to penalty as prescribed in
the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994).

Date
Place

Signature

I have explained the contents of the above consent to the patient and her companion (Name
..... Address Relationship) in a
language she/they understand.

**Name, Signature and/Registration number
Of Gynaecologist**

Date

**Name, Address and Registration number of
Genetic Clinic**

FORM H
[See Rule 9(5)]

**PERMANENT RECORD OF APPLICATION FOR REGISTRATION, GRANT OF REGISTRATION
REJECTION OF APPLICATION FOR REGISTRATION AND RENEWALS OF REGISTRATION**

1. Sl. No.
2. File number of Appropriate Authority.
3. Date of receipt of application for grant of registration.
4. Name, Address, Phone/Fax etc. of Applicant
5. Name and address(es) of Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*
6. Date on which case considered by Advisory Committee and recommendation of Advisory Committee, in summary.
7. Outcome of application (state granted/rejected and date of issue of orders).
8. Registration number allotted and date of expiry of registration.
9. Renewals (date of renewal and renewed upto).
10. File number in which renewals dealt.
11. Additional information, if any.

**Name, Designation and Signature of
Appropriate Authority**

Guidance for Appropriate Authority

- (a) Form H is a permanent record to be maintained as a register, in the custody of the Appropriate Authority.
- (b)* Means strike out whichever is not applicable.
- (c) Against item 7, record date of issue of order in Form B or Form C.
- (d) On renewal, the Registration Number of the Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic will not change. A fresh registration Number will be allotted in the event of change of ownership or management.
- (e) No registration number shall be allotted twice.
- (f) Each Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic may be allotted a folio consisting of two facing pages of the Register for recording Form H.
- (g) The space provided for 'additional information' may be used for recording suspension, cancellations, rejection of application for renewal, change of ownership/management, outcome of any legal proceedings, etc.
- (h) Every folio (i.e. 2 pages) of the Register shall be authenticated by signature of the Appropriate Authority with date, and every subsequent entry shall also be similarly authenticated.

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) (ADVISORY COMMITTEE) RULES, 1996

G.S.R. 540 (E), dated 26th November, 1996- In exercise of the powers conferred by Sec.32 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (Advisory Committees) Rules, 1996.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.- In these rules, unless the context otherwise requires:-

- (a) "Act" means the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994);
- (b) "Advisory Committee" means an Advisory Committee constituted under sub-section (5) of Section 17 of the Act;
- (c) "Chairman" means the Chairman of the Advisory Committee appointed under sub-section (5) of Section 17;
- (d) "Principle rules" means the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996;
- (e) "section" means a section of the Act;
- (f) "words and expressions" used herein and not defined in these rules but defined in the Act or in the principal rules, as the case may be, shall have the meanings, respectively, assigned to them in the Act or in the principle rules.

3. Terms and conditions of appointment as a member of an Advisory Committee.- (1) No person shall be appointed as a member of an Advisory Committee if he -

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government or the State Government, as the case may be, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent Court; or
- (d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or
- (e) has, in the opinion of the Central Government or the State Government, as the case may be, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Advisory Committee; or
- (f) has, in the opinion of the Central Government or the State Government, as the case may be, been associated with the sue or promotion of pre-natal diagnostic techniques for determination of sex.

(2) Every member of an Advisory Committee shall be a resident of the State or Union Territory, for which the Advisory Committee to which he is appointed as a member, has been constituted.

(3) A member of an Advisory Committee shall hold office during the pleasure of the Central Government or the State Government, as the case may be.

(4) Subject to the provisions of sub-rule (3), every such member shall hold office for a period not exceeding three years:

Provided that any person holding office as a member of an Advisory Committee immediately before the commencement of these rules shall hold such office only for the term of three years from the date of his appointment.

(5) A retiring member or a member whose term of office has expired by efflux of time shall be eligible for re-appointment.

(6) A casual vacancy in an Advisory Committee caused by the resignation, death, transfer or removal of any member or otherwise shall be filled by fresh appointment and the person so appointed shall hold office for a period not exceeding the term of office of the member in whose place he is appointed.

(7) The Central Government or the State Government, as the case may be, may remove from office any member of an Advisory Committee before the expiration of his term of office.

(8) Every member of an Advisory Committee shall be entitled to draw traveling and daily allowances for journeys performed by him for attending the meetings (including a meeting adjourned for want of quorum) of the Advisory Committee or for the purpose of discharging any other duties prescribed under the Act, or under the Principle rules or under these rules, on the scale admissible to First Grade Officers of the Government of the State or of the Union Territory, as the case may be.

4 Meetings of the Advisory Committees. - The intervening period between any two meetings of an Advisory Committee shall not exceed sixty days.

5 Notice of meetings. - (1) At least seven clear days' notice of all meetings of the Advisory Committee shall be given to each member, but an urgent meeting may be called by the Chairman at three clear days' notice.

Provided that if the Chairman is not available, and a meeting is required to be held within the time limit prescribed in Rule 4, the Appropriate Authority may call a meeting with seven clear days' notice after consultation with not less than four of the members of the Advisory Committee.

(2) The notice shall state the business to be transacted at the meeting and no business other than that stated shall be transacted at such meeting except with the consent of the Chairman or on his motion.

6 Business ordinarily to be transacted at meetings. - The business of the Advisory Committee shall ordinarily be transacted at a meeting duly called in accordance with the provisions of these rules.

Provided that the Chairman may, if he thinks fit, circulate any urgent matter among the members of the Advisory Committee for their opinion.

7 Quorum. - At every meeting of the Advisory Committee, four members shall form a quorum.

8 Chairman of the meeting. - Meetings of the Advisory Committee shall be presided over by the Chairman or in his absence, or if no Chairman has been appointed, by a member elected by the members present from among themselves.

9 Assistance to be rendered by the Appropriate Authority to the Advisory Committee. - (1) Every meeting of the Advisory Committee shall be attended by the Appropriate Authority concerned.

(2) All secretarial and other assistance to the Advisory Committee for the discharge of its functions shall be provided by the Appropriate Authority.

(3) The Appropriate Authority shall issue the notice of meeting, agenda, notes on agenda and the minutes of the meeting, in consultation with the Chairman, subject to the provisions of Rules 5, 6, 7 and 12.

10 Decisions on questions before the Advisory Committee. - (1) The advice tendered by the Advisory Committee shall be adopted, and in the event of any difference of opinion amongst the members, the matter shall be put to vote and decided by a simple majority of the members present.

(2) The Appropriate Authority shall not have a right to vote.

(3) In the event of tie in votes, the Chairman or in his absence, the member presiding shall have a second or casting vote.

(4) The fact of any question having been decided by the process of voting instead of by adoption, shall be recorded in the minutes of that meeting of the Advisory Committee.

11 Vacancies etc. not to invalidate proceedings of the Advisory Committees. - No meeting or proceeding of the Advisory Committee shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of the Advisory Committee; or

(b) any defect in the appointment of a person to be a member of the Advisory Committee; or

(c) any irregularity in the procedure adopted by the Advisory Committee not affecting the merits of the case.

12 Record of proceedings of the Advisory Committee. - One set of the agenda, notes on agenda, supporting documents and minutes of every meeting of the Advisory Committee shall be authenticated by the signature of the Chairman or in his absence by the signature of the member presiding, and preserved by the Appropriate Authority as permanent records.

The Gazette of India

EXTRAORDINARY
PART II - Section I

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NEW DELHI, MONDAY, JANUARY 20, 2003/ PAUSA

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 20th January, 2003/Pausa 30, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 17th January, 2003, and is hereby published for general information :-

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) AMENDMENT ACT, 2002

No. 14 of 2003

[17th January, 2003]

An Act further to amend the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

BE it enacted by Parliament in the Fifty-third year of the Republic of India as follows:-

1.(1) This Act may be called the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002. Short title and commencement

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

57 of 1994 2. In the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as the principal Act), for the long title, the following long title shall be substituted, namely:- Substitution of long title.

"An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto."

Amendment of section 1. 3. 3. In section 1 of the principal Act, in sub-section (1), for the words and brackets "the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse)", the words and brackets "the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection)" shall be substituted.

Amendment of section 2. 4. In section 2 of the principal Act, -

(i) after clause (b), the following clauses shall be inserted, namely:-

'(ba) "conceptus" means any product of conception at any stage of development from fertilisation until birth including extra embryonic membranes as well as the embryo or foetus;

(bb) "embryo" means a developing human organism after fertilisation till the end of eight weeks (fifty-six days);

(bc) "foetus" means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth;';

(ii) in clause(d), the following *Explanation* shall be added, namely:-

'*Explanation* - For the purpose of this clause, "Genetic Clinic" includes a vehicle, where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used;';

(iii) in clause (e), the following *Explanation* shall be added, namely:-

'*Explanation*:- For the purposes of this clause "Genetic Laboratory" includes a place where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used;';

(iv) for clause(g), the following clause shall be substituted, namely:-

'(g) "medical geneticist" includes a person who possesses a degree or diploma in genetic science in the fields of sex selection and pre-natal diagnostic techniques or has experience of not less than two years in any of these fields after obtaining -

102 of 1956

(i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956; or

(ii) a post-graduate degree in biological sciences;';

(v) for clause (i), the following clause shall be substituted, namely:-

'(i) "pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception;';

(vi) for clause (k), the following clause shall be substituted, namely:-

'(k) "pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;';

(vii) after clause (n), the following clauses shall be inserted, namely:-

“(o) “sex selection” includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex;

(p) “sonologist or imaging specialist” means a person who possesses any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology ;

(q) “State Board” means a State Supervisory Board or a Union territory Supervisory Board constituted under section 16 A;

(r) “State Government” in relation to Union territory with Legislature means the Administrator of that Union territory appointed by the President under article 239 of the Constitution.’

5. In section 3 of the principal Act, for clause (2), the following clause shall be substituted, namely: - Amendment of section 3.

“(2) no Genetic Counselling Center or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess the qualifications as may be prescribed.”.

6. After section 3 of the principal Act, the following sections shall be inserted, namely:- Insertion of new sections 3A and 3B.

“3A. No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them. Prohibition of sex-selection.

3B. No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.”. Prohibition on sale of ultrasound machine etc. to persons, laboratories, clinics etc. not registered under the Act.

7. In section 4 of the principal Act, for clauses (3) and (4), the following clauses shall be substituted, namely:- Amendment of section 4.

“(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled namely:-

- (i) age of the pregnant woman is above thirty-five years,
- (ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as, drugs, radiation, infection or chemicals;
- (iv) the pregnant woman or her spouse has a family history of

mental retardation or physical deformities such as, spasticity or any other genetic disease;
(v) any other condition as may be specified by the Board:

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography:

(4) no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2);

(5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both."

Amendment
of section 5.

8. In section 5 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any other manner."

Amendment
of section 6.

9. In section 6 of the principal Act, after clause (b), the following clause shall be inserted, namely :-

"(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception".

Amendment
of Section 7

10. In section 7 of the principal Act,-

(i) in sub-section (2), for clause (c), the following clause shall be substituted, namely:-

"(c) three members to be appointed by the Central Government to represent the Ministries of Central Government in charge of Women and Child Development, Department of Legal Affairs or Legislative Department in the Ministry of Law, Justice, and Indian System of Medicine and Homeopathy, ex officio;"

(ii) in clause (e), for sub-clause (ii), the following sub-clause shall be substituted, namely:-

"(ii) eminent gynaecologist and obstetrician or expert of strigra or prasuti-tantra."

Amendment
of section 14.

11. In section 14 of the principal Act, for clause (f), the following clause shall be substituted, namely:-

"(f) has, in the opinion of the Central Government, been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or with any sex selection technique."

Amendment
of section 15.

12. In section 15 of the principal Act, the following proviso shall be inserted, namely: -

"Provided that no member other than an ex-officio member shall be appointed for more than two consecutive terms."

Substitution
of new
section for
section 16.

Functions of
the Board.

13. For section 16 of the principal Act, the following section shall be substituted, namely:-

"16. The Board shall have the following functions, namely:-

(i) to advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse;

(ii) to review and monitor implementation of the Act and rules made thereunder and recommend to the Central Government changes in the said Act and rules.

(iii) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide;

(iv) to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics;

(v) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation;

(vi) any other functions as may be prescribed under the Act."

14. After section 16 of the principal Act, the following section shall be inserted, namely: -

Insertion of new
section 16A.

"16A (1) Each State and Union territory having Legislature shall constitute a Board to be known as the State Supervisory Board or the Union territory Supervisory Board, as the case may be, which shall have the following functions: -

Constitution of
State Supervisory
Board and Union
territory
Supervisory
Board.

(i) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide in the State;

(ii) to review the activities of the Appropriate Authorities functioning in the State and recommend appropriate action against them;

(iii) to monitor the implementation of provisions of the Act and the rules and make suitable recommendations relating thereto, to the Board;

(iv) to send such consolidated reports as may be prescribed in respect of the various activities undertaken in the State under the Act to the Board and the Central Government; and

(v) any other functions as may be prescribed under the Act.

(2) The State Board shall consist of: -

(a) the Minister in-charge of Health and Family Welfare in the State, who shall be the Chairperson, ex officio;

(b) Secretary in-charge of the Department of Health and Family Welfare who shall be the Vice-Chairperson, ex officio;

(c) Secretaries or Commissioners in charge of Departments of Women and Child Development, Social Welfare, Law and Indian System of Medicines and Homeopathy, ex officio, or their representatives;

(d) Director of Health and Family Welfare or Indian System of Medicines and Homeopathy of the State

Government, ex officio;
(e) three women members of Legislative Assembly or Legislative Council;
(f) ten members to be appointed by the State Government out of which two each shall be from the following categories:-

- (i) eminent social scientists and legal experts;
- (ii) eminent women activists from non-governmental organizations or otherwise;
- (iii) eminent gynaecologists and obstetricians or experts of sri roga or prasuti-tantra;
- (iv) eminent pediatricians or medical geneticists;
- (v) eminent radiologists or sonologists;
- (g) an officer not below the rank of Joint Director incharge of Family Welfare, who shall be the Member Secretary, ex officio

(3) The State Board shall meet at least once in four months.

(4) The term of office of a member, other than an ex officio member, shall be three years.

(5) If a vacancy occurs in the office of any member other than an ex officio member, it shall be filled by making fresh appointment.

(6) If a member of the Legislative Assembly or member of the Legislative Council who is a member of the State Board, becomes Minister or Speaker or Deputy Speaker of the Legislative Assembly or Chairperson or Deputy Chairperson of the Legislative Council, she shall cease to be a member of the State Board.

(7) One-third of the total number of members of the State Board shall constitute the quorum.

(8) The State Board may co-opt a member as and when required, provided that the number of co-opted members does not exceed one third of the total strength of the State Board.

(9) The co-opted members shall have the same powers and functions as other members, except the right to vote and shall abide by the rules and regulations.

(10) In respect of matters not specified in this section, the State Board shall follow procedures and conditions as are applicable to the Board."

Amendment
of section 17.

15. In section 17 of the principal Act,-

(i) in sub-section (3), for clause (a), the following clause shall be substituted, namely:-

"(a) when appointed for the whole of the State or the Union territory, consisting of the following three members -

(i) an officer of or above the rank of the Joint Director of Health and Family Welfare - Chairperson;

(ii) an eminent woman representing women's organisation;

and
(iii) an officer of Law Department of the State or the Union territory concerned;

Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be

filled within three months of the occurrence.”;

(ii) in sub-section (4), after clause (d), the following clauses shall be inserted, namely:-

“(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo-motu or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or pre-natal determination of sex;

(g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.”;

(iii) for sub-section (7), the following sub-section shall be substituted, namely:-

“(7) No person who has been associated with the use or promotion of pre-natal diagnostic techniques for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.”

16. After section 17 of the principal Act, the following section shall be inserted, namely :-

Insertion of new section 17A.

“17A. The Appropriate Authority shall have the powers in respect of the following matters, namely :-

Powers of Appropriate Authorities.

(a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;

(b) production of any document or material object relating to clause (a);

(c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and

(d) any other matter which may be prescribed.”

17. In section 18 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely :-

Amendment of section 18.

“(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such centre, laboratory or clinic is duly registered under the Act.”

18. For section 22 of the principal Act, the following section shall be substituted, namely:-

Substitution of new section for section 22.

“22. (1) No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or

Prohibition of

centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of the foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.

advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention.

(2) No person or organisation including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation. - For the purposes of this section, 'advertisement' includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any boarding, wall-painting, signal, light, sound, smoke or gas."

Amendment of section 23.

19. In section 23 of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:-

"(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

(4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection."

20. For section 24 of the principal Act, the following section shall be substituted, namely:-

"24 Notwithstanding anything contained in the Indian Evidence Act, 1872, the court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other

Substitution of new section for section 24.

Presumption in the case of conduct of



pre-natal
diagnostic
techniques.

relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section."

21. In section 28 of the principal Act, in sub-section (1), in clause (b), for the words "thirty days", the words "fifteen days" shall be substituted. Amendment of section 28.

22. In section 30 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:- Amendment of section 30.

"(1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place, such Authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act."

23. After section 31 of the principal Act, the following section shall be inserted, namely:- Insertion of new section 31 A.

"31A. (1) If any difficulty arises in giving effect to the provisions of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty:

Removal of difficulties.

Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

24. In section 32, in sub-section (2),-

Amendment of section 32.

(i) for clause (i), the following clauses shall be substituted, namely:-

"(i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (2) of section 3;

(ii) the manner in which the person conducting

ultrasonography on a pregnant woman shall keep record thereof in the Clinic under the proviso to sub-section (3) of section 4;";

(ii) after clause (iv), the following clauses shall be inserted, namely:-

"(iva) code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics to be laid down by the Central Supervisory Board under clause (iv) of section 16;

(ivb) the manner in which reports shall be furnished by the State and Union territory Supervisory Boards to the Board and the Central Government in respect of various activities undertaken in the State under the Act under clause (iv) of sub-section (1) of section 16A;

(ivc) empowering the Appropriate Authority in any other matter under clause (d) of section 17A;".

K.N. CHATURVEDI,
Additional Secy. To the Govt. of India

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New Delhi, FRIDAY, FEBRUARY 14, 2003 /MAGHA 25, 1924

MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Family Welfare)
NOTIFICATION
New Delhi, the 14th February, 2003

**The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse)
Amendment Rules, 2003.**

G.S.R.109(E).- In exercise of the powers conferred by section 32 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994), the Central Government hereby makes the following amendments to the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996.

1. (1) These may be called the **Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Rules, 2003.**

(2) They shall come into force on the date of their publication in the official gazette.

2. In the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996 (hereinafter referred to as the said rules) in rule 1, for sub-rule (1) the following sub-rule shall be substituted, namely:-

"(1) These Rules may be called the **Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996.**"

3. In the said rules, in rule 2, clause (d) shall be omitted.

4. In the said rules, for rule 3 the following rule shall be substituted, namely:-

"3. The qualifications of the employees, the requirement of equipment etc. for a Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall be as under:

(1) Any person being or employing

- (i) a gynaecologist or a paediatrician having six months experience or four weeks training in genetic counseling or
- (ii) a medical geneticists,

having adequate space and educational charts/models/equipments for carrying out genetic counselling may set up a genetic counselling center and get it registered as a genetic counselling center.

(2) (a) Any person having adequate space and being or employing

- (i) a Medical Geneticist and
- (ii) a laboratory technician, having a B.Sc. degree in Biological Sciences or a degree or diploma in medical

laboratory course with at least one year experience in conducting appropriate prenatal diagnostic techniques, tests or procedures may set up a genetic laboratory.

(b) Such laboratory should have or acquire such of the following equipments as may be necessary for carrying out chromosomal studies, bio-chemical studies and molecular studies:-

(i) Chromosomal studies:

- (1) Laminar flow hood with ultraviolet and fluorescent light or other suitable culture hood.
- (2) Photo-microscope with fluorescent source of light.
- (3) Inverted microscope.
- (4) Incubator and oven.
- (5) Carbon dioxide incubator or closed system with 5% CO₂ atmosphere.
- (6) Autoclave.
- (7) Refrigerator.
- (8) Water bath.
- (9) Centrifuge.
- (10) Vortex mixer.
- (11) Magnetic stirrer.
- (12) pH Meter.
- (13) A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.
- (14) Double distillation apparatus (glass).
- (15) Such other equipments as may be necessary.

(ii) Biochemical studies:

(requirements according to tests to be carried out)

- (1) Laminar flow hood with ultraviolet and fluorescent light or other suitable culture hood.
- (2) Inverted microscope.
- (3) Incubator and oven.
- (4) Carbon dioxide incubator or closed system with 5% CO₂ atmosphere.
- (5) Autoclave.
- (6) Refrigerator.
- (7) Water bath.
- (8) Centrifuge.
- (9) Electrophoresis apparatus and power supply.
- (10) Chromatography chamber.
- (11) Spectro-photometer and Elisa reader or Radio-immunoassay system (with gamma beta-counter) or fluorometer for various biochemical tests.
- (12) Vortex mixer.
- (13) Magnetic stirrer.
- (14) pH meter.
- (15) A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.
- (16) Double distillation apparatus (glass).
- (17) Liquid nitrogen tank.
- (18) Such other equipments as may be necessary.

(iii) Molecular studies:

- (1) Inverted microscope.
- (2) Incubator.
- (3) Oven.
- (4) Autoclave.
- (5) Refrigerators (4 degree and minus 20 degree Centigrade).
- (6) Water bath.
- (7) Microcentrifuge.
- (8) Electrophoresis apparatus and power supply.
- (9) Vertex mixer.
- (10) Magnetic stirrer.
- (11) pH meter.
- (12) A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.
- (13) Double distillation apparatus (glass).
- (14) P.C.R. machine.
- (15) Refrigerated centrifuge.
- (16) U.V. Illuminator with photographic attachment or other documentation system.
- (17) Precision micropipettes.
- (18) Such other equipments as may be necessary.

(3) (1) Any person having adequate space and being or employing

- (a) Gynaecologist having experience of performing at least 20 procedures in chorionic villi aspirations per vagina or per abdomen, chorionic villi biopsy, amniocentesis, cordocentesis, foetoscopy, foetal skin or organ biopsy or foetal blood sampling etc. under supervision of an experienced gynaecologist in these fields, or
- (b) a Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner having Post Graduate degree or diploma or six months training or one year experience in sonography or image scanning, or.
- (c) A medical geneticist.

may set up a genetic clinic/ultrasound clinic/imaging centre.

(2) The Genetic Clinic/ultrasound clinic/imaging centre should have or acquire such of the following equipments, as may be necessary for carrying out the tests or procedures -

- (a) Equipment and accessories necessary for carrying out clinical examination by an obstetrician or gynaecologist.
- (b) An ultra-sonography machine including mobile ultrasound machine, imaging machine or any other equipment capable of conducting foetal ultrasonography.
- (c) Appropriate catheters and equipment for carrying out chorionic villi aspirations per vagina or per abdomen.
- (d) Appropriate sterile needles for amniocentesis or cordocentesis.
- (e) A suitable foetoscope with appropriate accessories for foetoscopy, foetal skin or organ biopsy or foetal blood sampling shall be optional.
- (f) Equipment for dry and wet sterilization.

- (g) Equipment for carrying out emergency procedures such as evacuation of uterus or resuscitation in case of need.
- (h) Genetic Works Station."

5. In the said rules, after rule 3 a new rule 3A shall be inserted as follows, namely:-

"3A. Sale of ultrasound machines/imaging machines:

(1) No organization including a commercial organization or a person, including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment, capable of detecting sex of foetus, shall sell distribute, supply, rent, allow or authorize the use of any such machine or equipment in any manner, whether on payment or otherwise, to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person unless such Centre, Laboratory, Clinic, body or person is registered under the Act.

(2) The provider of such machine/equipment to any person/body registered under the Act shall send to the concerned State/UT Appropriate Authority and to the Central Government, once in three months a list of those to whom the machine/equipment has been provided.

(3) Any organization or person, including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus selling, distributing, supplying or authorizing, in any manner, the use of any such machine or equipment to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person registered under the Act shall take an affidavit from the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person purchasing or getting authorization for using such machine /equipment that the machine/equipment shall not be used for detection of sex of foetus or selection of sex before or after conception."

6. In the said rules, in rule 4 for sub-rule (1) the following sub-rule shall be substituted, namely:-

"(1) An application for registration shall be made to the Appropriate Authority, in duplicate, in Form A, duly accompanied by an Affidavit containing-

(i) an undertaking to the effect that the Genetic Centre/Laboratory/ Clinic/ Ultrasound Clinic/ Imaging Centre/ Combination thereof, as the case may be, shall not conduct any test or procedure, by whatever name called, for selection of sex before or after conception or for detection of sex of foetus except for diseases specified in Section 4(2) nor shall the sex of foetus be disclosed to any body; and

(ii) an undertaking to the effect that the Genetic Centre/Laboratory/ Clinic/ Combination thereof, as the case may be, shall display prominently a notice that they do not conduct any technique, test or procedure etc. by whatever name called, for detection of sex of foetus or for selection of sex before or after conception."

7. In the said rules, for rule 5, the following rule shall be substituted, namely:-

"5. Application Fee – (1) Every application for registration under Rule 4 shall be accompanied by an application fee of :-

(a) Rs.3000.00 for Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre.

(b) Rs.4000.00 for an institute, hospital, nursing home, or any place providing jointly the service of a Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, Ultrasound Clinic or Imaging Centre or any combination thereof.

Provided that if an application for registration of any Genetic Clinic/ Laboratory/ Centre etc. has been rejected by the Appropriate Authority, no fee shall be required to be paid on re-submission of the application by the applicant for the same body within 90 days of rejection. Provided further that any subsequent application shall be accompanied with the prescribed fee. Application fee once paid will not be refunded.

(2) The application fee shall be paid by a demand draft drawn in favour of the Appropriate Authority, on any scheduled bank payable at the headquarters of the Appropriate Authority concerned. The fees collected by the Appropriate Authorities for registration of Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre or any other body or person under sub-rule (1), shall be deposited by the Appropriate Authority concerned in a bank account opened in the name of the official designation of the Appropriate Authority concerned and shall be utilized by the Appropriate Authority in connection with the activities connected with implementation of the provisions of the Act and these rules."

8. In the said rules, in rule 9, -

(a) for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test."

(b) for sub-rule (3), the following sub-rule shall be substituted, namely:-

"(3) The record to be maintained by every Genetic Laboratory, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form E."

(c) for sub-rule (4), the following sub-rule shall be substituted, namely:-

"(4) The record to be maintained by every Genetic Clinic, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F."

(d) after sub-rule (7), the following sub-rule shall be inserted, namely:-

"(8) Every Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres shall send a complete report in respect of all pre-conception or pregnancy related procedures/ techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority."

9. In the said rules, in rule 10, -

(a) for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) Before conducting preimplantation genetic diagnosis, or any pre-natal diagnostic technique/test/procedure such as amniocentesis, chorionic villi biopsy, foetoscopy, foetal skin or organ biopsy or cordocentesis, a written consent, as specified in Form G, in a language the person undergoing such procedure understands, shall be obtained from her/him."

(b) after sub-rule (1), the following new sub-rule (1A) shall be inserted, namely:-

"(1A) Any person conducting ultrasonography/image scanning on a pregnant woman shall give a declaration on each report on ultrasonography/image scanning that he/she has neither detected nor disclosed the sex of foetus of the pregnant woman to any body. The pregnant woman shall before undergoing ultrasonography/image scanning declare that she does not want to know the sex of her foetus."

10. In the said rules, for rule 11, the following rule shall be substituted, namely:-

"11. Facilities for inspection.- (1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre, nursing home, hospital, institute or any other place where any of the machines or equipments capable of performing any procedure, technique or test capable of pre-natal determination of sex or selection of sex before or after conception is used, shall afford all reasonable facilities for inspection of the place, equipment and records to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf for registration of such institutions, by whatever name called, under the Act, or for detection of misuse of such facilities or advertisement therefore or for selection of sex before or after conception or for detection/disclosure of sex of foetus or for detection of cases of violation of the provisions of the Act in any other manner.

(2) The Appropriate Authority or the officer authorized by it may seal and seize any ultrasound machine, scanner or any other equipment, capable of detecting sex of foetus, used by any organisation if the organisation has not got itself registered under the Act. These machines of the organisations may be released if such organisation pays penalty equal to five times of the registration fee to the Appropriate Authority concerned and gives an undertaking that it shall not undertake detection of sex of foetus or selection of sex before or after conception."

11. In the said rules, in rule 12 for sub-rule (1), the following sub-rule shall be substituted, namely:-

"12. Procedure for search and seizure. - (1) The Appropriate Authority or any officer authorised in this behalf may enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act.

Explanation:- In these Rules -

- (1) 'Genetic Laboratory/Genetic Clinic/ Genetic Counselling Centre' would include an ultrasound centre/imaging centre/ nursing home/hospital/institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or after conception or performing any procedure, technique or test for pre-natal detection of sex of foetus, is used;
- (2) 'material object' would include records, machines and equipments; and
- (3) 'seize' and 'seizure' would include 'seal' and 'sealing' respectively."

12. In the said rules, after rule 17, the following rules shall be inserted, namely:-

"18. Code of Conduct to be observed by persons working at Genetic Counseling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres etc.

All persons including the owner, employee or any other persons associated with Genetic Counseling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres registered under the Act/these Rules shall –

- (i) not conduct or associate with, or help in carrying out detection or disclosure of sex of foetus in any manner;
- (ii) not employ or cause to be employed any person not possessing qualifications necessary for carrying out pre-natal diagnostic techniques/procedures, techniques and tests including ultrasonography;
- (iii) not conduct or cause to be conducted or aid in conducting by himself or through any other person any techniques or procedure for selection of sex before or after conception or for detection of sex of foetus except for the purposes specified in sub-section (2) of section 4 of the Act;
- (iv) not conduct or cause to be conducted or aid in conducting by himself or through any other person any techniques or test or procedure under the Act at a place other than a place registered under the Act/these Rules;
- (v) ensure that no provision of the Act and these Rules are violated in any manner;
- (vi) ensure that the person, conducting any techniques, test or procedure leading to detection of sex of foetus for purposes not covered under section 4(2) of the Act or selection of sex before or after conception, is informed that such procedures lead to violation of the Act and these Rules which are punishable offences;
- (vii) help the law enforcing agencies in bring to book the violators of the provisions of the Act and these Rules;
- (viii) display his/her name and designation prominently on the dress worn by him/her;
- (ix) write his/her name and designation in full under his/her signature;
- (x) on no account conduct or allow/cause to be conducted female foeticide;
- (xi) not commit any other act of professional misconduct.

19. Appeals. –

- (1) Anybody aggrieved by the decision of the Appropriate Authority at sub-district level may appeal to the Appropriate Authority at district level within 30 days of the order of the sub-district level Appropriate Authority.
- (2) Anybody aggrieved by the decision of the Appropriate Authority at district level may appeal to the Appropriate Authority at State/UT level within 30 days of the order of the District level Appropriate Authority.
- (3) Each appeal shall be disposed of by the District Appropriate Authority or by the State/Union Territory Appropriate Authority, as the case may be, within 60 days of its receipt.
- (4) If an appeal is not made within the time as prescribed under sub-rule (1), (2) or (3), the Appropriate Authority under that sub-rule may condone the delay in case he/she is satisfied that appellant was prevented for sufficient cause from making such appeal."

13. In the said rules, Schedule I, Schedule II and Schedule III shall be omitted.

14. In the said rules, for the words "Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic", the words "Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres" shall be substituted wherever they occur.

15. In the said rules, for Form A, Form B, Form C, Form D, Form E, Form F, Form G, and Form H, the following forms shall be substituted respectively, namely:-

"FORM A

[See rules 4(1) and 8(1)]

(To be submitted in Duplicate with supporting documents as enclosures)

**FORM OF APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION OF A
GENETIC COUNSELLING CENTRE/GENETIC LABORATORY/GENETIC CLINIC/ULTRASOUND
CLINIC/IMAGING CENTRE**

1. Name of the applicant

(Indicate name of the organisation sought to be registered)

2. Address of the applicant

3. Type of facility to be registered

(Please specify whether the application is for registration of a Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/Ultrasound Clinic/Imaging Centre or any combination of these)

4. Full name and address/addresses of Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/ Ultrasound Clinic/Imaging Centre with Telephone/Fax number(s)/Telegraphic/Telex/E-mail address (s)

5. Type of ownership of Organisation (individual ownership/partnership/company/co-operative/any other to be specified). In case type of organization is other than individual ownership, furnish copy of articles of association and names and addresses of other persons responsible for management, as enclosure.

6. Type of Institution (Govt. Hospital/Municipal Hospital/Public Hospital/Private Hospital/Private Nursing Home/Private Clinic/Private Laboratory/any other to be stated.)

7. Specific pre-natal diagnostic procedures/tests for which approval is sought

(a) Invasive (i) amniocentesis/ chorionic villi aspiration
/chromosomal/biochemical/molecular studies

(b) Non-Invasive Ultrasonography

Leave blank if registration is sought for Genetic Counselling Centre only.

8. Equipment available with the make and model of each equipment (List to be attached on a separate sheet).

9. (a) Facilities available in the Counselling Centre.

(b) Whether facilities are or would be available in the Laboratory/Clinic for the following tests:

- (i) Ultrasound
- (ii) Amniocentesis
- (iii) Chorionic villi aspiration
- (iv) Foetoscopy
- (v) Foetal biopsy
- (vi) Cordocentesis

Whether facilities are available in the Laboratory/ Clinic for the following:

- (i) Chromosomal studies
- (ii) Biochemical studies

- (iii) Molecular studies
(iv) Preimplantation genetic diagnosis

10. Names, qualifications, experience and registration number of employees (may be furnished as an enclosure).

11. State whether the Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/ultrasound clinic/imaging centre ⁴⁽¹⁾ qualifies for registration in terms of requirements laid down in Rule 3]

12. For renewal applications only:

(a) Registration No.

(b) Date of issue and date of expiry of existing certificate of registration.

13. List of Enclosures:

(Please attach a list of enclosures / supporting documents attached to this application.)

Date:

Place

(.....)

Name, designation and signature of the person authorized to sign on behalf of the organisation to be registered.

DECLARATION

I, Sh./Smt./Kum./Dr..... son/daughter/wife of aged years resident of working as (indicate designation) in (indicate name of the organisation to be registered) hereby declare that I have read and understood the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994) and the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996.

I also undertake to explain the said Act and Rules to all employees of the Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/ultrasound clinic/imaging centre in respect of which registration is sought and to ensure that Act and Rules are fully complied with.

Date:

(.....)

Place

Name, designation and signature of the person authorized to sign on behalf of the organisation to be registered

[SEAL OF THE ORGANISATION SOUGHT TO BE REGISTERED]

ACKNOWLEDGEMENT

[See Rules 4(2) and 8(1)]

⁴⁽¹⁾ Strike out whichever is not applicable or not necessary. All enclosures are to be authenticated by signature of the applicant.

The application in Form A in duplicate for grant*/renewal* of registration of Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*/Ultrasound Clinic*/Imaging Centre* by (Name and address of applicant) has been received by the Appropriate Authority On (date).

*The list of enclosures attached to the application in Form A has been verified with the enclosures submitted and found to be correct.

OR

*On verification it is found that the following documents mentioned in the list of enclosures are not actually enclosed.

This acknowledgement does not confer any rights on the applicant for grant or renewal of registration.

(.....)
Signature and Designation of Appropriate
Authority, or authorized person in the
Office of the Appropriate Authority.

Date:
Place:

SEAL

ORIGINAL/DUPLICATE FOR DISPLAY

FORM B

[See Rules 6(2), 6(5) and 8(2)]

CERTIFICATE OF REGISTRATION

(To be issued in duplicate)

5. 1. In exercise of the powers conferred under Section 19 (1) of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994), the Appropriate Authority hereby grants registration to the Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*/Ultrasound Clinic*/Imaging Centre* named below for purposes of carrying out Genetic Counselling/Pre-natal Diagnostic Procedures*/Pre-natal Diagnostic Tests/ultrasonography under the aforesaid Act for a period of five years ending on
6. 2. This registration is granted subject to the aforesaid Act and Rules thereunder and any contravention thereof shall result in suspension or cancellation of this Certificate of Registration before the expiry of the said period of five years apart from prosecution.
- A Name and address of the Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*/Ultrasound Clinic*/Imaging Centre*
- B Pre-natal diagnostic procedures* approved for (Genetic Clinic).
Non-Invasive
(i) Ultrasound
Invasive
(ii) Amniocentesis
(iii) Chorionic villi biopsy
(iv) Foetoscopy
(v) Foetal skin or organ biopsy
(vi) Cordocentesis
(vii) Any other (specify)
- C Pre-natal diagnostic tests* approved (for Genetic Laboratory)
(i) Chromosomal studies
(ii) Biochemical studies
(iii) Molecular studies
- D Any other purpose (please specify)
3. Model and make of equipments being used (any change is to be intimated to the Appropriate Authority under rule 13).
4. Registration No. allotted
5. Period of validity of earlier Certificate of Registration.
(For renewed Certificate of Registration only) From To

Signature, name and designation of
The Appropriate Authority

Date

SEAL

DISPLAY ONE COPY OF THIS CERTIFICATE AT A CONSPICUOUS PLACE AT THE PLACE OF BUSINESS

FORM C
[See Rules 6(3), 6(5) and 8(3)]

FORM FOR REJECTION OF APPLICATION FOR GRANT/RENEWAL OF REGISTRATION

In exercise of the powers conferred under Section 19(2) of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Appropriate Authority hereby rejects the application for grant*/renewal* of registration of the undermentioned Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*/Ultrasound Clinic*/Imaging Centre*.

- (1) Name and address of the Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic*/Ultrasound Clinic*/Imaging Centre*
- (2) Reasons for rejection of application for grant/renewal of registration:

Signature, name and designation of
the Appropriate Authority with SEAL
of Office

Date:
Place:

*Strike out whichever is not applicable or necessary.

FORM D
[See rule 9(2)]

FORM FOR MAINTENANCE OF RECORDS BY THE GENETIC COUNSELLING CENTRE

1. Name and address of Genetic Counselling centre.
2. Registration No.
3. Patient's name
4. Age
5. Husband's/Father's name
6. Full address with Tel. No., if any
7. Referred by (Full name and address of Doctor(s) with registration No (s) (Referral note to be preserved carefully with case papers)
8. Last menstrual period/weeks of pregnancy
9. 9 History of genetic/medical disease in the family (specify)
Basis of diagnosis:
(a) Clinical
(b) Bio-chemical
(c) Cytogenetic
(d) Other (e.g. radiological, ultrasonography)
10. Indication for pre-natal diagnosis
A. Previous child/children with:
(i) Chromosomal disorders
(ii) Metabolic disorders
(iii) Congenital anomaly
(iv) Mental retardation
(v) Haemoglobinopathy
(vi) Sex linked disorders
(vii) Single gene disorder
(viii) Any other (specify)
B. Advanced maternal age (35 years or above)
C. Mother/father/sibling having genetic disease (specify)
D. Others (specify)
11. Procedure advised⁸²¹
(i) Ultrasound
(ii) Amniocentesis
(iii) Chorionic villi biopsy
(iv) Foetoscopy

(v) Foetal skin or organ biopsy
(vi) Cordocentesis
(vii) Any other (specify)

⁸²¹ Strike out whichever is not applicable or necessary.

12. Laboratory tests to be carried out
(i) Chromosomal studies
(ii) Biochemical studies
(iii) Molecular studies
(iv) Preimplantation genetic diagnosis
13. Result of diagnosis
If abnormal give details. Normal/Abnormal
14. Was MTP advised?
15. Name and address of Genetic Clinic* to which patient is referred.
16. Dates of commencement and completion of genetic counseling.

**Name, Signature and Registration No. of the
Medical Geneticist/Gynaecologist/Paediatrician
administering Genetic Counselling.**

Place:

Date:

FORM E
[See Rule 9(3)]
FORM FOR MAINTENANCE OF RECORDS BY GENETIC LABORATORY

1. Name and address of Genetic Laboratory
2. Registration No
3. Patient's name
4. Age
5. Husband's/Father's name
6. Full address with Tel. No., if any
7. Referred by/sample sent by (full name and address of Genetic Clinic) (Referral note to be preserved carefully with case papers)
8. Type of sample: Maternal blood/Chorionic villus sample/amniotic fluid/Foetal blood or other foetal tissue (specify)
9. Specify indication for pre-natal diagnosis
 - A. Previous child/children with
 - (i) Chromosomal disorders
 - (ii) Metabolic disorders
 - (iii) Malformation(s)
 - (iv) Mental retardation
 - (v) Hereditary haemolytic anaemia
 - (vi) Sex linked disorder
 - (vii) Single gene disorder
 - (viii) Any other (specify)
 - B. Advanced maternal age (35 years or above)
 - C. Mother/father/sibling having genetic disease (specify)
 - D. Other (specify)
10. Laboratory tests carried out (give details)
 - (i) Chromosomal studies
 - (ii) Biochemical studies
 - (iii) Molecular studies
 - (iv) preimplantation genetic diagnosis
11. Result of diagnosis
If abnormal give details. Normal/Abnormal
12. Date(s) on which tests carried out

The results of the Pre-natal diagnostic tests were conveyed to on

Name, Signature and Registration No. of the
Medical Geneticist/Director of the Institute

Place:
Date:

FORM F

[See Proviso to Section 4(3), Rule 9(4) and Rule 10(1A)]

FORM FOR MAINTENANCE OF RECORD IN RESPECT OF PREGNANT WOMAN BY GENETIC CLINIC/ULTRASOUND CLINIC/IMAGING CENTRE

1. Name and address of the Genetic Clinic/Ultrasound Clinic/Imaging Centre.
2. Registration No.
3. Patient's name and her age
4. Number of children with sex of each child
5. Husband's/Father's name
6. Full address with Tel. No., if any
7. Referred by (full name and address of Doctor(s)/Genetic Counselling Centre (Referral note to be preserved carefully with case papers)/self referral
8. Last menstrual period/weeks of pregnancy
9. History of genetic/medical disease in the family (specify)
Basis of diagnosis:
(a) Clinical
(b) Bio-chemical
(c) Cytogenetic
(d) Other (e.g. radiological, ultrasonography etc. specify)
10. Indication for pre-natal diagnosis
 - A. Previous child/children with:
 - (i) Chromosomal disorders
 - (ii) Metabolic disorders
 - (iii) Congenital anomaly
 - (iv) Mental retardation
 - (v) Haemoglobinopathy
 - (vi) Sex linked disorders
 - (vii) Single gene disorder
 - (viii) Any other (specify)
 - B. Advanced maternal age (35 years)
 - C. Mother/father/sibling has genetic disease (specify)
 - D. Other (specify)
11. Procedures carried out (with name and registration No. of Gynaecologist/Radiologist/Registered Medical Practitioner) who performed it.

Non-Invasive

- (i) Ultrasound (specify purpose for which ultrasound is to be done during pregnancy)
[List of indications for ultrasonography of pregnant women are given in the note below]

Invasive

- (ii) Amniocentesis
(iii) Chorionic Villi aspiration
(iv) Foetal biopsy
(v) Cordocentesis
(vi) Any other (specify)

12. Any complication of procedure – please specify

13. Laboratory tests recommended^{REL}

- (i) Chromosomal studies
(ii) Biochemical studies
(iii) Molecular studies
(iv) Preimplantation genetic diagnosis

14. Result of

(a) pre-natal diagnostic procedure
(give details)

(b) Ultrasonography
(specify abnormality detected, if any)

Normal/Abnormal

15. Date(s) on which procedures carried out.

16. Date on which consent obtained. (In case of invasive)

17. The result of pre-natal diagnostic procedure were conveyed to on

18. Was MTP advised/conducted?

19. Date on which MTP carried out.

Date:
Place

Name, Signature and Registration number of the
Gynaecologist/Radiologist/Director of the Clinic

DECLARATION OF PREGNANT WOMAN

I, Ms. _____ (name of the pregnant woman) declare that by undergoing ultrasonography /image scanning etc. I do not want to know the sex of my foetus.

Signature/Thumb impression of pregnant woman

3 Strike out whichever is not applicable or not necessary

DECLARATION OF DOCTOR/PERSON CONDUCTING ULTRASONOGRAPHY/IMAGE SCANNING

I, _____ (name of the person conducting ultrasonography/image scanning) declare that while conducting ultrasonography/image-scanning on Ms. _____ (name of the pregnant woman), I have neither detected nor disclosed the sex of her foetus to any body in any manner.

Name and signature of the person conducting ultrasonography/image scanning/
Director or owner of genetic clinic/ultrasound clinic/imaging centre.

Important Note:

- (i) Ultrasound is not indicated/advised/performed to determine the sex of foetus except for diagnosis of sex-linked diseases such as Duchenne Muscular Dystrophy, Haemophilia A & B etc.
- (ii) During pregnancy Ultrasonography should only be performed when indicated. The following is the representative list of indications for ultrasound during pregnancy.

- (1) To diagnose intra-uterine and/or ectopic pregnancy and confirm viability.
- (2) Estimation of gestational age (dating)
- (3) Detection of number of foetuses and their chorionicity.
- (4) Suspected pregnancy with IUCD in-situ or suspected pregnancy following contraceptive failure/MTP failure.
- (5) Vaginal bleeding / leaking.
- (6) Follow-up of cases of abortion.
- (7) Assessment of cervical canal and diameter of internal os.
- (8) Discrepancy between uterine size and period of amenorrhoea.
- (9) Any suspected adnexal or uterine pathology / abnormality.
- (10) Detection of chromosomal abnormalities, foetal structural defects and other abnormalities and their follow-up.
- (11) To evaluate foetal presentation and position.
- (12) Assessment of liquor amnii.
- (13) Preterm labour / preterm premature rupture of membranes.
- (14) Evaluation of placental position, thickness, grading and abnormalities (placenta praevia, retroplacental haemorrhage, abnormal adherence etc.).
- (15) Evaluation of umbilical cord – presentation, insertion, nuchal encirclement, number of vessels and presence of true knot.
- (16) Evaluation of previous Caesarean Section scars.
- (17) Evaluation of foetal growth parameters, foetal weight and foetal well being.
- (18) Colour flow mapping and duplex Doppler studies.
- (19) Ultrasound guided procedures such as medical termination of pregnancy, external cephalic version etc. and their follow-up.
- (20) Adjunct to diagnostic and therapeutic invasive interventions such as chorionic villus sampling (CVS), amniocenteses, foetal blood sampling, foetal skin biopsy, amnio-infusion, intrauterine infusion, placement of shunts etc.
- (21) Observation of intra-partum events.
- (22) Medical/surgical conditions complicating pregnancy.
- (23) Research/scientific studies in recognised institutions.

Person conducting ultrasonography on a pregnant women shall keep complete record thereof in the clinic/centre in Form – F and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 of the Act, unless contrary is proved by the person conducting such ultrasonography.

FORM G
[See Rule 10]
FORM OF CONSENT
(For invasive techniques)

I, wife/daughter of Age years
residing at hereby state that I have been explained fully the
probable side effects and after effects of the pre-natal diagnostic procedures.

I wish to undergo the preimplantation/pre-natal diagnostic technique/test/procedures in my
own interest to find out the possibility of any abnormality (i.e. disease/deformity/disorder) in the child I
am carrying.

I undertake not to terminate the pregnancy if the pre-natal procedure/technique/test
conducted show the absence of disease/deformity/disorder.

I understand that the sex of the foetus will not be disclosed to me.

I understand that breach of this undertaking will make me liable to penalty as prescribed in
the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994)
and rules framed thereunder.

Date
Place

Signature of the pregnant woman.

I have explained the contents of the above to the patient and her companion (Name
..... Address Relationship) in a
language she/they understand.

Name, Signature and/Registration number of
Gynaecologist/Medical Geneticist/Radiologist/Paediatrician/
Director of the Clinic/Centre/Laboratory

Date

Name, Address and Registration number of
Genetic Clinic/Institute

SEAL

FORM H
[See Rule 9(5)]

FORM FOR MAINTENANCE OF PERMANENT RECORD OF APPLICATIONS FOR GRANT/REJECTION OF REGISTRATION UNDER THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994.

1. Sl. No.
2. File number of Appropriate Authority.
3. Date of receipt of application for grant of registration.
4. Name, Address, Phone/Fax etc. of Applicant.
5. Name and address(es) of Genetic Counselling Centre*/Genetic Laboratory*/Genetic Clinic* /Ultrasound Clinic*/Imaging Centre*.
6. Date of consideration by Advisory Committee and recommendation of Advisory Committee, in summary.
7. Outcome of application (state granted/rejected and date of issue of orders - record date of issue of order in Form B or Form C).
8. Registration number allotted and date of expiry of registration.
9. Renewals (date of renewal and renewed upto).
10. File number in which renewals dealt.
11. Additional information, if any.

Name, Designation and Signature of
Appropriate Authority

Guidance for Appropriate Authority

- (a) Form H is a permanent record to be maintained as a register, in the custody of the Appropriate Authority.
- (b) * Means strike out whichever is not applicable.
- (c) On renewal, the Registration Number of the Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/Ultrasound Clinic/Imaging Centre will not change. A fresh registration Number will be allotted in the event of change of ownership or management.
- (e) Registration number shall not be allotted twice.
- (f) Each Genetic Counselling Centre/Genetic Laboratory/Genetic Clinic/ Ultrasound Clinic/Imaging Centre may be allotted a folio consisting of two pages of the Register for recording Form H.
- (g) The space provided for 'additional information' may be used for recording suspension, cancellations, rejection of application for renewal, change of ownership/management, outcome of any legal proceedings, etc.
- (h) Every folio (i.e. 2 pages) of the Register shall be authenticated by signature of the Appropriate Authority with date, and every subsequent entry shall also be similarly authenticated *.

(Ms. K. Sujatha Rao)

Joint Secretary to the Government of India.

[No.N.24026/14/2002-PNDT Cell]

Footnote:- The Principal Notification was published in the Gazette of India vide No.G.S.R. 1(E) dated 1st January, 1996. This is the first amendments to the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996.

**THE DRUGS AND
MAGIC REMEDIES
(OBJECTIONABLE
ADVERTISEMENTS)
ACT, 1954
(Act No 21 of 1954)¹**



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2536

THE DRUGS AND MAGIC REMEDIES (OBJECTIONABLE
ADVERTISEMENTS) ACT, 1954

(Act No 21 of 1954)¹

An Act to control the advertisements of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith.

(30th April 1954)

Be it enacted by Parliament as follows:

1. *Short title, extent and commencement.* – (1) This Act may be called the Drugs and Magic remedies (Objectionable Advertisements) Act, 1954.

(2) It extends to the whole of India² except the State of Jammu and Kashmir, and applies to persons domiciled in the territories to which this Act extends who are outside the said territories.

(3) It shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) “advertisement” includes any notice, circular, label, wrapper, or other document, and any announcement made orally or by any means of producing or transmitting light, sound or smoke;

(b) “drug” includes–

- (i) a medicine for internal or external use of human beings or animals;
- (ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;
- (iii) any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals;
- (iv) any article intended for use as component of any medicine substance or article, referred to in sub-clauses (i), (ii), and (iii);

1. Extended to Pondicherry by Reg. 7 of 1963, Sec 3 w.e.f. 01.10.1963

2. Extended to Sikkim by S.O. 852(E) dated 26.10.1989 w.e.f. 01.11.1989.

3. 1st April 1955 vide G.O.I. Notification S.R.O. 511 dated 26.2.1955



7. *Penalty.* - Whoever contravenes the provisions of this Act ¹[or the rules made there under] shall, on conviction, be punishable-

(a) in the case of first conviction, with imprisonment which may extend to six months, or with fine, or with both;

(b) in the case of subsequent conviction, with imprisonment which may extend to one year, or with fine, or both.

8. ²[*Powers of entry, search etc.* - (1) Subject to the provisions of any rules made in this behalf, any Gazetted officer authorized by the State Government may, within the local limits of the area for which he is so authorized, -

(a) enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;

(b) seize any advertisement which he has reason to believe contravenes any of the provisions of this Act;

Provided that the power of seizure under this clause may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such document, article or thing, if the advertisement cannot be separated by reason of it being embossed or otherwise from such document, article or thing without affecting the integrity, utility or saleable value thereof;

(c) examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973(2 of 1974), shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code.

(3) Where any person seizes any thing under clause (b) or clause (c) of subsection (1), he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.]

1.Ins.by Act 42 of 1963

2.Subs.by Act 42 of 1963

9. *Offences by companies.* – (1) If the person contravening any of the provisions of this Act is a company, every person who at the time the offence was committed, was in charge of and was responsible to the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation. – For the purposes of this section, –

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

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

¹[9-A. *Offences to be cognizable.* – Notwithstanding anything contained in the Code of Criminal procedure, 1973(2 of 1974), an offence punishable under this Act shall be cognizable.]

10. *Jurisdiction to try offences.* – No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

²[10-A. *Forfeiture.* – Where a person has been convicted by any Court for contravening any provisions of this Act or any rule made there under, the Court may direct that any document (including all copies thereof), article or thing, in respect of which the contravention is made, including the contents thereof where such contents are seized under clause (b) of sub-section (1) of Section 8, shall be forfeited to the Government.]

11. *Officers deemed to be public servants.* – Every person authorized under Section 8 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

12. *Indemnity.* – No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

13. *Other laws not affected.* – The provisions of this Act are in addition to, and not in derogation of the provisions of any other law for the time being in force.

14. *Savings.* – Nothing in this Act shall apply to –

(a) any sign board or notice displayed by a registered medical practitioner on his premises indicating that treatment for any disease, disorder or condition specified in Sec.3, the schedule or the rules made under this Act, is undertaken in those premises; or

(b) any treatise or book dealing with any of the matters specified in Sec.3 from a *bonafide* scientific or social stand point; or

(c) any advertisement relating to any drug sent confidentially in the manner prescribed under Sec.16 only to a registered medical practitioner; or

(d) any advertisement relating to a drug printed or published by the Government; or

(e) any advertisement relating to a drug printed or published by any person with the previous sanction of the Government granted prior to the commencement of the Drugs and Magic Remedies (Objectionable Advertisements) Amendment Act, 1963(42 of 1963):

Provided that the Government may, for reasons to be recorded in writing, withdraw the sanction after giving the person an opportunity of showing cause against such withdrawal.

15. *Power to exempt from application of Act.* – (1) If in the opinion of the Central Government public interest requires that the advertisement of any specified drug or class of drugs ¹[or any specified class of advertisement relating to drugs] should be permitted, it may, by notification in the Official Gazette, direct that the provisions of Sections 3,4,5 and 6 or any one of such provisions shall not apply or shall apply subject to such conditions as may be specified in the notification to or in relation to the advertisement of any such drug or classes of drugs, ¹ [or any such advertisement relating to drugs.]

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

1.Ins.by Act 42 of 1963

(2) In particular and without prejudice to the generality of the foregoing power, such rules may, -

(a) specify any disease, disorder or condition to which the provisions of Sec.3, shall apply;

(b) prescribe the manner in which advertisements of articles or things referred to in Cl. (c) of Sec.14 may be sent confidentially.

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

THE SCHEDULE
[See Secs.3(d) and 14]

S.No	Name of the disease, disorder or condition	S.No	Name of the disease, disorder or condition
1	Appendicitis	29	Hysteria
2	Arteriosclerosis	30	Infantile paralysis
3	Blindness	31	Insanity
4	Blood Poisoning	32	Leprosy
5	Bright's Disease	33	Leucoderma
6	Cancer	34	Lockjaw
7	Cataract	35	Locomotor atoxia
8	Deafness	36	Lupus
9	Diabetes	37	Nervous debility
10	Diseases and disorders of the brain	38	Obesity
11	Diseases and disorders of the optical system	39	Paralysis
12	Diseases and disorders of the uterus	40	Plague
13	Disorders of menstrual flow	41	Pleurisy
14	Disorders of the nervous system	42	Pneumonia
15	Disorders of the prostatic gland	43	Rheumatism
16	Dropsy	44	Ruptures
17	Epilepsy	45	Sexual impotence
18	Female diseases in general	46	Small pox
19	Fevers (in general)	47	Stature of persons
20	Fits	48	Sterility in women
21	Form and structure of the female bust	49	Trachoma
22	Gall stones, kidney stones and bladder stones	50	Tuberculosis
23	Gangrene	51	Tumors
24	Glaucoma	52	Typhoid fever
25	Goitre	53	Ulcers of the gastro-intestinal tract
26	Heart diseases	54	Venereal diseases, including syphilis, gonorrhoea, soft chancre, venereal granuloma and lympho granuloma
27	High or low blood pressure		
28	Hydrocele		

DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS)
RULES, 1955

1. *Short title and commencement.* – (1) These rules may be called the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955.
- (2) They shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.* – In these rules, unless the context otherwise requires, -

(1) the "Act" means the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (21 of 1954); and

(2) "section" means a section of the Act.

3. *Scrutiny of misleading advertisements relating to drugs.* – Any person authorized by the State Government in this behalf may, if satisfied that the advertisement relating to a drug contravenes the provisions of sec.4, by order, require the manufacturer, packer, distributor or seller of the drug to furnish, within such time as may be specified in the order of such regarding the composition of the drug or the ingredients thereof or such information in regard to that drug as he deems necessary for holding the scrutiny of the advertisement and where such order is made, it shall be the duty of the manufacturer, packer, distributor or seller of the drug to which the advertisement relates to comply with the order. Any failure to comply with such order shall, for the purposes of sec.7, be deemed to be a contravention of the provisions of Sec.4:

Provided that no publisher or advertising agency of any medium for the dissemination of any advertisement relating to a drug shall be deemed to have made any contravention merely by the reason of the dissemination by him or if any such advertisement, unless such publisher or advertising agency has failed to comply with any discretion made by the authorized person in this behalf calling upon him or it to furnish the name and address of the manufacturer, packer, distributor, or seller or advertising agency, as the case may be, who or which caused such advertisement to be disseminated.

4. *Procedure to be followed in prohibited import into, and export from India of certain advertisements.* – (1) If the Customs Collector has reasons to believe that any consignment contains documents of the nature referred to in Sec.6, he may, and if requested by an officer appointed for the purpose by the Central Government, shall detain the consignment and dispose it of in accordance with the provisions of Sea Customs Act, 1978(7 of 1878), and the rules made there under, and shall also inform the importer or the exporter, of the order so passed:

Provided that if the importer or exporter feels aggrieved by an order passed by the Customs Collector under this sub-rule and makes a representation to him within one week of the date of the order and has given an undertaking in writing not to dispose of the consignment without the consent of the Customs Collector and to return the consignment when so required by the Customs Collector, the Customs Collector shall pass an order making over the consignment to the importer or the exporter, as the case may be:

Provide further that before passing any order under this sub-rule or under the first proviso thereto; the Customs Collector shall consult the officer appointed for the purpose by the Central Government.

(2) If the importer or the exporter who has given an under taking under the first proviso to sub-rule (1) is required by the Customs Collector to return the consignment or any portion thereof within ten days of the receipt of the notice.

5. *Manner in which advertisements may be sent confidentially.* – All documents containing advertisements relating to drugs referred to in clause (c) of sub-section (1) of Section 14, shall be sent by post to a registered medical practitioner by name or to a whole sale or retail chemist, the address of such registered medical practitioner or to whole sale or retail chemist being given. Such document shall bear at the top, printed in indelible ink in a conspicuous manner the words "for the use of a registered medical practitioner or a hospital or a laboratory".

6. *Procedure to be followed in obtaining previous sanction of the Government for publishing an advertisement.* – Any person intending to obtain the previous sanction of the Government to publish advertisements under clause (d) of sub-section (10) of Section 14 shall make an application to such officer as may be authorized by the Central Government, or the state Government, as the case may be in this behalf, and any such application shall mention the registered name and the trade mark of the drug, its detailed composition and any special reasons justifying the sanction of the Government and shall be submitted by the officer afore said to the Central Government or, as the case may be, the State Government for sanction.

THE EMPLOYEE'S COMPENSATION ACT, 1923

[as amended through
EC (Amendment)
Act, 2017]



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2533

THE EMPLOYEE'S COMPENSATION ACT, 1923

PREAMBLE.-

1. Short title, extent and commencement.—(1) This Act may be called the *[Employee's] Compensation Act, 1923.

2. Definitions.—(1) In this Act, unless there is anything repugnant in the subject or context,—



in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]

(e) "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a *[employee] are temporarily lent or let on hire to another person by the person with whom the *[employee] has entered into a contract of service or apprenticeship, means such other person while the *[employee] is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(ff) "minor" means a person who has not attained the age of eighteen years;

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a *[employee] in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified [in Part II of Schedule I] shall be deemed to result in permanent partial disablement;

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

(i) "qualified medical practitioner" means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(j) Omitted by Act 15 of 1933

(k) "seaman" means any person forming part of the crew of any ship, but does not include the master of the ship;

(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a *[employee] for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;

(m) "wages", includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a *[employee] towards any pension or provident fund or a sum paid to a *[employee] to cover any special expenses entailed on him by the nature of his employment;

(n) Omitted by Act 45 of 2009

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons:

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only

3. Employer's liability for compensation.— (1) If personal injury is caused to a *[employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable --

- (a) in respect of any injury which does not result in the total or partial disablement of the *[employee] for a period exceeding three days;
- (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to:
 - (i) the *[employee] having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the *[employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of *[employees], or
 - (iii) the wilful removal or disregard by the *[employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of *[employee],
- (c) Omitted by Act 5 of 1929.

(2) If an *[employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

- (a) that an *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and
- (b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a *[employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a *[employee] employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply,

in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A)] and (3) no compensation shall be payable to a *[employee] in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a *[employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a *[employee] in any Court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the *[employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

4. Amount of compensation.—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(a) where death results from the injury : an amount equal to fifty per cent. of the monthly wages of the deceased *[employee] multiplied by the relevant factor; or an amount of *[one lakh and twenty thousand rupees], whichever is more;

(b) where permanent total disablement results from the injury : an amount equal to sixty per cent. of the monthly wages of the injured *[employee] multiplied by the relevant factor; *[one lakh and twenty thousand rupees], whichever is more;

*[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).]

Explanation I.—For the purposes of clause (a) and clause (b), "relevant factor", in relation to a *[employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the *[employee] on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II.—Omitted by Act 45 of 2009.

(c) where permanent partial disablement result from the injury:

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.—In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial, results from the injury : a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the *[employee], to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a *[employee] in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such *[employee] in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the *[employee] in accordance with the law of that country.]

*[(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.]

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day --

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter;

Provided that--

(a) there shall be deducted from any lump sum or half-monthly payments to which the *[employee] is entitled the amount of any payment or allowance which the *[employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the *[employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.--Any payment or allowance which the *[employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

*[(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.]

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the *[employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of *[not less than five thousand rupees] for payment of the same to the eldest surviving dependant of the *[employee] towards the expenditure of the funeral of such *[employee] or where the *[employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]

*[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.]

4A. Compensation to be paid when due and penalty for default.-(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the *[employee], as the case may be, without prejudice to the right of the *[employee] to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall--

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.—For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).
(3A) The interest and the penalty payable under sub-section (3) shall be paid to the *[employee] or his dependant, as the case may be.

5. Method of calculating wages.—In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely:—
(a) where the *[employee] has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the *[employee] shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
(b) where the whole of the continuous period of service immediately preceding the accident during which the *[employee] was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the *[employee] shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a *[employee] employed on the same work by the same employer, or, if there was no *[employee] so employed, by a *[employee] employed on similar work in the same locality;
(c) in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.
Explanation.—A period of service shall, for the purposes of this section be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.
(2) omitted by Act 15 of 1933

6. Review.—(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the *[employee] accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.
(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

7. Commutation of half-monthly payments.—Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

8. Distribution of compensation.—(1) No payment of compensation in respect of a *[employee] whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased *[employee], an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such *[employee] and so much of such amount] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

- (2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.
- (3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.
- (4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased *[employee] the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.
- (5) Compensation deposited in respect of a deceased *[employee] shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased *[employee] or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.
- (6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.
- (7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the *[employee] or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the *[employee].
- (8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:
Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.
- (9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

9. Compensation not to be assigned, attached or charged.- Save as provided by this Act no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the *[employee] by operation of law nor shall any claim be set off against the same.

10. Notice and claim.- (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of

the days during which the *[employee] was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the *[employee] to absent himself from work, the period of two years shall be counted from the day the *[employee] gives notice of the disablement to his employer:

Provided further that if a *[employee] who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim⁽⁴⁾

(a) if the claim is preferred in respect of the death of a *[employee] resulting from an accident which occurred on the premises of the employer, or at any place where the *[employee] at the time of the accident was working under the control of the employer or of any person employed by him, and the *[employee] died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured *[employee] was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured *[employee] was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which *[employees] are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured *[employee] employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

10A. Power to require from employers statements regarding fatal accidents.-(1) Where a Commissioner receives information from any source that a *[employee] has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the *[employee]'s employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the *[employee], and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased *[employee] that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

10B. Reports of fatal accidents and serious bodily injuries.- (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury:

Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.

Explanation.--"Serious bodily injury" means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.

(2) The State Government may, by notification in the Official Gazette, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

(3) Nothing in this section shall apply to factories to which the Employees' State Insurance Act, 1948 (34 of 1948), applies.

11. Medical examination.- (1) Where a *[employee] has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any *[employees] who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time:

Provided that a *[employee] shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a *[employee], on being required to do so by the employer under subsection (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a *[employee], before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a *[employee], whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased*[employee].

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured *[employee] has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the *[employee] has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably

have been expected to be if the *[employee] had been regularly attended by a qualified medical practitioner whose instructions he had followed, and compensation, if any, shall be payable accordingly.

12. Contracting.- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any *[employee] employed in the execution of the work any compensation which he would have been liable to pay if that *[employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the *[employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the *[employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the *[employee] could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a *[employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

13. Remedies of employer against stranger.- Where a *[employee] has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

14. Insolvency of employer.- (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any *[employee], then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the *[employee], and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the *[employee] than they would have been under the employer.

(2) If the liability of the insurers to the *[employee] is less than the liability of the employer to the *[employee], the *[employee] may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the *[employee].

Provided that the provisions of this sub-section shall not apply in any case in which the *[employee] fails to give the notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under section 530 of the Companies Act, 1956 (1 of 1956), are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if applications were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

14A. Compensation to be first charge on assets transferred by employer.— Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.

15. Special provisions relating to masters and seamen.— This Act shall apply in the case of * [employees] who are masters of ships or seamen subject to the following modifications, namely:—

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost:

Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured master or seaman is discharged or left behind in any part of India or in any foreign country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a

criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(5) No compensation shall be payable under this Act in respect of any injury in respect of which provision is made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention Allowances (Indian Seamen, etc.) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (2 & 3 Geo. 6, c. 83), or under the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if—

(a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and

(b) the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provision for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

(c) the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to the person commencing the proceedings.

15A. Special provisions relating to captains and other members of crew of aircrafts.— This Act shall apply in the case of * [employees] who are captains or other members of the crew of aircrafts subject to the following modifications, namely:—

(1) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft and if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.

(2) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been, so lost:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a

criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

15B. Special provisions relating to employees abroad of companies and motor vehicles.- This Act shall apply ⁽¹⁾

(i) in the case of *[employees] who are persons recruited by companies registered in India and working as such abroad, and

(ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other *[employees], subject to the following modifications, namely:—

(1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(2) In the case of death of the *[employees] in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured *[employees] is discharged or left behind in any part of India or in any other country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence⁽⁴⁾

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

16. Returns as to compensation.- The State Government may, by notification in the Official Gazette, direct that every person employing *[employees], or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the State Government may direct.

17. Contracting out.- Any contract or agreement whether made before or after the commencement of this Act, whereby a *[employee] relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

****17A.** Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

18. Proof of age (Repealed).- [Rep. by the Workmen's Compensation (Amendment) Act, 1959 (8 of 1959), section 11 (w.e.f. 1-6-1959).]

18A. Penalties.- (1) Whoever--

(a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or
(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A, or

(c) fails to send a report which he is required to send under section 10B, or

(d) fails to make a return which he is required to make under section 16 or

******(e) fails to inform the employee of his rights to compensation as required under section 17A, shall be punishable with fine which ******shall not be less than fifty thousand rupees but which may extend to one lakh rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner.

19. Reference to Commissioners.- (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a *[employee]) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

20. Appointment of Commissioners.- (1) The State Government may, by notification in the Official Gazette, appoint any person *[who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted officer for not less than five years having educational qualifications and experience in personnel management, human resource development and industrial relations] to be a Commissioner for *[employees] Compensation for such area as may be specified in the notification.

(2) Where more than one Commissioner has been appointed for any area, the State Government may, by general or special order, regulate the distribution of business between them.

(3) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

21. Venue of proceeding and transfer.- (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which--

(a) the accident took place which resulted in the injury; or

(b) the *[employee] or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office;

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner

prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the *[employee], being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a *[employee] in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard:

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire there into and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

22. Form of application.-(1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.

(1A) Subject to the provisions of sub-section (1), no application for the settlement of any matter by Commissioner, other than an application by a dependant or dependants for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars namely:--

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;

(c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

22A. Power of Commissioner to require further deposit in cases of fatal accident.- (1) Where any sum has been deposited by an employer as compensation payable in respect of a *[employee] whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.
(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

23. Powers and procedure of Commissioners.- The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

24. Appearance of parties.- Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), or under sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952), or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner, by any other person so authorised.

25. Method of recording evidence.- The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

***[25A. Time limit for disposal of cases relating to compensation.-** The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.]

26. Costs.- All costs, incidental to any proceedings before a Commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner.

27. Power to submit cases.- A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

28. Registration of agreements.- (1) Where the amount of any lump sum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal

disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that--

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b) Omitted by Act 5 of 1929;

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872), or in any other law for the time being in force.

29. Effect of failure to register agreement.— Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the *[employee] by way of compensation whether under the agreement or otherwise.

30. Appeals.— (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:—

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under section 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased *[employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than **ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.

30A. omitted by Act 11 of 2017

31. Recovery.- The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890 (1 of 1890).

32. Power of the State Government to make rules.- (1) The State Government may make rules to carry out the purposes of this Act.

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

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals at which and the conditions subject to which a *[employee] may be required to submit himself for medical examination under sub-section (1) of section 11;

(c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased *[employee] and for the transfer of money so invested from one Commissioner to another;

(f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;

(g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered;

(h) for the withholding by Commissioners, whether in whole or in part of half-monthly payments pending decision on applications for review of the same;

(i) for regulating the scales of costs which may be allowed in proceedings under this Act;

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;

(k) for the maintenance by Commissioners of registers and records of proceedings before them;

(l) for prescribing the classes of employers who shall maintain notice-books under sub-section (3) of section 10, and the form of such notice-books;

(m) for prescribing the form of statement to be submitted by employers under section 10 A;

(n) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner;

(o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;

(p) for prescribing the manner in which diseases specified as occupational diseases may be diagnosed;

(q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;

(r) for prescribing the manner in which, and the standards by which, incapacity may be assessed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

33. Power of Local Government to make rules (Repealed).- [Rep. by the A.O. 1937.]

34. Publication of rules.- (1) The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897) as that after which a draft of rules proposed to be made under section 32 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Official Gazette, and on such publication, shall have effect as if enacted in this Act.

35. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.-(1) The Central Government may, by notification in the Official Gazette, make rules for the transfer to any foreign country of money deposited with a Commissioner under this Act which has been awarded to or may be due to, any person residing or about to reside in such foreign country and for the receipt, distribution and administration in any State of any money deposited under the law relating to *[employees]'s compensation in any foreign country, which has been awarded to, or may be due to any person residing or about to reside in any State:

Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned under the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

(2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.

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

*substituted/amended/inserted by Act 45 of 2009

**substituted/amended/inserted by Act 11 of 2017

SCHEDULE I :
[See sections 2(1) and (4)]

PART I :
LIST OF INJURIES DEEMED TO RESULT IN PERMANENT TOTAL DISABLEMENT

Serial No.	Description of Injury	Percentage of loss of earning capacity
1.	Loss of both hands or amputation at higher sites.	100
2.	Loss of a hand and a foot .	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

PART II :
LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT

Serial No.	Description of Injury	Percentage of loss of earning capacity
	Amputation cases—upper limbs (either arm)	
1.	Amputation through shoulder joint .	90
2.	Amputation below shoulder with stump less than 20.32 Cms. from tip of acromion	80
3.	Amputation from 20.32 Cms. from tip of acromion to less than 11.43 Cms. below tip of olecranon	70
4.	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 Cms. below tip of olecranon	60
5.	Loss of thumb	30
6.	Loss of thumb and its metacarpal bone	40
7.	Loss of four fingers of one hand	50
8.	Loss of three fingers of one hand	30
9.	Loss of two fingers of one hand	20
10.	Loss of terminal phalanx of thumb	20

10A.	Guillotine amputation of tip of thumb without loss of bone	10
	Amputation cases--lower limbs	
11.	Amputation of both feet resulting in end bearing stumps .	90
12.	Amputation through both feet proximal to the metatarsophalangeal joint	80
13.	Loss of all toes of both feet through the metatarso-phalangeal joint	40
14.	Loss of all toes of both feet proximal to the proximal inter-phalangeal joint	30
15.	Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
16.	Amputation at hip	90
17.	Amputation below hip with stump not exceeding 12.70 Cms. in length measured from tip of great trochanter ..	80
18.	Amputation below hip with stump exceeding 12.70 Cms. in length measured from tip of great trochanter but not beyond middle thigh	70
19.	Amputation below middle thigh to 8.89 Cms. below knee	60
20.	Amputation below knee with stump exceeding 8.89 Cms. but not exceeding 12.70 Cms.	50
21.	Amputation below knee with stump exceeding 12.70 Cms	50
22.	Amputation of one foot resulting in end bearing .	50
23.	Amputation through one foot proximal to the metatarsophalangeal joint ...	50
24.	Loss of all toes of one foot through the metatarsophalangeal joint	20
	Other injuries	
25.	Loss of one eye, without complications, the other being normal ...	40
26.	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal .	30
26A.	Loss of partial vision of one eye ... Loss of--	10
	A--Fingers of right or left hand Index finger	
27.	Whole	14

28.	Two phalanges	11
29.	One phalanx ...	9
30.	Guillotine amputation of tip without loss of bone .	5
	Middle finger	
31.	Whole	12
32.	Two phalanges ...	9
33.	One Phalanx ...	7
34.	Guillotine amputation of tip without loss of bone .	4
	Ring or little finger	
35.	Whole	7
36.	Two phalanges ...	6
37.	One phalanx ...	5
38.	Guillotine amputation of tip without loss of bone.	2
	B—Toes of right or left foot Great toe	
39.	Through metatarso-phalangeal joint .	14
40.	Part, with some loss of bone	3
	Any other toe	
41.	Through metatarso-phalangeal joint .	3
42.	Part, with some loss of bone	1
	Two toes of one foot, excluding great toe	
43.	Through metatarso-phalangeal joint .	5
44.	Part, with some loss of bone	2
	Three toes of one foot, excluding great toe	
45.	Through metatarso-phalangeal joint .	6
46.	Part, with some loss of bone	3
	Four toes of one foot, excluding great toe	
47.	Through metatarso-phalangeal joint	9
48.	Part-with some loss of bone	3

[Note.—Complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be the equivalent of the loss of that limb or member.]

SCHEDULE II

See section 2(1)(dd)

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(DD), ARE INCLUDED IN THE DEFINITION OF EMPLOYEES

The following persons are employees within the meaning of section 2(1)(dd) and subject to the provisions of that section, that is to say, any person who is--

(i) employed in railways, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

(ii) employed, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made whether or not employment in any such work is within such premises or precincts, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises

Explanation.--For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or

(iv) employed in the manufacture or handling of explosives in connection with the employer's trade or business; or

(v) employed, in any mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952), in any mining operation or in any kind of work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground; or

(vi) employed as the master or as a seaman of.--

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or

(b) Omitted

(c) any sea going ship not included in sub-clause (a) provided with sufficient area for navigation under sails alone; or

(vii) employed for the purpose of --

(a) loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to the Ports Act, 1908 (15 of 1908), or the Major Port Trusts Act, 1963 (38 of 1963)], of goods which have been discharged from or are to be loaded into any vessel; or

(b) warping a ship through the lock; or

(c) mooring and unmooring ships at harbour wall berths or in pier; or

(d) removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or

(e) the docking or undocking of any vessel during an emergency; or

(f) preparing splicing coir springs and check wires, painting depth marks on lock-sides, removing or replacing fenders whenever necessary, landing of gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature; or

(g) any work on jolly-boats for bringing a ship's line to the wharf; or

(viii) employed in the construction, maintenance, repair or demolition of --

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or

- (c) any road, bridge, tunnel or canal; or
- (d) any wharf, quay, sea-wall or other marine work including any moorings of ships; or
- (ix) employed in setting up, maintaining, repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same; or
- (x) employed, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline or sewer; or
- (xi) employed in the service of any fire brigade; or
- (xii) employed upon a railway as defined in clause (31) of section 2 and subsection (1) of section 197 of the Railways Act, 1959 (24 of 1959), either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration; or
- (xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service or as a telegraphist or as a postal or railway signaller, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department; or
- (xiv) employed, in connection with operation for winning natural petroleum or natural gas; or
- (xv) employed in any occupation involving blasting operations; or
- (xvi) employed in the making of any excavation or explosives have been used, or whose depth from its highest to its lowest point exceeds twelve feet; or
- (xvii) employed in the operation of any ferry boat capable of carrying more than ten persons; or
- (xviii) employed on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea; or
- (xix) employed, in the generating, transforming transmitting or distribution of electrical energy or in generation or supply of gas; or
- (xx) employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouse, Act 1927 (17 of 1927); or
- (xxi) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or
- (xxii) employed in the training, keeping or working of elephants or wild animals; or
- (xxiii) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forests fires; or
- (xxiv) employed in operations for the catching or hunting of elephants or other wild animals; or
- (xxv) employed as a diver; or
- (xxvi) employed in the handling or transport of goods in, or within the precincts of,--
 - (a) any warehouse or other place in which goods are stored, or,
 - (b) any market; or
- (xxvii) employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radioactive substances; or
- (xxviii) employed in or in connection with the construction, erection, dismantling, operation or maintenance of an aircraft as defined in section 2 of the Indian Aircraft Act, 1934 (22 of 1934); or
- (xxix) employed in horticultural operations, forestry, bee-keeping or farming by tractors or other contrivances driven by steam or other mechanical power or by electricity; or
- (xxx) employed, in the construction, working, repair or maintenance of a tube-well; or
- (xxxi) employed in the maintenance, repair or renewal of electric fittings in a building; or
- (xxxii) employed in a circus.
- (xxxiii) employed as watchman in any factory or establishment; or
- (xxxiv) employed in any operation in the sea for catching fish; or
- (xxxv) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous animal or insect; or
- (xxxvi) employed in handling animals like horses, mules and bulls; or
- (xxxvii) employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; or
- (xxxviii) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; or

- (xxxix) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities, ground water surveys and exploration; or
- (xl) employed in cleaning of jungles or reclaiming land or ponds; or
- (xli) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing; or
- (xlii) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams and the like; or
- (xliii) employed in the construction, boring or deepening of an open well or dug well, bore well, bore-cum-dug well, filter point and the like; or
- (xliv) employed in spraying and dusting or insecticides or pesticides in agricultural operations or plantations; or
- (xlv) employed in mechanised harvesting and threshing operations; or
- (xlvi) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; or
- (xlvii) employed as artist for drawing pictures on advertisement boards at a height of 3.66 metres or more from the ground level; or
- (xlviii) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and engaged in outdoor work;

SCHEDULE III
(See section 3)

LIST OF OCCUPATIONAL DISEASES

Serial No.	Occupational disease	Employment
PART A		
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to health or laboratory work; (b) All work involving exposure to veterinary work; (c) Work relating to handling animals, animal carcasses, part of such carcasses, or merchandise which may have been contaminated by animals or animal carcasses; (d) Other work carrying a particular risk of contamination.
2.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
3.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes.	All work involving exposure to the risk concerned.
5.	Poisoning by organo phosphorus compounds.	All work involving exposure to the risk concerned.
PART B		
1.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
2.	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.
3.	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
5.	Diseases caused by chromium or its toxic compounds.	All work involving exposure to the risk concerned.
6.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by radioactive substances and	All work involving exposure to

	ionising radiations.	the action of radioactive substances or ionising radiations.
8.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
9.	Diseases caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic and aromatic series),	All work involving exposure to the risk concerned.
10.	Diseases caused by carbon disulphide.	All work involving exposure to the risk concerned.
11.	Occupational cataract due to infra-red radiations.	All work involving exposure to the risk concerned.
12.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
13.	Skin diseases caused by physical, chemical or biological agents not included in other items.	All work involving exposure to the risk concerned.
14.	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.
15.	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts of such substances.	All work involving exposure to the risk concerned.
16.	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
17.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
18.	Occupational asthma caused by recognised sensitising agents inherent to the work process.	All work involving exposure to the risk concerned.
19.	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned.
20.	Diseases caused by nitroglycerin or other nitroacid esters.	All work involving exposure to the risk concerned.
21.	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned.
22.	Diseases caused by asphyxiants, carbon monoxide, and its toxic derivatives, hydrogen sulphide.	All work involving exposure to the risk concerned.
23.	Lung cancer and mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
24.	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned.
25.	Snow blindness in snow bound areas.	All work involving exposure to the risk concerned.
26.	Disease due to effect of heat in extreme hot climate.	All work involving exposure to the risk concerned.

27.	Disease due to effect of cold in extreme cold climate.	All work involving exposure to the risk concerned.
	PART C	
1.	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthracosis-silicosis, asbestosis) and silico-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2.	Bagassosis	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Byssinosis),	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveolitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.
6.	Acute Pulmonary oedema of high altitude.	All work involving exposure to the risk concerned.

SCHEDULE IV
(See section 4)

**FACTORS FOR WORKING OUT LUMP SUM EQUIVALENT OF COMPENSATION
AMOUNT IN CASE OF PERMANENT DISABLEMENT AND DEATH**

	Completed years of age on the last birthday of the workman immediately preceding the date on which the compensation fell due	Factors
Not more than	16	228.54
	17	227.49
	18	226.38
	19	225.22
	20	224.00
	21	222.71
	22	221.37
	23	219.95
	24	218.47
	25	216.91
	26	215.28
	27	213.57
	28	211.79
	29	209.92
	30	207.98
	31	205.95
	32	203.85
	33	201.66
	34	199.40
	35	197.06
	36	194.64
	37	192.14
	38	189.56
	39	186.90
	40	184.17
	41	181.37
	42	178.49
	43	175.54
	44	172.52
	45	169.44

	166.29
46	163.07
47	159.80
48	156.47
49	153.09
50	149.67
51	146.20
52	142.68
53	139.13
54	135.56
55	131.95
56	128.33
57	124.70
58	121.05
59	117.41
60	113.77
61	110.14
62	106.52
63	102.93
64	99.37
65 or more	

The Medicinal and
Toilet
Preparations
(Excise Duties) Act,
1955
(16 OF 1955)



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2527

**The Medicinal and Toilet Preparations
(Excise Duties) Act, 1955**
(16 OF 1955)

[27th April, 1955]

An Act to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:

1. SHORT TITLE, EXTENT AND COMMENCEMENT.

- (1) This Act may be called the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date 2, as the Central Government may, by notification in the official Gazette, appoint.

2. DEFINITIONS.

In this Act unless the context otherwise requires, -

- (a) "alcohol" means ethyl alcohol of any strength and purity having chemical compositions $C_2H_5 OH$;
- (aa) "Coca derivative" means -
- (i) crude cocaine that is any extract of coca leaf which can be used directly or indirectly, for the manufacture of cocaine;
- (ii) ecgonine, that is laevo-ecgonine having the chemical formula, $C_9H_{15}NO_3H_2O$, and all the derivatives of laevo-ecgonine from which it can be recovered, and
- (iii) cocaine, that is, methyl-benzoyl-laevo-ecgonine having the chemical formula, $C_{17}H_{21}NO_4$ and its salts;
- (ab) "coca-leaf" means -
- (i) the leaf and young twigs of any coca plant, that is, of the *Erythroxylon coca* (Lamk.) and the *Erythroxylon novo-granatense* (Hiern.) and their varieties, and of any other species of this genus which the Central Government may,



by notification in the official Gazette, declare to be coca plants for the purposes of this Act, and

(ii) any mixture thereof, with or without neutral materials;

(bb) derivative of opium, means -

(i) medicinal opium, that is, opium which has undergone the processes necessary to adopt it for medicinal use;

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked ;

(iii) morphine, that is, the principal alkaloid of opium having the chemical formula $C_{17}H_{19}NO_8$, and its salts, and its derivatives;

(b) "collecting Government" means the Central Government or, as the case may be, the State Government which is entitled to collect the duties levied under this Act;

(c) "dutiable goods" means the medicinal and toilet preparations specified in the schedule as being subject to the duties of excise levied under this Act;

(d) "excise officer" means an officer of the Excise Department of any State and includes any person empowered by the collecting Government to exercise all or any of the powers of an excise officer under this Act;

(e) "Indian hemp" means -

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis-sativa* L), including all forms known as bhang, sidhi or ganja;

(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;

(iii) any mixture, with or without neutral materials, of any of the above forms of Indian hemp or any drink prepared there from; and

(iv) any extract or tincture of the above forms of Indian hemp;

(f) "manufacture" includes any process incidental or ancillary to the completion of the manufacture of any dutiable goods;

(g) "medicinal preparation" includes all drugs which are a remedy or "prescription" prepared for internal or external use of human beings or

animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals;

(h) "narcotic drug" or "narcotic" means a substance which is coca leaf, or coca derivative, or opium or derivative of opium, or Indian hemp and shall include any other substance, capable of causing or producing in human beings dependence, tolerance and withdrawal syndromes and which the Central Government may, by notification in the official Gazette, declare to be a narcotic drug or narcotic;

(i) "opium" means -

(1) the capsules of the poppy (*Palaver somniferous L*), whether in their original form or cut, crushed or powdered and whether or not juice has been extracted there from,

(2) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

(3) any mixture, with or without neutral materials of any of the above forms of opium, and includes and derivative of opium;

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

(k) "toilet preparation" means any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description, or any substance intended to cleanse, improve or alter the complexion, skin, hair or teeth, and includes deodorants and perfumes.

3. DUTIES OF EXCISE TO BE LEVIED AND COLLECTED ON CERTAIN GOODS.

(1) There shall be levied duties of excise, at the rates specified in the schedule, on all dutiable goods manufactured in India.

(2) The duties aforesaid shall be leviable -

(a) where the dutiable goods are manufactured in bond, in the State in which such goods are released from a bonded warehouse for home consumption, whether such State is the State of manufacture or not;

(b) where dutiable goods are not manufactured in bond, in the State in which such goods are manufactured.

(3) Subject to the other provisions contained in this Act, the duties aforesaid shall be collected in such manner as may be prescribed.

Explanation:

Dutiable goods said to be manufactured in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, opium, Indian hemp or other narcotic drug or narcotic which is to be used as an ingredient in the manufacture of such goods.

4. REBATE OF DUTY ON ALCOHOL, ETC. SUPPLIED FOR MANUFACTURE OF DUTIABLE GOODS.

Where alcohol opium, Indian hemp or other narcotic drug or narcotic had been supplied to a manufacturer or any dutiable goods for use as an ingredient of such goods by, or under the authority of, the collecting Government and a duty or excise on the goods so supplied had already been recovered by such Government under any law for the time being in force, the collecting Government shall, on an application being made to it in this behalf, grant in respect of the duty of excise leviable under this Act, a rebate to such manufacturer of the excess, if any, of the duty so recovered over the duty leviable under this Act.

5. RECOVERY OF SUMS DUE TO GOVERNMENT.

In respect of the duty of excise and any other sums of any kind payable to the collecting Government under any of the provisions of this Act or of the rules made there under, the Excise Officer empowered by the said rules to levy such duty or require the payment of such sums, may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due, which may be in his hands or under his disposal or control or may recover the amount by attachment and sale of dutiable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the sum and sent to it the Collector of the district in which such person resides or conducts his business, and the said Collector

on receipt of such certificate shall proceed to recover from the said person the amount specified therein in the same manner as an arrear of land revenue.

6. CERTAIN OPERATIONS TO BE SUBJECT TO LICENCES.

(1) The Central Government may, by notification in the official Gazette, provide that from such date as may be specified in the notification, no person shall engage in the production or manufacture of any dutiable goods or of any specified component parts or ingredients of such goods or of specified container of such goods or of labels of such containers except under the authority and in accordance with the terms and conditions of a licence granted under this Act.

(2) Every licence under sub-section (1) shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars as may be prescribed.

7. OFFENCES AND PENALTIES.

If any person -

(a) contravenes any of the provisions of a notification issued under Sec. 6; or
(b) evades the payment of any duty of excise payable under this Act; or
(c) fails to supply any information which he is required by rules made under this Act to supply or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(d) attempts to commit or abets the commission of any offence mentioned in Cl. (a) or Cl. (b).

He shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

8. POWER OF COURTS TO ORDER FORFEITURE.

Any Court trying any offence under Sec. 7 may order the forfeiture to the collecting Government of any dutiable goods in respect of which the Court is satisfied that an offence under this Act has been committed, and may also order the forfeiture of any alcohol, drugs or materials by means of which the

offence has been committed and of any receptacles, packages or coverings in which any such goods or articles are contained and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles, and any implements or machinery used in the manufacture of such goods.

9. POWER TO ARREST.

(1) Any excise officer duly empowered by rules made in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made there under, who, on demand of any excise officer duly empowered by rules made under this Act, refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false may be arrested by such officer in order that his name and residence may be ascertained.

10. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS IN INQUIRIES UNDER THIS ACT.

(1) Any excise officer duly empowered by rules made in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purpose of this Act.

(2) A summons to produce documents or other things under sub-section (1) may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person concerned.

(3) All persons so summoned shall be bound to attend either in person or by an authorized agent as such officer may direct and all persons so summoned shall be bound to state the truth on any subject respecting which he is examined or make statements and produce such documents and other things as may be required :

Provided that the exemption under Sec. 132 and Sec. 133 of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to requisitions for attendance

under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Sec. 193 and Sec. 228 of the Indian Penal Code (45 of 1860).

11. OFFICERS REQUIRED TO ASSIST EXCISE OFFICERS.

All officers of Customs and Central Excise, and such other officers of the Central Government as may be specified in this behalf, and all police officers and all officers engaged in the collection of land revenue are hereby empowered and required to assist excise officers in the execution of this Act.

12. OWNERS OR OCCUPIERS OF LAND TO REPORT MANUFACTURE OF CONTRABAND DUTIABLE GOODS.

Every owner or occupier of land and the agent of any such owner or occupier in charge of the management of that land, if dutiable goods are manufactured thereon in contravention of the provisions of this Act or the rules made thereunder, shall, in the absence of reasonable excuse, be bound to give notice of such manufacture to a Magistrate or to an officer of the Excise, Customs, Police or Land Revenue Department immediately the fact comes to his notice.

13. PUNISHMENT FOR CONNIVANCE AT OFFENCES.

Any owner or occupier of land or any agent of such owner or occupier in charge of the management of the land, who willfully connives at any offence against the provisions of this Act or any rules made there under shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

14. SEARCHES AND ARRESTS HOW TO BE MADE.

All arrests and searches made under this Act or under any rules made there under shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) 6, relating respectively to searches and arrests under the Code.

15. DISPOSAL OF PERSONS ARRESTED.

(1) Every person arrested under this Act shall be forwarded without delay to the nearest Excise Officer empowered to send persons so arrested to a Magistrate or if there is no such excise officer within a reasonable distance to the officer-in-charge of the nearest police station.

(2) The officer-in-charge of a police station to whom any person is forwarded under sub-section (1) shall either admit him to bail to appear before a Magistrate having jurisdiction or in default of bail forward him without delay in custody to such Magistrate.

16. INQUIRY HOW TO BE MADE BY EXCISE OFFICERS AGAINST ARRESTED PERSONS FORWARDED TO THEM.

(1) When any person is forwarded under Sec. 15 to an excise officer empowered to send persons so arrested to a Magistrate, the Excise Officer shall proceed to inquire into the charge against him.

(2) For the purpose of sub-section (1), the Excise Officer may exercise the same powers, and shall be subject to the same provisions, as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case :
Provided that -

(a) if the Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person he shall either admit him to bail to appear before Magistrate having jurisdiction in the case, or forward him in custody without delay to such Magistrate;

(b) if it appears to the Excise Officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond with or without sureties as the Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction and shall make a full report of all the particulars of the case to his official superior.

(3) All officers exercising any powers under Sec. 15 or this section shall so exercise their powers as to ensure that every person who is arrested and detained in custody is 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.

17. VEXATIOUS SEARCH, SEIZURE, ETC. BY EXCISE OFFICER.

(1) Any officer exercising powers under this Act or under the rules made there under who -

- (a) without reasonable ground of suspicion searches or causes to be searched any place, conveyance or vessel;
- (b) vexatiously and unnecessarily detains, searches or arrests any person;
- (c) vexatiously and unnecessarily seizes the moveable property of any person on pretence of seizing or searching for any article liable to confiscation under this Act;
- (d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

Shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

(2) Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

18. FAILURE OF EXCISE OFFICERS ON DUTY.

Any Excise Officer who ceases or refuses to perform, or withdraws himself from the duties of his office, unless he had obtained the express written permission of his superior officer or has given such superior officer two month's notice in writing of his intention or has other lawful excuse, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

19. POWER TO MAKE RULES.

(1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may -

- (i) provide for the assessment and collection of duties levied under this Act, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of the duty not paid;
- (ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government may think fit, the manufacture, or any process of the manufacture, or dutiable goods or of any component parts or ingredients or containers thereof, except of land or premises approved for the purpose;
- (iii) regulate the removal of dutiable goods from the place where they are stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market;
- (iv) regulate the production or manufacture or any process of production or manufacture, the possession and storage of dutiable goods or of any component parts or ingredients or containers thereof so far as such regulation is essential for the proper levy and collection of duties levied under this Act;
- (v) provide for the employment of excise officers to supervise the carrying out of any rules made under this Act;
- (vi) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for Excise Officers employed to supervise the carrying out of rules made under this Act and prescribe the scale of such accommodation;
- (vii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering dutiable goods into a clearing goods from such warehouses or in the movement of dutiable goods from one bonded warehouse to another;
- (viii) provide for the distinguishing of excisable goods which have been manufactured under licence, or materials which have been imported under licence and of goods on which duty has been paid or which are exempt from duty under this Act;

- (ix) impose on persons engaged in the manufacture, storage or sale (whether on their own account or as brokers or commission agents) so far as such imposition is essential for the proper levy and collection of the duties levied under this Act, the duty of furnishing information, keeping records and making returns and prescribe the nature of such information and form of such records and returns the particulars to be contained therein and the manner in which they shall be verified.
- (x) require that dutiable goods shall not be sold or offered or kept for sale except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;
- (xi) provide for the issue of licences and transport permits and the fees, if any, to be charged therefor;
- (xii) provide for the detention of dutiable goods, plant, machinery or material for the purpose of exacting the duty;
- (xiii) provide for the confiscation of dutiable goods in respect of which a breach of any rule made under this Act has been committed, and also for the confiscation of any alcohol, drugs or materials by means of which the breach has been committed and of any receptacle, packages or coverings in which goods or article are contained, and the animals, vehicles, vessels, or other conveyances used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods;
- (xiv) provide for the levy of a penalty not exceeding two thousand rupees for a breach of any rule made under this Act;
- (xv) provide for the procedure in connection with such confiscation and the imposition of such penalty, the maximum limits up to which particular classes of excise officers may adjudge such confiscation or penalty, appeals from orders of such officers and revision of such orders by some higher authority, the time-limit for such appeals and revisions and the disposal of goods and articles confiscated;
- (xvi) authorize and regulate the compounding of offences against, or liabilities incurred under, this Act or the rules made thereunder;

(xvii) authorize and regulate the inspection of factories and provide for the taking of samples or for the making of tests of any substance produced therein and for the inspection or search of any place, conveyance or vessel used for the production, storage, sale or transport of dutiable goods in so far as such inspection or search is essential for the proper levy and collection of the duties levied under this Act;

(xviii) provide for the grant of a rebate of the duty paid on dutiable goods which are exported out of India or shipped for consumption on a voyage to any port outside India;

(xix) exempt any dutiable goods from the whole or any part of the duty levied under this Act where in the opinion of the Central Government, it is necessary to grant such exemption in the interest of the trade or in the public interest;

(xx) notify in the official Gazette lists of the names and descriptions of preparations which would fall for assessment under any particular item or the schedule or for regulating their manufacture, transport and distribution;

(xxi) authorize particular classes of excise officers to provide by written instructions for supplemental matters arising out of any rule made by the Central Government under this section.

(3) Where any confiscation or penalty has been adjudged in respect of a breach of any rule under this Act, which is also an offence under Sec. 7 the person concerned shall not be prosecuted under that section.

(4) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however,

that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

20. BAR OF SUITS AND LIMITATION OF SUITS AND OTHER LEGAL PROCEEDINGS.

(1) No suit or other legal proceeding shall lie against the collecting Government or against any officer in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted against the collecting Government or against any officer for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

21. REPEALS AND SAVINGS.

If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed :

Provided that all rules made, notifications issued, licences or permits granted, powers conferred under any law hereby repealed shall, so far as they are not inconsistent with this Act, have the same force and effect as if they had been respectively made, issued, granted or conferred under this Act and by the authority empowered hereby in that behalf.

THE SCHEDULE

(See Sec. 3)

Medicinal Preparations

1. Allopathic Medicinal Preparations

(i) Medicinal preparations containing alcohol which are not capable of being consumed as ordinary alcoholic beverages -

(a) Patent or proprietary Twenty per cent. admedicines. valorem or rupees ten per litre of pure alcohol content, whichever is higher.

(b) Others. Rupees ten per litre of pure alcohol content.

(ii) Medicinal preparations containing alcohol which are capable of being consumed as ordinary alcoholic beverages -

(a) Medicinal preparations which contain Twenty per cent. ad known active ingredients in therapeutic valorem or rupees quantities. twenty per litre of pure alcohol content, whichever is higher.

- (b) Others. Twenty per cent. ad valorem or rupees eighty per litre of pure alcohol content, whichever is higher.
- (iii) Medicinal preparations not containing alcohol but containing narcotic ad valorem. drug or narcotic.

2. Medicinal preparations in Ayurvedic, Unani or other indigenous systems of medicine -

- (i) Medicinal preparations containing Nil self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages.
- (ii) Medicinal preparations containing Rupees two and self-generated alcohol which are capable fifty paise per of being consumed as ordinary alcoholic litre of pure beverages. alcohol content.
- (iii) All other containing alcohol Rupees eighty per which are prepared by distillation litre of pure or to which alcohol has been added. alcohol content.
- (iv) Medicinal preparations not Twenty per cent. ad containing alcohol but containing valorem. narcotic drug or narcotic.

3. Homoeopathic preparations Rupees twenty per containing alcohol. litre of pure alcohol content.

TOILET PREPARATIONS

4. Toilet preparations containing One hundred per alcohol or narcotic drug or narcotic. cent. ad valorem or rupees twenty per litre of pure alcohol content whichever is higher.

Explanation I :

"Patent or proprietary medicines" means any medicinal preparation which bears either on itself or on its container or both, a name which is not specified in a monograph in a pharmacopoeia, formulary or other publications notified in this behalf by the Central Government in the official Gazettee, or which is a brand name, that is, a name or a registered trade-mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or any other mark such to a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicinal preparation for the purpose of indicating or so as to indicate a connection in the course of trade between the preparation and some person having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person.

Explanation II :

Where any article is chargeable with duty at a rate dependent on the value of the article such value shall be deemed to be the value as determined in accordance with the provisions of Sec. 4 of the Central Excises and Salt Act, 1944 (1 of 1944).

Explanation III :

For the purposes of this schedule, "pure alcohol content", in relation to a preparation, means the ethyl alcohol content in the preparation expressed as ethyl alcohol of 100 per cent. by volume at 150 Degree C.

THE PERSONAL INJURIES (COMPENSATION INSURANCE) ACT, 1963

ACT NO.37 OF 1963



Mahalanand Homoeopathic
Medical College, Raigad, Satara.



2539

THE PERSONAL INJURIES (COMPENSATION INSURANCE) ACT, 1963

ACT NO. 37 OF 1963

[8th October, 1963.]

An Act to impose on employers a liability to pay compensation to workmen sustaining personal injuries and to provide for the insurance of employers against such liability.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Personal Injuries (Compensation Insurance) Act, 1963.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may by notification appoint.

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

(a) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the service of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means the later person while the workman is working for that other person;

(b) the "Fund" means the Personal Injuries (Compensation Insurance) Fund constituted under section 13;

(c) "gainfully occupied person" and "personal injury" have the meanings respectively assigned to those expressions in the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);

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

(e) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time the injury was sustained, and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in any employment which he was capable of undertaking at that time;

Provided that permanent partial disablement shall be deemed to result from every injury, or from any combination of injuries, specified in the Schedule, where the percentage, or the aggregate percentage, of disability as specified in the Schedule against such injury, or combination of injuries amounts to less than one hundred per cent.

¹[(f) "period of emergency" means, in relation to the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution,—

(i) on the 26th day of October, 1962, the period beginning with the 26th day of October, 1962, and ending with the 10th day of January, 1968, that is to say, the date on which the said Emergency was declared, by notification of the Government of India in the Ministry of Home Affairs, No. G.S.R. 93, dated the 10th January, 1968, to have come to an end;

(ii) on the 3rd day of December, 1971, the period beginning with the 3rd day of December, 1971, and ending with such date as the Central Government may, by notification in the Official Gazette, declare to be the date on which the said emergency shall come to an end.

1. For Pro-entire, 1965, vide notification No. S.O. 3382, dated 18th October, 1965, see Gazette of India, Extraordinary, Part II, sec. 3(1).

2. Subs. by Act 75 of 1971, s. 2, for clause (f) w.e.f. 25-12-1971.



(g) "prescribed" means prescribed by rules made under section 22;

(h) "total disablement" means such disablement whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time the injury was sustained;

Provided that permanent total disablement shall be deemed to result from every injury, or from any combination of injuries, specified in the Schedule, where the percentage, or the aggregate percentage, of disability as specified in the Schedule against such injury, or combination of injuries, amounts to one hundred per cent. or more;

(i) the "Scheme" means the Personal Injuries (Compensation Insurance) Scheme referred to in sub-section (1) of section 8;

(j) "wages" means wages as defined in the Workmen's Compensation Act, 1923 (8 of 1923), and "monthly wages" has the meaning assigned to that expression by section 5 of the Workmen's Compensation Act, 1923 (8 of 1923), and shall be calculated for the purposes of this Act in the manner laid down in that section;

(k) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is employed in any of the employments specified in section 3.

CHAPTER II

COMPENSATION PAYABLE UNDER THE ACT

3. Workmen to whom the Act applies.—The workmen to whom this Act applies are—

(a) workmen employed in any employment or class of employment which is, or has been declared to be an essential service under rule 126AA of the [Defence of India Rules, 1962 or under rule 119 of the Defence of India Rules, 1971];

(b) the workmen employed in any factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(c) workmen employed in any mine within the meaning of the Mines Act, 1952 (35 of 1952);

(d) workmen employed in major port;

(e) workmen employed in any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(f) workmen employed in any employment specified in this behalf by the Central Government by notification.

4. Compensation payable under the Act, by whom and how payable.—(1) There shall, subject to such conditions as may be specified in the Scheme, be payable by an employer in respect of personal injury sustained by a gainfully occupied person who is a workman to whom this Act applies, compensation, in addition to any relief provided under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), of the amount and kind provided by section 7:

Provided that where an employer has taken out a policy of insurance, as required by sub-section (1) of section 9, and has made all payments by way of premium thereon which are subsequently due from him in accordance with the provisions of the Scheme or where by the provisions of sub-section (1) of section 9 or of sub-section (2) of section 10 the employer is not required to insure, the Central Government shall assume and discharge on behalf of the employer the employer's liability to pay compensation under this sub-section.

(2) The compensation payable under this Act shall be payable in accordance with the provisions made in this behalf in the Scheme.

(3) This section shall be binding on the Government.

5. Limitation on right to receive compensation otherwise than under this Act and Act 59 of 1962.—Where any person has a right apart from the provisions of this Act and of the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), to receive compensation (whether in the form of gratuity, pension, compassionate payment or otherwise) or damages from an employer in respect of a personal injury in respect of which compensation is payable under this Act, the right shall extend only to so much of such compensation or damages as exceeds the amount of compensation payable under this Act.

6. Special provisions in relation to employees of Government.—Where any person in the employ of Government has under the rules regulating the conditions of his service a right apart from the provisions of this Act or of the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), to receive any sum, whether as extraordinary pension, gratuity, compassionate payment or damages, from the Government in respect of a personal injury in respect of which compensation is payable under this Act, then, notwithstanding anything contained in this Act or the Personal Injuries (Emergency Provisions) Act, 1962, that person shall have the right to receive the sum admissible under those rules and if the sum so admissible is less than the amount payable as compensation under this Act and the Personal Injuries (Emergency Provisions) Act, 1962, then, he shall have a further right to receive an amount equal to the difference between the sum admissible under those rules and the amount of compensation payable under this Act.

7. Amount of compensation.—(1) The compensation payable under this Act shall be as follows:—

(a) where death results from the injury, the amount payable in a like case under the Workmen's Compensation Act, 1923 (8 of 1923), reduced by the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);

(b) where permanent total disablement results from the injury, the amount payable in a like case under the Workmen's Compensation Act, 1923 (8 of 1923), reduced by the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);

(c) where permanent partial disablement results from the injury—

(i) in the case of an injury specified in the Schedule—such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of disablement;

(ii) in the case of an injury not specified in the Schedule—the percentage of such compensation specified in the Schedule for disablement held by a competent medical authority acting under the Scheme made under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), to be of corresponding degree;

(iii) where more injuries than one are sustained—the aggregate of the compensation payable in respect of those injuries, so however as not to exceed in any case the compensation which would have been payable if permanent total disability has resulted from the injuries;

(d) where temporary disablement, whether total or partial, results from the injury, the half-monthly payments payable in a like case under the Workmen's Compensation Act, 1923 (8 of 1923), reduced in each case, so long as he receives any payment under the Scheme made under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), by the amount payable under the said Scheme.

(2) Where the monthly wages of a workman are more than five hundred rupees, the compensation payable under this Act shall be the amount payable under the provisions of sub-section (1) in the case of a workman whose monthly wages are more than four hundred rupees.

CHAPTER III

PERSONAL INJURIES (COMPENSATION INSURANCE) SCHEME

8. Personal Injuries (Compensation Insurance) Scheme.—(1) The Central Government shall, by notification, put into operation a Scheme to be called the Personal Injuries (Compensation Insurance)

Scheme whereby provision is made for all matters necessary to give effect to the purposes of this Act and whereby the Central Government undertakes, in relation to employers of workmen to whom this Act applies, the liabilities of insuring such employers against liabilities incurred by them to workmen under this Act and the Scheme;

[Provided that different Scheme shall be put into operation in relation to different periods of emergency.]

(2) The Scheme shall secure that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued in the prescribed form by a person acting on behalf of the Central Government.

(3) The Scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein.

(4) The scheme may be amended at any time by the Central Government.

(5) Without prejudice to the generality of the provisions of sub-section (1), the Scheme may—

(a) make provisions regulating the payment of the compensation payable under this Act and the Scheme, including provisions for punishment by fine not exceeding two thousand rupees for the contravention of any requirement of the Scheme;

(b) make provisions specifying the persons to whom and the proportions and manner in which payments under this Act shall be made;

(c) make provisions for determining the value in lump sum of the amount payable under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962);

(d) specify conditions or circumstances which will disentitle a workman to the compensation payable under this Act, and make it an express or implied condition of any policy of insurance issued under the Scheme that the payment of compensation in defiance of such specification is not covered by the policy;

(e) specify the conditions or circumstances under which the compensation payable to a workman may be withheld, cancelled, reduced or reviewed if the award made under the Scheme made under the Personal Injuries (Emergency Provisions) Act, 1962 (59 of 1962), is withheld, cancelled, reduced or reviewed;

(f) provide for cases in which an employer has of his own accord undertaken a part or the whole of the liability imposed by this Act;

(g) provide for the final assessment of the total premium due on a policy of insurance under the Scheme either as the equivalent of all advance payments of premium already made by an employer, or as a percentage of the total wages bills of an employer for the periods with reference to which the amount of any advance payments made by him was fixed or as a percentage of the total wages bill of an employer for a period of not less than twelve or more than fifteen months immediately preceding the expiry of the period of the emergency, and for the assessment of the total premium due on a policy which has ceased to be in force before the expiry of the period of the emergency owing to the employer having gone out of business;

(h) provide for the recovery from an employer of the total premium due on a policy of insurance including provision for its recovery by periodic advance payments of an amount based on a percentage of his total wages bill for any prescribed period, the separate funding of the payments so made by each employer, and the eventual adjustment of the total premium as finally assessed against the total of such periodic payments;

Provided that where the amount of the periodic payment based on the total wages bill of the prescribed period is less than eight rupees, it shall be increased to eight rupees.

Provided further that the first of such periodic payments shall, subject to the aforesaid minimum of eight rupees, be at such rate as the Central Government may specify in this behalf.

Provided further that such periodic payments shall not be more frequent than once in each quarter of a year.

Provided further that the rate of any periodic payment after the first shall, subject to the aforesaid minimum of eight rupees, be such as the Central Government may, after considering its liabilities under this Act, fix from time to time, and the Central Government may, where the total amount in the Fund so¹ requires, either waive or postpone any periodic payment.

9. Compulsory insurance.—(1) Every employer of workmen to whom this Act applies or is subsequently made applicable except an employer whose total wages bill for any quarter after the commencement of this Act has never exceeded fifteen hundred rupees, shall, before such date as may be prescribed, or before the expiry of such period as may be prescribed after his having first become such an employer, take out a policy of insurance issued in accordance with the Scheme, whereby he is insured until the expiry of the period of the emergency or until the date, if any, prior to the expiry of the period of the emergency at which he ceases to be an employer to whom this section applies, against all liabilities imposed on him by this Act.

(2) Whoever contravenes the provisions of sub-section (1), or, having taken out a policy of insurance as required by that sub-section, fails to make any payment by way of premium thereon which is subsequently due from him in accordance with the provisions of the Scheme, shall be punishable with fine which may extend to two thousand rupees and shall also be punishable with a further fine which may extend to one thousand rupees for every day after having been so convicted on which the contravention or failure continues.

(3) This section shall not bind the Government.

10. Principals and contractors.—(1) Where a person (in this section referred to as the principal) uses, in the course of or for the purposes of his trade or business, the services of workmen temporarily lent or let on hire to him by arrangement with another person with whom the workmen have entered into contracts of service or apprenticeship, or in the course of or for the purpose of his trade or business, contracts with any other person for the execution by or under such other person of the whole or any part of any work which is ordinarily part of the trade or business of the principal (either such other person being in this section referred to as the contractor) the principal shall obtain from the contractor the name of the agent of the Central Government acting under section 11 with whom he intends to insure, and shall report to the agent the existence of his agreement or contract with the contractor.

(2) Notwithstanding anything elsewhere contained in this Act, in any such case as is referred to in sub-section (1), it shall not be necessary for the contractor to insure against the liabilities imposed on him by this Act in respect of workmen employed by him whose services are lent or let on hire on such an arrangement or used in the execution of work on such a contract as is referred to in sub-section (1), where the arrangement or contract is for a term of less than one month.

(3) The Scheme may make provision for the supply by a contractor to a principal of any information necessary to enable the purposes of this section to be carried out including provision for punishment by fine not exceeding two thousand rupees for the contravention of any requirement of the Scheme.

11. Employment of agents by the Central Government.—The Central Government may by notification employ or authorise the employment of any person to act as its agent for any of the purposes of this Act and to pay to the person so employed such remuneration as it may think fit.

12. Prohibition of certain insurance business.—(1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business of insuring employers in India against the liabilities for insurance against which the Scheme provides.

(2) Nothing in sub-section (1) applies to any policy of insurance entered into before the date on which the Scheme is put into operation and current after that date or to any policy of insurance covering liabilities undertaken in excess of the liabilities imposed by this Act.

(3) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

13. Personal Injuries (Compensation Insurance) Fund.—(1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year to a fund to be called the Personal Injuries (Compensation Insurance) Fund (hereinafter referred to as the "Fund") such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payments made on compensation of offences under section 18 or by way of expenses or compensation awarded by a court under section 545 of the Code of Criminal Procedure, 1898 (5 of 1898), out of any fine imposed in any prosecution under this Act or by way of penalties imposed under the Scheme.

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under this Act or the Scheme or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme or for the payment by the Central Government of the cost of administering the Scheme.

Provided that no payment from the Fund shall be made in discharge of any liability of the Government to pay compensation to workmen employed by it.

(3) If at any time when a payment is to be made out of the Fund, the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India.

(4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be disposed of in such manner as the Central Government may think fit.

(5) The Central Government shall prepare in such form and manner as may be prescribed and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund.

CHAPTER IV MISCELLANEOUS

14. Power of Central Government to obtain information.—(1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether the requirements of this Act and of the Scheme have been complied with, require any employer to submit to him such accounts, books or other documents or to furnish to him such information or to give such certificates as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of the powers under this section or fails without reasonable excuse to comply with any request made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees.

(3) Whoever in purporting to comply with his obligations under this section knowingly or recklessly makes a statement false in a material particular shall be punishable with fine which may extend to one thousand rupees.

15. Recovery of premium unpaid.—(1) Without prejudice to the provisions of sub-section (2) of section 9, where any person has failed to insure as or to the full amount required by this Act and the Scheme and has thereby evaded the payment by way of premium of any money which he would have had to pay in accordance with the provisions of the Scheme but for such failure, an officer authorised in this behalf by the Central Government, may determine the amount payment of which has been so evaded and

the amount so determined shall be payable by such person and shall be recoverable from him as provided in sub-section (2).

(2) Any sum payable in accordance with the provisions of the Scheme by way of premium on a policy of insurance issued under the Scheme and any amount determined as payable under sub-section (1) shall be recoverable as an arrear of land-revenue.

(3) Any person against whom a determination is made under sub-section (1) may, within the prescribed period, appeal against such determination to the Central Government whose decision shall be final.

16. Payment of compensation where an employer has failed to insure.—Where an employer has failed to take out a policy of insurance as required by sub-section (1) of section 9, or having taken out a policy of insurance as required by that sub-section, has failed to make the payments by way of premium thereon which are subsequently due from him in accordance with the provisions of the Scheme, payment of any compensation for the payment of which he is liable under this Act may be made out of the Fund, and the sum so paid together with a penalty of such amount not exceeding the sum so paid as may be determined by an officer authorised in this behalf by the Central Government shall be recoverable from the employer as an arrear of land-revenue for payment into the Fund.

17. Limitation of prosecutions.—No prosecution for any offence punishable under this Act shall be instituted against any person except by or with the consent of the Central Government or an authority authorised in this behalf by the Central Government.

18. Composition of offences.—Any offence punishable under sub-section (2) of section 9 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

19. Power of magistrate to impose any sentence.—Where any offence against this Act is tried by a Presidency Magistrate or a magistrate of the first class, then, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), the magistrate trying the offence may pass any sentence authorised by this Act.

20. Bar of legal proceedings.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil court against the Central Government or a person acting as its agent under section 11 for the refund of any money paid or purporting to have been paid by way of premium on a policy of insurance taken out or purporting to have been taken out under this Act.

21. Power to exempt employers.—The Central Government shall exempt any employer from the provisions of this Act on the employer's request, if satisfied that he has before the commencement of this Act entered into a contract with insurers substantially covering the liabilities imposed on him by this Act, for so long as that contract continues.

22. Power to make rules.—(1) The Central Government may by notification make rules to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power such rules may prescribe—

(a) the principles to be followed in ascertaining the total wages bill of an employer, including provision for the exclusion therefrom of certain categories of wages or of certain elements included in the definition of wages;

(b) the form of the policies of insurance referred to in sub-section (2) of section 8;

(c) the period referred to in clause (g) of sub-section (5) of section 8;

(d) the date and the period referred to in sub-section (1) of section 9;

(e) the form of and the manner of preparing and publishing the account referred to in sub-section (5) of section 13;

(f) the periods referred to in sub-section (3) of section 15;

(g) any other matter which has to be or may be prescribed.

23. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to whether any compensation is payable under this Act or as to the amount thereof the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the decision of the Central Government, in such cases, shall be final.

24. ¹[Every scheme and rule to be laid before Parliament].—Every Scheme and every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament while, it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or the rule or both Houses agree that the Scheme or the rule should not be made, the Scheme or the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme or the rule.

THE SCHEDULE
[See sections 2 and 7(1)]

Description of injury	Percentage of disablement
<i>Upper Limb</i>	
Loss of both hands or of all fingers and thumbs.	100
Amputation of Right arm through shoulder.	90
Amputation of Left arm through shoulder.	90
Amputation below shoulder stump exceeding 6 inches from tip of acromion (Right).	80
Amputation below shoulder stump not exceeding 6 inches (Right).	90
Amputation below shoulder stump not exceeding 6 inches (left).	80
Amputation below shoulder from tip of acromion stump exceeding 6 inches (Left).	70
Amputation through elbow or below elbow with stump not exceeding 5 inches (Right).	80
Amputation through elbow or below elbow with stump not exceeding 5 inches (Left).	70
Amputation below elbow stump exceeding 5 inches (Right).	70
Amputation below elbow stump exceeding 5 inches (Left).	50
Loss of thumb (Right).	50
Loss of thumb (Left).	40
Loss of 4 fingers (Right).	50
Loss of 4 fingers (Left).	40
Loss of 2 fingers on either hand.	20
<i>Lower Limb</i>	
Loss of 2 or more limbs.	100
Amputation of both feet.	100
Amputation of one leg at hip or below hip with stump not exceeding 5 inches.	90
Lisfranc's Operation both feet.	80
<i>Lower Limb—Contd.</i>	
Amputation below hip with stump exceeding 5 inches.	80
Amputation through both feet proximal to the metatarso-phalangeal joint.	80
Loss of all toes of both feet through the metatarso-phalangeal joint.	40
Loss of all toes of both feet proximal to the proximal inter-phalangeal joints.	30
Loss of all toes of both feet distal to the proximal inter-phalangeal joint.	20

Description of injury		Percentage of disablement
Amputation of leg below middle thigh through knee or below knee with stump not exceeding 4 inches.		70
Amputation of leg below knee with stump exceeding 4 inches.		60
Liston's amputation of one foot.		40
Amputation through one foot proximal to the metatarso-phalangeal joint.		30
Loss of all toes of one foot proximal to the proximal inter-phalangeal joint including amputations through the metatarso-phalangeal joint.		20
<i>Other specific injury</i>		
Loss of hand and foot.		100%
<i>Other disablements</i>		
Very severe facial disfigurement.		100%
Total loss of speech.		70%
Limited restriction of movement, of joint through injury without penetration, or limited function of limb through fracture, or compound fracture of thumb or 2 or more fingers of either hand with impaired function.		20%
<i>Ankylosis in optimum position, i.e. the position of greatest usefulness</i>		
	<i>Right</i>	<i>Left</i>
<i>Arm</i>		
Shoulder.	40%	30%
Elbow.	40%	30%
Wrist.	30%	20%
<i>Leg</i>		
Hip.		60%
Knee.		40%
Ankle.		30%
<i>Defective Vision</i>		
Loss of sight.		100%
Loss one eye without complications, the other eye being normal.		40%
Loss of vision of one eye with complications or disfigurement, the other eye being normal.		40%
Loss of vision of one eye without complications or disfigurement, the other eye being normal.		30%

Other degree of defective vision

	When best obtainable actuity is in		Assessment Per cent.	When one eye removed—best obtainable actuity in remaining eye, with or without glasses is	Assessment Per cent.
	One eye	the other			
1.	6/6	6/24	15.19	1. 6/6	40
	or	6/36		2. 6/9	
2.	6/9	6/60	20	3. 6/12	
	or	3/60			
3.	6/12	Nil	30	4. 6/18	50
4.	6/18	6/18	15.19	5. 6/24	70
5.	6/18	6/24	30	6. 6/36	80
6.	6/18	6/36			
7.	6/18	3/60	40	7. 6/60	90
8.	6/18	6/60		8. 3/60	
9.	6/18	Nil	50		
10.	6/24	6/24	30	9. Nil	100
11.	6/24	6/3	40		
12.	6/24	6/60	50		
13.	6/24	3/60			
14.	6/24	Nil	70		
15.	6/36	6/36	50		
16.	6/36	6/60	60		
17.	6/36	3/60			
18.	6/36	Nil	80		
19.	6/60	6/60	80		
20.	6/60	3/60			
21.	6/60	Nil	90		
22.	3/60	3/60	80		
23.	5/60	Nil	90		
24.	Nil	Nil	100		

Defective hearing

Assessment should be based on the Grade "attained using both ears together; the percentage assessment appropriate to the Grade thus attained is given in the last column.

Grade of hearing attained		Assessment of both ears used together
1.	Total deafness.	80%
2.	Shout not beyond 3 feet.	70%
3.	Conversational voice not over 1 foot.	60%
4.	Conversational voice not over 3 feet.	40%
5.	Conversational voice not over 6 feet.	20%
6.	Conversational voice not over 9 feet—	
	(a) one ear totally deaf.	20%
	(b) otherwise	less than 20%

A case in which the right ear attained grade 4, the left ear grade 2 and both ear together grade 3 should, therefore, be recorded thus:

R₄ L₂ R Plus L₂ Assessment 60 per cent.

The assessment given above take into account minor ailments such as headache, vertigo tinnitus, sleeplessness, etc., which generally accompany deafness.

THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

No.42 OF 1994

[8th July, 1994]



Mahalaxmi Homoeopathic
Medical College, Raigaon, Satara.



2534

Ministry of Law, Justice and Company Affairs
(Legislative Department)

New Delhi, the 11th July, 1994

The following Act of Parliament received the assent of the President on the 8th July, 1994 and is hereby published for general information:-

THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

No.42 OF 1994

[8th July, 1994]

An Act to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto.

Whereas it is expedient to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs;

And whereas Parliament has no power to make laws for the States with respect to any of the matters aforesaid except as provided in articles 249 and 250 of the Constitution;

And whereas in pursuance of clause (1) of article 252 of the Constitution, resolutions have been passed by all the Houses of the Legislatures of the States of Goa, Himachal Pradesh and Maharashtra to the effect that the matters aforesaid should be regulated in those States by Parliament by law;

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:

Chapter I
Preliminary

Short title, application and commencement 1. (1) This Act may be called the Transplantation of Human Organs Act, 1994.

(2) It applies, in the first instance, to the whole of the States of Goa, Himachal Pradesh and Maharashtra and to all the Union territories and it shall also apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.

(3) It shall come into force in the States of Goa, Himachal Pradesh and Maharashtra and in all the Union territories on such date as the Central Government may, by notification, appoint and in any other State which adopts this Act under clause (1) of article 252 of the Constitution, on the date of such adoption; and any reference in this Act to the commencement of this Act shall, in relation to any State or Union Territory, mean the date on which this Act comes into force in such State or Union Territory.

Definitions 2. In this Act, unless the context otherwise requires:
(a) "advertisement" includes any form of advertising whether to the public generally or to any section of the public or individually to selected persons;
(b) "Appropriate Authority" means the Appropriate Authority



- appointed under section 13;
- (c) "Authorisation Committee" means the committee constituted under clause (a) or clause (b) of sub-section (4) of section 9;
 - (d) "brain-stem death" means the stage at which all functions of the brain stem have permanently and irreversibly ceased and is so certified under sub-section (6) of section 3;
 - (e) "deceased person" means a person in whom permanent disappearance of all evidence of life occurs, by reason of brain-stem death or in a cardio-pulmonary sense, at any time after live birth has taken place;
 - (f) "donor" means any person, not less than eighteen years of age, who voluntarily authorizes the removal of any of his human organs for therapeutic purposes under sub-section (1) or sub-section (2) of section 3;
 - (g) "hospital" includes a nursing home, clinic, medical centre, medical or teaching institution for therapeutic purposes and other like institution;
 - (h) "human organ" means any part of a human body consisting of a structured arrangement of tissues which, if wholly removed, cannot be replicated by the body;
 - (i) "near-relative" means spouse, son, daughter, father, mother, brother or sister;
 - (j) "notification" means a notification published in the Official Gazette;
 - (k) "payment" means payment in money or money's worth but does not include any payment for defraying or reimbursing –
 - (i) the cost of removing, transporting or preserving the human organ to be supplied; or
 - (ii) any expenses or loss of earnings incurred by a person so far as reasonably and directly attributable to his supplying any human organ from his body;
 - (l) "prescribed" means prescribed by rules made under this Act;
 - (m) "recipient" means a person into whom any human organ is, or is proposed to be, transplanted;
 - (n) "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section-2 of the Indian Medical Council Act, 1956, and who is enrolled on a State Medical Register as defined in clause (k) of that section;
 - (o) "therapeutic purposes" means systematic treatment of any disease or the measures to improve health according to any particular method or modality; and
 - (p) "transplantation" means the grafting of any human organ from any living person or deceased person to some other living person for therapeutic purposes.

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Authority for the removal of human organs

Authority for removal of human organs

3. (1). Any donor may, in such manner and subject to such conditions as may be prescribed, authorise the removal, before his death, of any human organ of his body for therapeutic purposes.
- (2). If any donor had, in writing and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorized at any time before his death, the removal of any human organ of his body, after his death, for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal, for therapeutic purposes, of that human organ from the dead body of the donor.
- (3). Where no such authority as is referred to in sub-section (2), was made by any person before his death but no objection was also expressed by such person to any of his human organs being used after his death for therapeutic purposes, the person lawfully in possession of the dead body of such person may, unless he has reason to believe that any near relative of the deceased person has objection to any of the deceased person's human organs being used for therapeutic purposes, authorize the removal of any human organ of the deceased person for its use for therapeutic purposes.
- (4). The authority given under sub-section (1) or sub-section (2) or, as the case may be, sub-section (3) shall be sufficient warrant for the removal, for therapeutic purposes, of the human organ; but no such removal shall be made by any person other than the registered medical practitioner.
- (5). Where any human organ is to be removed from the body of a deceased person, the registered medical practitioner shall satisfy himself, before such removal, by a personal examination of the body from which any human organ is to be removed, that life is extinct in such body or, where it appears to be a case of brain-stem death, that such death has been certified under sub-section (6).
- (6). Where any human organ is to be removed from the body of a person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in such manner and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts consisting of the following namely:
 - (i) the registered medical practitioner in charge of the hospital in which brain-stem death has occurred;
 - (ii) an independent registered medical practitioner, being a specialist, to be nominated by the

registered medical practitioner specified in cause (i), from the panel of names approved by the Appropriate authority;

(iii) a neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority; and

(iv) the registered medical practitioner treating the person whose brain-stem death has occurred.

(7). Notwithstanding anything contained in sub-section (3), where brain-stem death of any person, less than eighteen years of age, occurs and is certified under sub-section (6), any of the parents of the deceased person may give authority, in such form and in such manner as may be prescribed, for the removal of any human organ from the body of the deceased person.

Removal of
human organs
not to be
authorised in
certain cases.

4. (1). No facilities shall be granted under sub-section (2) of section 3 and no authority shall be given under sub-section (3) of that section for the removal of any human organ from the body of a deceased person, if the person required to grant such facilities, or empowered to give such authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2). No authority for the removal of any human organ from the body of a deceased person shall be given by a person to whom such body has been entrusted solely for the purpose of interment, cremation or other disposal.

Authority for
removal of
human organs
in case of
unclaimed
bodies in
hospital or
prison.

5. (1). In the case of a dead body lying in a hospital or prison and not claimed by any of the near relatives of the deceased person within forty-eight hours from the time of the death of the concerned person, the authority for the removal of any human organ from the dead body which so remains unclaimed may be given, in the prescribed form, by the person in charge, for the time being, of the management or control of the hospital or prison, or by an employee of such hospital or prison authorised in this behalf by the person in charge of the management or control thereof.

(2). No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased person is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased person within the time specified in such sub-section (1).

Authority for
removal of
human organs
from bodies
sent for post-

6. Where the body of a person has been sent for post-mortem examination-

(a) for medico-legal purposes by reason of the death of such person having been caused by accident or any other unnatural cause;

mortem
examination for
medico-legal or
pathological
purposes.

OR

(b) for pathological purposes,
the person competent under this Act to give authority for the removal of any human organ from such dead body may, if he has reason to believe that such human organ will not be required for the purpose for which such body has been sent for post-mortem examination, authorize the removal, for therapeutic purposes, of that human organ of the deceased person provided that he is satisfied that the deceased person had not expressed, before his death, any objection to any of his human organs being used, for therapeutic purposes after his death or, where he had granted an authority for the use of any of his human organs for therapeutic purposes after his death, such authority had not been revoked by him before his death.

Preservation of 7.
human organs.

After the removal of any human organ from the body of any person, the registered medical practitioner shall take such steps for the preservation of the human organ so removed as may be prescribed.

Savings 8.

(1). Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body or with any part of the body of a deceased person if such dealing would have been lawful if this Act had not been passed.

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(2). Neither the grant of any facility or authority for the removal of any human organ from the body of a deceased person in accordance with the provisions of this Act nor the removal of any human organ from the body of a deceased person in pursuance of such authority shall be deemed to be an offence punishable under section 297 of the Indian Penal Code.

Restrictions on 9
removal and
transplantation
of human
organs.

(1). Save as otherwise provided in sub-section (3), no human organ removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.

(2). Where any donor authorizes the removal of any of his human organs after his death under sub-section (2) of section 3 of any person competent or empowered to give authority for the removal of any human organ from the body of any deceased person authorises such removal, the human organ may be removed and transplanted into the body of any recipient who may be in need of such human organ.

(3). If any donor authorizes the removal of any of his human organs before his death under sub-section (1) of section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorisation Committee.

(4). (a) The Central Government shall constitute, by notification, one or more Authorisation Committees

consisting of such members as may be nominated by the Central Government on such terms and conditions as may be specified in the notification for each of the Union Territories for the purposes of this section.

(b) The State Government shall constitute, by notification, one or more Authorisation Committees consisting of such members as may be nominated by the State Government on such terms and conditions as may be specified in the notification for the purposes of this section.

- (5). On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorisation Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made thereunder, grant to the applicants approval for the removal and transplantation of the human organs.
- (6). If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorisation Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for approval.

Chapter III Regulation of hospitals

Regulation of hospitals conducting the removal, storage or transplantation of human organs

10. (1). On and from the commencement of this Act:
- (a) no hospital, unless registered under this Act, shall conduct, or associate with, or help in, the removal, storage or transplantation of any human organ;
 - (b) no medical practitioner or any other person shall conduct, or cause to be conducted, or aid in conducting by himself or through any other person, any activity relating to the removal, storage or transplantation of any human organ at a place other than an place registered under this Act; and
 - (c) no place including a hospital registered under sub-section (1) of section 15 shall be used or cause to be used by any person for the removal, storage or transplantation of any human organ except for therapeutic purposes.

- (2). Notwithstanding anything contained in sub-section (1), the eyes or the ears may be removed at any place from the dead body of any donor, for therapeutic purposes, by a registered medical practitioner.

Explanation: For the purposes of this sub-section, "ears" includes ear drums and ear bones.

Prohibition of removal or transplantation of human organs

11. No donor and no person empowered to give authority for the removal of any human organ shall authorise the removal of any human organ for any purpose other than therapeutic purposes.

organs for any purpose other than therapeutic purposes. Explaining effects, etc., to donor and recipient.

12. No registered medical practitioner shall undertake the removal or transplantation of any human organ unless he has explained, in such manner as may be prescribed, all possible effects, complications and hazards connected with the removal and transplantation to the donor and the recipient respectively.

Chapter IV Appropriate Authority

Appropriate Authority

13. (1). The Central Government shall appoint, by notification, one or more officers as Appropriate Authorities for each of the Union territories for the purposes of this Act.
(2). The State Government shall appoint, by notification, one or more officers as Appropriate Authorities for the purposes of this Act.
(3). The Appropriate Authority shall perform the following functions, namely:
(i) to grant registration under sub-section (1) of section 15 or renew registration under sub-section (3) of that section;
(ii) to suspend or cancel registration under sub-section (2) of section 16;
(iii) to enforce such standards as may be prescribed, for hospitals engaged in the removal, storage or transplantation of any human organ;
(iv) to investigate any complaint of breach of any of the provisions of this Act or any of the rules made thereunder and take appropriate action;
(v) to inspect hospitals periodically for examination of the quality of transplantation and the follow-up medical care to persons who have undergone transplantation and persons from whom organs are removed; and
(vi) to undertake such other measures as may be prescribed.

Chapter V Registration of Hospitals

- | | | |
|---|-----|---|
| Registration of hospitals engaged in removal, storage or transplantation of human organs. | 14. | (1). No hospital shall commence any activity relating to the removal, storage or transplantation of any human organ for therapeutic purposes after the commencement of this act unless such hospital is duly registered under this Act. Provided that every hospital engaged, either partly or exclusively in any activity relating to the removal, storage or transplantation of any human organ for therapeutic purposes immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement:
Provided further that every hospital engaged in any activity relating to the removal, storage or transplantation of any human organ shall cease to engage in any such activity on the expiry of three months from the date of commencement of this Act unless such hospital has applied for registration and is so registered or till such application is disposed of, whichever is earlier.
(2). Every application for registration under sub-section (1) shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.
(3). No hospital shall be registered under this Act unless the Appropriate authority is satisfied that such hospital is in a position to provide such specialised services and facilities, possess such skilled manpower and equipments and maintain such standards as may be prescribed. |
| Certificate of registration | 15. | (1). The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder, grant to the hospital a certificate of registration in such form, for such period and subject to such conditions as may be prescribed.
(2). If, after the inquiry and after giving an opportunity to the applicant of being heard, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for registration.
(3). Every certificate of registration shall be renewed in such manner and on payment of such fees as may be prescribed. |
| Suspension or cancellation of registration | 16. | (1). The Appropriate Authority may, suo moto or on complaint, issue a notice to any hospital to show cause why its registration under this Act should not be suspended or cancelled for the reasons mentioned in the notice.
(2). If, after giving a reasonable opportunity of being heard to the hospital, the Appropriate Authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made thereunder, it may, without prejudice to any criminal action that it may take against such hospital, suspend its registration for such period as |

it may think fit or cancel its registration:

Provided that where the Appropriate authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any hospital without issuing any notice.

Appeals

17. (1). Any person aggrieved by an order of the Authorisation Committee rejecting an application for approval under sub-section (6) of section 9, or any hospital aggrieved by an order of the Appropriate Authority rejecting an application for registration under sub-section (2) of section 15 or an order of suspension or cancellation of registration under sub-section (2) of section 16, may, within thirty days from the date of the receipt of the order, prefer an appeal, in such manner as may be prescribed, against such order to:
- (i) the Central Government where the appeal is against the order of the Authorisation Committee constituted under clause (a) of sub-section (4) of section 9 or against the order of the Appropriate Authority appointed under sub-section (1) of section 13; or
 - (ii) the State Government, where the appeal is against the order of the Authorisation Committee constituted under clause (b) of sub-section (4) of section 9 or against the order of the Appropriate Authority appointed under sub-section (2) of section 13.

Chapter VI Offences and Penalties

Punishment for
removal of
human organ
without
authority.

18. (1). Any person who renders his services to or at any hospital and who, for purposes of transplantation, conducts associates with, or helps in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.
- (2). Where any person convicted under sub-section (1) is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

Punishment for
commercial
dealings in
human organs

19. Whoever –
- (a) makes or received any payment for the supply of, or for an offer to supply, any human organ;
 - (b) seeks to find person willing to supply for payment any human organ;
 - (c) offers to supply any human organ for payment;
 - (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;

(e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or

(f) publishes or distributes or causes to be published or distributed any advertisement-

(a) inviting persons to supply for payment of any human organ;

(b) offering to supply any human organ for payment; or

(c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d),

shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees:

Provided that the court may, for any adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

Punishment for
contravention
of any other
provision of this
Act.

20.

Whoever contravenes any provision of this Act or any rule made, or any condition of the registration granted, thereunder for which no punishment is separately provided in this Act, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees.

Offences by
companies.

by 21.

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

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

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

Explanation: For the purposes of this section:

Cognizance of
offence

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.
- (1). No court shall take cognizance of an offence under this Act except on a complaint made by:
- (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; or
- (b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the court.
- (2). No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- (3). Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

Chapter VII Miscellaneous

Protection of
action taken in
good faith.

- (1). No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.
- (2). No suit or other legal proceeding shall lie against the Central Government or the State Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

Power to make
rules.

- (1). The Central Government may, by notification, make rules for carrying out the purposes of this Act.
- (2). In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
- (a) the manner in which and the conditions subject to which any donor may authorise removal, before his death, of any human organ of his body under sub-section (1) of section 3;
- (b) the form and the manner in which a brain-stem death is to be certified and the conditions and requirements which are to be satisfied for that purpose under sub-section (6) of section 3;
- (c) the form and the manner in which any of the parents may give authority, in the case of brain-stem death of a minor, for the removal of any

- human organ under sub-section (7) of section 3;
- (d) the form in which authority for the removal of any human organ from an unclaimed dead body may be given by the person incharge of the management or control of the hospital or prison, under sub-section (1) of section 5;
 - (e) the steps to be taken for the preservation of the human organ removed from the body of any person, under section 7;
 - (f) the form and the manner in which an application may be jointly made by the donor and the recipient under sub-section (5) of section 9;
 - (g) the manner in which all possible effects, complications and hazards connected with the removal and transplantation is to be explained by the registered medical practitioner to the donor and the recipient under section 12;
 - (h) the standards as are to be enforced by the Appropriate authority for hospitals engaged in the removal, storage or transplantation of any human organ under clause (iii) of sub-section (3) of section 13;
 - (i) the other measures as the Appropriate Authority shall undertake in performing its functions under clause (vi) of sub-section (3) of section 13;
 - (j) the form and the manner in which an application for registration shall be made and the fee which shall be accompanied, under sub-section (2) of section 14;
 - (k) the specialised services and the facilities to be provided, skilled manpower and the equipments to be possessed and the standards to be maintained by a hospital for registration, under sub-section (3) of section 14;
 - (l) the form in which, the period for which and the conditions subject to which certificate of registration is to be granted to a hospital, under sub-section (1) of section 15;
 - (m) the manner in which and the fee on payment of which certificate of registration is to be renewed under sub-section (3) of section 15;
 - (n) the manner in which an appeal may be preferred under section 17;
 - (o) the manner in which a person is required to give notice to the Appropriate Authority of the alleged offence and of his intention to make a complaint to the court, under clause (b) of sub-section (1) of section 22; and
 - (p) any other matter which is required to be, or may be prescribed.
- (3). Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of

thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal
saving
28 of 1982
29 of 1982

- and 25. (1). The Ear Drums and Ear Bones (Authority for Use for Therapeutic Purposes) Act, 1989 and the Eyes (Authority for Use for Therapeutic Purposes) Act, 1982 are hereby repealed.
- (2). The repeal shall, however, not affect the previous operation of the Acts so repealed or anything duly done or suffered thereunder.