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# **CRIMINAL MINOR ACT**

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## **MODULE- 1**

### **THE MAHARASHTRA POLICE ACT 1951**

**An Act to consolidate and amend the law for the regulation of the Police Force in the State of Bombay**

#### **History of Maharashtra police Act:**

-  
During the 17th century (until 1655), the area of present-day Mumbai was under Portuguese control. The Portuguese formed a basic law enforcement structure in this area with the establishment of a Police outpost in 1661.

The origins of the present day Mumbai police can be traced back to a militia organized by Gerald Aungier, the then Governor of Bombay in 1669. This Bhandari Militia was composed of around 500 men and was headquartered at Mahim, Sevree and Sion. In 1672, the judicial overview of police decisions by courts was introduced, although none of the judges had any actual legal training. The situation remained unchanged through the Maratha wars. However, by 1682, policing remained stagnant. There was only one ensign for the whole Bhandari militia, and there were only three sergeants and two corporals.

In 1936, the Sind province police was split from the Bombay province police. In 1947, it was renamed to Bombay state police, following India's independence. After the States Reorganisation Act, 1956, the Bombay state was divided into Gujarat police (later renamed Karnataka police) and Maharashtra Police.

#### **An Act to consolidate and amend the law for the regulation of the Police Force in the State of Bombay**

Whereas, it is expedient to amalgamate the District and Greater Bombay Police Forces [and the Police Forces of the Saurashtra, Kutch and Hyderabad areas, and of the Vidarbha region of the State of Bombay] into one common Police Force and to introduce uniform methods regarding the working control of the said Force throughout the State; And whereas it is necessary to consolidate and amend the law relating to the regulation of the said Force and the exercise of

powers and performances of functions by the State Government and by the members of the said

Force for the maintenance of public order.

**Objects : -**

It shall come into force [in the pre-Reorganisation State of Bombay] on such date as the State Government may, by notification in the *Official Gazette* [specify in this behalf], and in that part of the State to which it is extended by the Bombay Police (Extension and Amendment) Act, 1959, it shall come into force on such other date as that Government may by like notification specify.

**2. Definitions. -**

**(1) cattle -**

includes elephants, camels, horses, asses, mules, sheep, goats and swine;

**(2) "Corporation"**

means a Corporation constituted under the Bombay Municipal Corporation Act or the Bombay Provincial Municipal Corporations Act, 1949 [of the City of Nagpur Corporation Act, 1948];

**(3) The expression "**

competent authority" when used with reference to the exercise of performance of any power, duty or function under the provisions of this Act, means-

- (a) in relation to Greater Bombay and other areas for which a Commissioner of Police is appointed under section 7, the Commissioner;
- (b) in relation to the areas other than those referred to in clause (a), the District Magistrate or the [Superintendent] or the Additional Superintendent when specially empowered in that behalf by the State Government;
- (c) in relation to a revenue division, the Revenue Commissioner;

**(4) "constable"**

means a police officer of the lowest grade;

(4A) "dancing school" means any place (by whatever name called) where dancing of any kind is taught to, or practised by, persons on admission thereto either on payment of fees or with or without any other consideration; but does not include any institution where dancing is taught or practised as one of the subject of its curriculum and the institution is for the purposes of this Act duly recognised by the Government or any officer duly authorised by Government in that behalf.

**(5) "district"**

means a territorial division constituting a district for the purposes of the [Code of Criminal Procedure, 1898], but does not include [any area for which a Commissioner of Police has been appointed under section 7];

[(5A) "**eating house**" means any place to which the public are admitted, and where any kind of food or drink is supplied for consumption in the premises by any person owning or having an interest in or managing such place, and includes a refreshment room, boarding-house, coffee-house or a shop where any kind of food or drink is supplied to the public for consumption in or near such shop; but does not include "place of public entertainment"];

[(6) "**Director General and Inspector General**", "Additional Director General and Inspector General", "Special Inspector General", "Commissioner", "Joint Commissioner", "Additional Commissioner", "Deputy Inspector General", "Deputy Commissioner", "Assistant Commissioner", "Superintendent", "Additional Superintendent" "Assistant Superintendent" and "Deputy Superintendent" means respectively, the Director General and Inspector General of Police, Additional Director General and Inspector General of Police, Special Inspector General of Police, Commissioner of Police, Joint Commissioner of Police, Additional Commissioner of Police, Deputy Inspector General of Police (including the Director of Police Wireless and Deputy Inspector General of Police, Police Motor Transport appointed under section 8A), Deputy Commissioner of Police, Assistant Commissioner of Police, Superintendent of Police (including a Superintendent appointed under section 8A or 22A), Additional Superintendent of Police, Assistant Superintendent of Police and Deputy Superintendent of Police, appointed or deemed to be appointed under this Act.]

**(7) "municipality"**

means a municipality or municipal borough established under any law for the time being in force in any part of the State, but does not include a Municipal Corporation];

(7A) "**Municipal Commissioner**", in relation to the Municipal Corporation of the City of Nagpur, means the Chief Executive Officer by whatever name called;]

**(8) "place"**



includes a building, a tent, a booth or other erection, whether permanent or temporary, or any area whether enclosed or open.

**(9) "place of public amusement"**

means any place where music, singing, dancing, or any diversion or game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money or with the intention that money may be collected from those admitted and includes a race course, circus, theatre, music hall, billiard room, bagatelle room, gymnasium, fencing school, swimming pool or dancing hall;

**(10) "Place of public entertainment"**

means a lodging-house, boarding and lodging house or residential hotel, and includes any eating house in which any kind of liquor or intoxicating drug is supplied (such as a tavern, a wine shop, a beer shop or a spirit, arrack, toddy, ganja, bhang or opium shop) to the public for consumption in or near such place;]

**(11) "Police Officer"**

means any member of the Police Force appointed or deemed to be appointed under this Act and includes a special or an additional Police Officer appointed under section 21 or section 22;

**(13) "public places"**

includes the foreshore, the precincts of every public building or monument, and all places accessible to the public for drawing water, washing or bathing or for the purpose of recreation;

**(13A) "Revenue Commissioner"**

means the Commissioner of a Division appointed under section 6A of the [Bombay Land Revenue Code, 1879;]]

**(15) "street"**

includes any highway, bridge, way over a causeway, viaduct, arch, quay, or wharf or any road, lane, footway, square, court, alley or passage accessible to the public, whether a thoroughfare or not;

**(16) "subordinate ranks"**

means members of the Police Force below the rank of the Inspector;

**(17) "vehicle"**

means any carriage, cart, van dray, truck, hand cart or other conveyance of any description and includes a bicycle, a tricycle, a rickshaw, an automatic car, a vessel or an aeroplane.

**\* Superintendence, control and organization of the Police Force:-**

**One Police Force for the [whole of the [State of Maharashtra. –( u/s.3)**

There shall be one Police Force for the [whole of the [State of Maharashtra]] [and such

Police Force shall

include every Police officer referred to in clause (6) of section

Provided that, the members of the Police Forces constituted under any of the Acts mentioned

in Schedule I, immediately before the coming into force of this Act [in the relevant part of the

State] shall be deemed to be the members of the said Police Force.

**Case law :-Sumit v/s Deputy Commissioner of Police, Zone-1 & Another (2017)**

**Superintendence of Police Force to vest in the State Government. –(u/s.4)**

The superintendence of the Police Force throughout [the [State of Maharashtra]] vests in and exercisable by the State Government and [subject to such superintendence, the Secretary to the State Government in the Home Department, whether designated as Secretary, Home Secretary, Special Secretary, Additional Chief Secretary or otherwise, in charge of the Law and Order Division of the Home Department shall exercise control, direction and supervision over the Police Force].

**Constitution of Police Force. –(u/s.5)**

Subject to the provisions of this Act-the Police Force shall consist of such number in the several ranks and have such

- (a) organization and such powers, functions and duties as the State Government may by
- (b) general or special order determine;
- (b) the recruitment, pay, allowances and all other conditions of service of the Police Force shall be such as may from time to time be determined by the State Government by general or special order:

Provided that-

- (i) the rules and orders governing the recruitment, pay, allowances and other conditions of service of the members of the Police Force constituted under any of the Acts mentioned in Part I or II of Schedule I and deemed to be the members of the Police Force under section 3, shall continue in force until altered or cancelled under clause (b); but in the case of members of the Police Force constituted under any of the Acts mentioned in Part II of that Schedule such alteration or cancellation shall be subject to the proviso to sub-section (7) of section 115 of the States Reorganisation Act, 1956;]
- (ii) nothing in this clause shall apply to the recruitment, pay, allowances and other conditions of service of the members of the Indian Police and Indian Police Service.

**Inspector-General, Additional and Deputy Inspector-General. – (u/s.6)**

(1) Subject to the provisions of section 4 for the direction and supervision] of the Police Force, the State Government shall appoint a [Director-General and Inspector-General of Police] who shall exercise such powers and perform such functions and duties and shall have such responsibilities and such authority as may be provided by or under this Act, or orders made by the State Government.

(2) (a) The State Government may appoint 2 [one or more Special Inspector-General of Police] 3 [one or more Additional Inspectors-General] and one or more Deputy Inspectors-General of Police.

(b) The State Government may direct that any one of the powers, functions, duties and

responsibilities and the authority of the Inspector-General may be exercised, performed or discharged as the case, may be, by 4 [a Special Inspector-General or] 5 [an Additional Inspector-General] or a Deputy Inspector-General.

(c)The State Government may also by a general or special order direct that [a Special Inspector-General or] [an Additional Inspector-General] or Deputy Inspector-General shall assist and aid the Inspector-General in the performance, exercise and discharge of his powers, functions, duties, responsibilities and authority in such manner and to such extent as may be specified in the order.

(d)6 [N. B.- Retrospective effect to Secs. 2 to 6 and indemnity of officers, etc

(1) The amendments made to the principal Act by Secs. 2 to 6 (both inclusive) of this Act shall be deemed to have been made and come into force on the 20th day of November, 1963.

(2) All acts done in good faith by any police officer, or Additional police officer, Veterinary Officer or Magistrate in pursuance or intended pursuance of the powers conferred on him by Secs. 73 to 77 (both inclusive) of the principal Act as amended by this Act during the period from the 20th November, 1963 to the date of commencement of Bombay Police (Amendment) Act, 1964 shall be deemed to be and always be deemed to have been validly done, and no such acts shall be deemed to be invalid or called in question on the ground only that the said powers in purported exercise of which the said acts were done were not at the time when the said acts were done lawfully vested in him, and all such officers and Magistrates are hereby indemnified and

discharged from civil and criminal liability.

### **Commissioner(u/s.7)**

S(a) The State Government may appoint a police officer to be the Commissioner of Police of Greater Bombay for any area specified in a notification issued by the State Government in this behalf and published in the official gazette.

(b) The State Government 1 [may also appoint an additional Commissioner of Police for the areas] specified in Cl. (a).

(c) The Commissioner shall exercise such powers, perform such functions and duties and shall have such responsibilities and authority as are

provided by or under this Act or as may otherwise be directed by the State Government by general or special order: Provided that the State Government may direct that any of the powers, functions, duties, responsibilities or authority exercisable or to be performed or discharged by the Commissioner, shall be exercised, performed or discharged subject to the control of the Inspector-General:

Provided further that the area for which a Commissioner has been appointed under the section shall not, unless otherwise provided by or under this Act, to be under the charge of the District Magistrate or the District Superintendent or any of the purpose of this Act, notwithstanding the fact that such area form 8.] part of a district within the territorial jurisdiction for which a District Magistrate or a 2 [Superintendent] may have been appointed

### **Appointment of Principals of Police Training Institutions.(U/S.9)**

(1) The State Government may appoint any Police officer not below the rank of Superintendent to be the Principal of the Police Training College, Nasik, or any other Police Training College established by it. The State Government may assign to each of the Principals aforesaid, such powers, functions and duties, as it may think fit.

(2) The State Government may appoint any Police Officer not below the rank of an Assistant or Deputy Superintendent to be the Principal of any Police Training School, established by it. An officer (not below the rank of a Deputy Inspector-General) authorized by the State Government in that behalf, may, subject to the control of the State Government, assign to each Principal so appointed such powers, functions and duties as he may think fit.

### **Deputies Commissioner(u/s.10)**

- (1) The State Government may appoint one or more Deputy Commissioners and one or more Assistant Commissioners of Police 2 [\* \* \*] in any area in which a Commissioner has been appointed under Cl. (a) of Sec. 7. (2) Every such Deputy or Assistant Commissioner shall, under the orders of the Commissioner, exercise and perform any of the powers, functions and duties of the Commissioner to be exercised or performed by him under the provision of this Act or any other law for the time being in force in accordance with general or special orders of the State Government made in this behalf: Provided that the powers to be exercised by the Commissioner 3 [of making, altering or rescinding rules under Sec. 33] shall not be exercisable by a Deputy Commissioner.

### **Assistant Commissioner within jurisdiction of Commissioners.(u/s.11)**

- (1) The State Government may appoint 7 [for any area for which a Commissioners of police has been appointed under Sec. 7) such number of Superintendents of Police as it may think expedient.
- (2) An Assistant Commissioner appointed under sub-section (1) shall exercise such powers and perform such duties and functions as can be exercised or performed under the provisions of this Act or other law for the time being in force or as are assigned to him by the Commissioner under the general or special orders of the State Government: Provided that the powers to be exercised by the Commissioner 9 [of making, altering or rescinding rules under sSec. 33] shall not be exercisable by the Assistant Commissioner.

### **Constitution of divisions and sections(u/s.12)**

- (1) Subject to the control of the State Government, the Commissioner 10[for any area] shall, if he thinks fit-
- (a) constitute 11[within the area under his charge], Police divisions,
- (b) sub-divide the same into sections, and
- (c) define the limits and extent of such divisions and sections.
- (3) Officers-in-charge of divisions and sections. Each such division shall be in charge of an

Assistant Commissioner and each section shall be in charge of an Inspector of Police.  
the State Government the Commissioner for the area for which he is appointed and the  
Inspector-General for other areas shall appoint 1 Omitted by Mah Act 46 of 1962, Sec 3  
and Sch. 2 The words “in Greater Bombay or” were deleted by the Maharashtra  
Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

#### **Certificate of appointment(u/s.14)**

- (1) Every Police officer of the grade of Inspector or below], shall on appointment receive a certificate in form provided in Schedule II. The certificate shall be issued under the seal of such officer as the State Government may, by general or special order direct.
- (2) A certificate of appointment shall become null and void whenever person named therein ceases to belong to the Police Force or shall remain inoperative during the period within which such person is suspended from such force.

#### **Effect of suspension of Police officer(u/s.15)**

. The powers, functions and privileges vested in a police shall remain suspended whilst such Police officer is under suspension from office: Provided that notwithstanding such suspension, such person shall not cease to be a Police officer and shall continue to be subject to the control of the same authorities to which he would have been, if he was not under suspension.

#### **General powers of Commissioner and [Superintendent.(u/s.16)**

The Commissioner, subject to the orders of the Inspector-General and the Superintendent, subject to the orders of the Inspector-General and the District Magistrate, shall, within their respective spheres of authority, direct and regulate all matters of arms, drill, exercise, observation of persons and events, mutual relations, distribution of duties, study of laws, orders and modes of proceedings and all matters of executive detail or the fulfilment of their duties by the Police Force under him.

#### **Control of District Magistrate over Police Force in district (u/s.17)**

(1) The Superintendent and the Police Force of a district shall be under the control of the District Magistrate  
. (2) In exercising such control the District Magistrate shall be governed by such rules and orders as the State Government may make in this behalf 4 [and shall be subject to the lawful orders of the Revenue Commissioner]. Gujarat Amendment : In Sec. 17, in sub-section (2), the words “and shall be subject to the lawful orders of the Revenue Commissioner” shall be deleted.5

#### **Power of District Magistrate to require reports from [Superintendent] .(u/s18.)**

The District Magistrate may require from the [Superintendent] reports, either particular or general, or any matter connected with the crimes, habitual offenders, the prevent on of disorder, the regulation of a assemblies and amusements, the distribution of the Police Force, the conduct and character of any Police officer subordinate to the [Superintendent], the utilization of auxiliary means and all other matters in furtherance of his control of the Police Force and the maintenance of order.



### **Power of supervision by district Magistrates(u/s.19)**

If the District Magistrate observes any marked incompetence or unfitness for the locality or for his particular duties in any Police officer subordinate to the [Superintendent], he may require the Superintendent to substitute another officer for any officer whom he has power to transfer and the Superintendent shall be bound to comply with the requisition: Provided that if the Police officer concerned is an officer 1 (of a grade higher than that of an Inspector) the District Magistrate may report his conduct to the Inspector-General. The Inspector-General may, thereafter, determine the action to be taken and pass such orders as he thinks fit, and shall communicate such action or order to the District Magistrate.

### **Power of Inspector-General and Commissioner to investigate and regulate matters of**

#### **Police accounts.(u/s.20)**

The Inspector-General, throughout the 2 [State] and the Commissioner in the area for which he is appointed, shall, subject to the orders of the State Government, have authority to investigate and (3) regulate all matters of account connected with the Police in the [State] or in the area, as the case (4) may be, and all persons concerned shall be bound to give him reasonable aid and facilities in conducting such investigations and to conform to his orders consequent thereto.

#### **Special Police officers( u/s.21)**

The Commissioner, the District Superintendent, or any Magistrate 3 specially empowered in this behalf by the State Government, may, at any time by a written order signed by himself and sealed with his own seal, appoint any able bodied male person between the ages of 18 and 50, whom he considers fit to be a special Police officer to assist the Police Force on any occasion, when he has reason to apprehend the occurrence of any riot or grave

disturbance of the peace within the limits of his charge and he is of opinion that the ordinary Police Force is not sufficient for the protection of the inhabitants and for the security of property. (1) Every special Police officer so appointed shall on appointment- (a) receive a certificate in a form approved by the State Government in this behalf. (b) have the same powers, privileges and immunities and be liable to the same duties and responsibilities and be subject to the same authorities as an ordinary Police officer.

**Appointment of additional Police(u/s.22)**

(1) Additional Police officers of such rank or grade for such time and on such pay as the authority specified or under the provisions of this Act in that behalf may determine, may be employed or deputed for the purpose stated in such provisions.

(2) Every additional Police officer appointed shall, on appointment, -

(a) receive a certificate in a form approved by the State Government in this behalf,

(b) be vested with all or such of the powers, privileges and duties of a Police officer as are specially mentioned in the certificate, and

(c) be subject to the orders of the Commissioner or the Superintendent, as the case may be.

(2) The employment or deputation of such additional Police officer may be made at the request of any person requiring such Police and the cost of such employment, shall be recovered in such matter as is provided by or under this Act or under any other law for the time being in force.

**Appointment of Railway Police. (u/s.22-A.)**

(1) The State Government may, by notification in the official Gazette, create one or more special police district embracing such railway areas in the State as it may specify, and appoint a Superintendent of Police

(2) Subject to the control of the Inspector-General, such police officers shall discharge police functions connected with the administration of railways situated within their respective charges, and such other functions as the State Government may from time to time assign to them.

(3) Any member of the said Police Force whom the State Government shall generally or specially empowered to act under this sub-section may, subject to any orders which the Government may make in this behalf, exercise within the special district or any part thereof, any of the powers of an officer in charge of a police station in that district, and when so exercising such powers shall, subject to any such order as aforesaid, be deemed to be an officer in charge of the police station discharging the functions of such officer within the limits of his station.

(4) Subject to any general or special orders which the State Government may make in this behalf, such police officers shall, in the discharge of their functions, be vested within every part of the State with the powers and privileges and be subject to the liabilities of police officers under this Act or any other law for the time being in force.

(5) The Superintendent of Police may, with the previous permission of the State Government, delegate any of the powers and functions conferred on him by or under this Act to an Assistant or Deputy Superintendent].

### **Regulation, Control and Discipline of the Police Force**

#### **Framing of rules for administration of the Police.(u/s.23)**

Subject to the orders of the State Government the Commissioner in the case of the Police Force allocated to Greater Bombay and other areas for which he has been appointed and the Inspector-General in the case of the Police Force allocated to other areas, may make rules or orders not inconsistent with this Act or with any other enactment for the time being in force-

(a) regulating the inspection of the Police Force by his subordinates;

(b) determining the description and quantity of arms, accoutrements, clothing and other necessaries to be furnished to the Police;

(c) prescribing the places of residence of members of the Police Force; (d) for institution, management and regulation of any Police fund for any purpose connected with police administration;

(e) regulating, subject to the provisions of Sec. 17, the distribution movements and location of the Police;

(f) assigning duties to Police officers of all ranks and grades, and prescribing –

(i) the manner in which, and

(ii) the conditions subject to which, they shall exercise and perform their respective powers.<sup>1</sup> This section was inserted by Bom Act 34 of 1959, See 12. <sup>2</sup> Ins by Maharashtra Act 28 of 1964. <sup>3</sup> Ins by Maharashtra Act 28 of 1964. <sup>12</sup> duties:

(g) regulating the collection and communication by the Police of intelligence and information;

(h) generally, for the purpose of rendering the Police efficient and preventing abuse or neglect of their duties.

Gujarat Amendment: In Sec. 23, omit “Greater Bombay and other”.

#### **Inspector- General or Commissioner may call for returns.(u/s.24)**

(1) The Inspector-General may, subject to the rules and orders of the State Government, call for such returns, reports and statements on subject connected with the suppression of crime, the maintenance of order and the performance of their duties as his subordinates may be able to furnish to him.

The Inspector-General shall communicate to the District Magistrate <sup>2</sup> [and the Revenue Commissioner] any general orders issued by him for the purposes aforesaid or in consequence of the information furnished to him, and also any orders which the State Government may direct.

(2) The Commissioner may subject as aforesaid with reference to the area under his charge, call for such reports, returns and statements as are pro<sup>25</sup>. Punishment of the members of the subordinate ranks of the Police Force departmentally for neglect of duty etc.

(1) The State Government or any officer authorised by sub-section (2) in that behalf may suspend, reduce, dismiss or remove <sup>2</sup> [an Inspector or] any member of the subordinate ranks of the Police

Force whom he shall think cruel, perverse, remiss or negligent in the discharge of his duty or unfit for the same, and may fine in an amount not exceeding one month's pay, any member of the subordinate ranks of the Police Force.

(2) Punitive powers of Inspector-General, Commissioner, Deputy Inspector-

(a) The Inspector-General, the Commissioner and the Deputy Inspector-General 6 [(including the Director of Police Wireless) shall have authority to punish 7 [an Inspector or] any member of the subordinate ranks under sub-section (1), A 5 [Superintendent] shall have the like authority in respect of any Police officer subordinate to him below the grade of Inspector 8 [and may suspend an Inspector who is subordinate to him pending inquiry into a complaint against such Inspector and until an order of the Inspector-General or Deputy Inspector-General 4 [(including the Director of Police Wireless) can be obtained

(b) The Principal of 9 [a Police Training College] shall also have the like authority in respect of any member of the subordinate ranks of the Police Force below the grade of inspector serving under him, and in respect of head constables and constables belonging to the Police Force or of any other district all attached to for duty under him, He may also suspend an Inspector who is subordinate to him pending inquiry into a complaint against such Inspector and until an order of the Inspector-General or Deputy Inspector General can be obtained training at such school or serving under him, or attached to such school for duty under him.

**Procedure to be observed in awarding punishment(u/s.26)**

When any officer passes an order for fining, suspending, reducing, removing or dismissing a Police officer, he shall record such order or cause the same to be recorded, together with the reasons therefore and a note of the inquiry made, in writing, under his signature. Provided that 3 [no order for reducing, removing or dismissing a Police officer] shall be passed without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him except in cases referred to in the proviso (a) to CI. (2) of Art. 311 of the Constitution.

**Appeals from orders of punishment (u/s27)**

An appeal against any order passed against a Police officer under Sec. 25 or the rules or orders thereunder shall lie to the State Government itself or to such officer as the State Government may by general or special order specify.

**Divisional powers of State Government, Inspector-General and Deputy Inspector (27-A).** General. The State Government, the Inspector-General or a Deputy Inspector-General may, suo motu or on application made to him within the prescribed period in this behalf, call for and examine the record of any inquiry or proceeding of any subordinate police office order" (a) confirm, modify or reverse any such order  
, (b) impose any penalty or set aside, reduce, confirm or enhance penalty imposed by such order,  
(c) direct that further inquiry may be held, or

(d) make such other order as. in circumstances of the case, it or be may deem fit: Provided that an order in revision imposing or enhancing penalty shall not be passed unless the police officer affected thereby has been given a reason able opportunity of being heard: Provided further that no order in revision shall be passed-

(i) in a case where an appeal against the decision or order passed in such inquiry or proceeding has been filed, when such appeal is pending; (ii) in a case where an appeal against such decision or order, has not been filed. before the expiry of the period provided for filing such appeal; and

(iii) in any case after the expiry of a period of three years from the date of the decision or order sought to be revised.

**Police officers to be deemed to be always on duty and to be liable to employment in any part of the State(u/s.28)**

(1) Every Police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty, and any Police officer or any number or body of Police officers allocated for duty in one part of the State may, if the State Government or the Inspector General so directs, at any time, be employed on Police duty in any other part of the State for so long as the services of the same may be there required.

(2) Intimation of proposed transfers to be given by the Inspector-General to the Commissioner and District Magistrate.

**the Amendment: In Section 28, in sub-section (2), the words 'the Revenue Commissioner and' shall be deleted.3 29. Under what conditions Police officer may resign. 4 (1) No Police 2 [Revenue Commissioner] and the District Magistrate by the Inspector-General, of any proposed transfer under this section, and, except, where secrecy is necessary the reasons for the transfer shall be explained; whereupon the officers aforesaid and their subordinates shall give all reasonable furtherance to such transfer by Maharashtra Act 28 of 1964. 16 such Police officer until he has fully discharged any debt due by him as such Police officer to Government or to any Police**

**Under what conditions Police officer may resign(u/s.29)**

(1) No Police officer 5 [of the grade of Inspector or] of the subordinate rank shall resign his office or withdraw himself from the duties thereof except with the written permission of the Commissioner or the Deputy Inspector-General, Criminal Investigation Department, or of the Principal of or of the District Superintendent or of some other Police officer empowered by the Inspector-General or the Commissioner to grant such permission.

(2) If any such Police officer produces a certificate signed by the Police Surgeon or the Civil Surgeon declaring him to be unfit by reason of disease or mental or physical incapacity for further service in the Police, the necessary written permission to resign shall forthwith be granted to him on his discharging or giving

satisfactory security for the payment of any debt due by him as such Police officer to Government or to any Police fund.

(3) Arrear of pay of a Police officer contravening this section may be forfeited. If any such Police officer as aforesaid resigns or withdraws himself from the duties of his office in contravention of this section, he shall be liable on the order of the Commissioner,

**Amendment: In Sec. 29, (a) In sub-section (1), for the words "a Police Training School" the words "a Police Training College or School" shall be substituted; (b) in sub-section (3), for the words "the Police Training School", the words "the Police Training College or School" shall be substituted.**

### **Certificates, arms, etc. to be delivered up by person ceasing to be a police officer(u/s.30)**

(1) Every person who for any reason ceases to be a police officer shall forthwith deliver up to some officer empowered by the Commissioner or the Deputy Inspector-General, Criminal Investigation Department, or the Principal or the District Superintendent to whom such Police officer is subordinate to receive the same, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessaries which have been furnished to him for the performance of duties and functions connected with his office.

(2) If not delivered up may be seized under a search warrant. Any Magistrate and, for special reasons which shall be recorded in writing at the time the Commissioner or the Deputy Inspector-General, Criminal Investigation Department, or the Principal of 1 [the Police 2 [Training College]] or any 3 [Superintendent] Assistant Superintendent or Deputy Superintendent may issue a warrant to search for and seize, wherever they be found, any certificate, arms, accoutrement, clothing or other necessaries not so delivered.

The Deputy Inspector-General, Criminal Investigation Department, the Principal of the Central Police Training School, Nasik, the District Superintendent, the Assistant Superintendent or the Deputy Superintendent issuing the warrant so directs, by any other person.

(3) Saving of certain articles. Nothing in this section shall be deemed to apply to any article which, under the orders of the Inspector-General, or the Commissioner, as the case may be, has become the property of the person to whom the same was furnished.

### **Occupation of and liability to vacate premises provided Police officers(u/s.31)**

(1) Any police officer occupying any premises provided by the State Government for his residence –  
(a) shall occupy the same subject to such conditions and terms as may generally or in special cases, be specified by the State Government, and  
(b) shall, notwithstanding anything contained in any law for the time being in force vacate the same on his ceasing to be a Police officer or whenever the State Government or any officer authorized by the State Government in this behalf thinks it necessary and expedient to require him to do so

. (2) If any person who is bound or required under sub-section (1) to vacate any premises fails to do so, the State Government or the officer authorised in this behalf by the State Government may order such person to vacate the premises and may direct any Police officer with such assistance as may be necessary to enter upon the premises and remove therefrom any person found therein and to take possession of the premises and deliver the same to any person specified in the direction.

## **Police Regulations**

### **. Power to make rules or regulation of traffic and for presentation of order in public place, etc(u/s.33)**

The Commissioner with respect to any of the matters specified in this sub-section, the District Magistrate with respect to any of the said matters (except those falling under Cls. 4 [(a), (b), (d), (db), (e), (g), (r), (t) and (u)]) thereof and the Superintendent of Police with respect to the matters falling under the clauses aforementioned read with Cl. (y) to this sub-section], in areas under their respective charges or any part thereof, may make, alter or rescind rules or orders not inconsistent with this Act for-

- (a) licensing and controlling persons offering themselves for employment at quays, wharves and landing places, and outside Railway stations for the carriage of passenger's baggages and fixing and providing for the enforcement of a scale of charges for the labour of such persons so employed; (b) regulating traffic of all kinds in streets and public places, and the use of
- (b) streets and public places by persons riding, driving, Cycling, walking or leading or accompanying cattle, so as to prevent 1 Vide Gujarat Act 16 of 1978, Sec. 8, w.e.f. 3-3-1978. 2 This section was substituted for the original by Bom 34 of 1959, Sec. 16. 3 Subs by Maharashtra Act XIII of 1965. 4 Subs by Maharashtra Act 45 of 1967. 19 danger, obstruction or inconvenience to the public;
- (c) (c) regulating the conditions under which vehicles may remain standing in streets and public places, and the use of streets as halting places for vehicles or cattle;
- (d) (d) prescribing the number and position of lights to be used on vehicles in streets and the hours between such lights shall be used;  
1 [(da) licensing, controlling or prohibiting the display of any pictures, advertisements, news boards or public notices upon a vessel or boat in territorial waters or on inland waterways other than national waterways;  
2 [(db) licensing, controlling or prohibiting the erection, exhibition, fixation or retention of any sign, device or representation for the purpose of advertisement, which is visible against the sky from some point in any street and is hoisted or held aloft over any land, building or structure at such height as (regard being had to the traffic in the vicinity, and the likelihood of such sign, device or representation at that height being a distraction or causing obstruction to such traffic) may be specified in the rule or order ;]
- (e) prescribing certain hours of the day during which cattle shall not be driven along the streets, or along certain specified streets, except subject to such regulations as he may prescribe in that behalf;

- (f) regulating the leading, driving, conducting or conveying of any elephant or wild or dangerous animal through or in any street;
- (g) regulating and controlling the manner and mode of conveying timber, scaffold poles, ladders, iron girders, beams or bars, boilers or other unwieldy articles through the streets, and the route and hours for such conveyance ;
- (h) licensing, controlling or, in order to prevent the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting the carrying in streets and public places of gunpowder or any other explosive substances;
- (i) prohibiting except along certain specified streets and during specified hours and subject to such regulations as he may prescribe in that behalf, the exposure or movement in any street of persons or animals suffering from contagious or infectious diseases and the carcasses of animals or part thereof and the corpses of persons deceased;
- (j) prescribing certain hours of the day during which odour or offensive matter or objects shall not be taken from or into houses or buildings in certain streets or conveyed through such streets except subject to such rules as he may make in that behalf;
- (k) setting apart places for the slaughtering of animals, the cleaning of carcasses or hides, the deposit of noxious or offensive matter and for obeying calls of nature
- ; (l) in cases of existing or apprehended epidemic or infectious disease of men or animals, the cleanliness and disinfection of premises by the occupier thereof and resident therein and the segregation and management of the persons or animals diseased or supposed to be diseased, as may have been directed or approve by the State Government, with a view to prevent the disease of to check the spreading thereof;
- (m) directing the closing or disuse, wholly or for certain purposes, or limiting to certain purposes only the use of any source, supply or receptacle of water and providing against pollution of the same or of the water therein;
- (n) licensing, controlling or, in order to prevent the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting the playing of music, the beating of drums, tom-toms of other instruments and the blowing or sounding of horns or other noisy instruments in or near streets or public places;
- (o) regulating the conduct of and behaviour or action of persons constituting assemblies and processions on or along the streets and prescribing in the case of processions, the routes by which, the order in which and the times at which the same may pass;
- (p) prohibiting the banging or placing of any cord or pole across a street or part thereof, or the making of a projection or structure so as to obstruct traffic or the free access of light and air;
- (q) prohibiting, except under such reasonable rules as he may make, the placing of building materials or other articles or the fastening or detention of any horse or other animals in any street or public places.
- (r) licensing, controlling or, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting-



- (i) the illumination of streets and public places and the exteriors of building abutting thereon by persons other than servants of Government or Municipal officers duly authorized in that behalf;
- (ii) the blasting of rock or making excavations in or near streets or public places;
- (iii) the using of a loudspeaker in 1 [or near any public place or in any] place of public entertainment;
- (s) closing certain streets or places temporarily, in cases of danger from ruinous buildings or other cause, with such exceptions as shall appear reasonable;
- (t) guarding against injury to person and property, in the construction, repair and demolition of building, platforms and other structures from which danger may arise to passengers, neighbours or the public;
- (u) prohibiting the setting fire to or burning any straw or other matter, or lighting a bonfire or wantonly discharging a fire, arm or airgun, or letting off or throwing a fire- work or, sending up a fire balloon or rocket in or upon or within fifty feet of a street or building or the putting up of any post or other thing on the side of or across a street for the purpose of affixing thereto lamps or other contrivances for illumination, except subject to such reasonable rules, as he may make in that behalf;
- (v) regulating the hours during which and the manner in which any place for the disposal of the dead, any dharamshala, village-gate or other place of public resort may be used, so as to secure the equal and appropriate application of its advantages and accommodation and to maintain orderly conduct amongst those who resort thereto;
- (w) (i) licensing or controlling places of public amusement or entertainment;
- (ii) prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity
- ; (iii) regulating the means of entrance and exit at places of public amusement or entertainment or assembly, and providing for the maintenance of public safety and the prevention of disturbance thereat;
- 1 [(wa) (i) licensing or controlling 2 [in the interest of public order decency or morality or in the interest of the general public with such exceptions as may be specified, the musical, dancing, mimetic or theatrical or other performances for public amusement, including melas and tamashas ;
- (ii) regulating in the interest of public order, decency or morality or in the interest of the general public, the employment of artists and the conduct of the artists and the audience at such performances;
- (iii) prior scrutiny of such performances 2 [and of the scripts in respect thereof, if any, and granting of suitability certificate therefore subject to conditions, if any, by the Board appointed by the State Government for the purpose, either for the whole State or the area concerned the members of the Board being persons who in the opinion of the State Government possess knowledge of, or experience in literature, the theatre and other matters relevant to such scrutiny, or by an Advisory Committee appointed by the Commissioner, or the District Magistrate in this behalf ; Provision for appeal against the order or decision of the Board to the prescribed authority, its appointment or constitution, its procedure and other matters ancillary thereto, and the fees (whether in the form of court-fee stamp or otherwise) to be charged for the scrutiny of such performances or

scripts for applications for obtaining such certificates and for issuing duplicates thereof and in respect of such appeals;]

(iv) regulating the hours during which and the places at which such performances may be given;

(x) regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement;

[(xa) registration of eating-houses, included granting a certificate of registration in each case, which shall be deemed to be written permission required and obtained under this Act for keeping the eating-house, and annual renewal of such registration within prescribed period; (y) prescribing the procedure in accordance with which any licence or permission sought to be obtained or required under this Act should be applied for and fixing the fees to be charged for any such licence or permission:

Provided that nothing in this section and no licence [or certificate of registration] granted under any rule made thereunder shall authorize any person to import, export, transport, manufacture, sell or possess any liquor, or intoxicating drug, in respect of which a licence, permit, pass or authorization is required under the Bombay Prohibition or under any other law for the time being in force (relating to the Abkari revenue or to the prohibition of the manufacture, sale and consumption of liquor) or shall affect the liability of any person under any such law or shall in any way affect the provisions of the Arms Act, 1878 (XI of 1878), or of the Explosives Act, 1884 (IV of 1884), or of any rules made under either of those enactments, or the liability of any person thereunder: Provided further that any action taken under the rules or orders made under this sub-section or the grant of a licence [or certificate of registration] made under such rules or orders shall be subject to the control and supervision of the State Government: [Provided also that, against any order granting or refusing to grant or renew or revoking [or refusing to grant or renew or revoking any certificate of registration for any eating-house] an appeal shall lie to the State Government itself or to such officer as the State Government may by general or special order specify, within thirty days from the date of receipt of such order by the aggrieved person]. [(1. A) The power to make rules or order under Cls. (w), (wa) and (x) of sub-section (1) shall in the first instance have effect only in relation to

**The Bombay area of the state of Maharashtra], but the State Government may by notification in the Official Gazette provide that such power under any or all of those clauses, shall also have effect. from such date as may be specified in the notification, in any other area of the State.**

(1), may subject to the provisions of sub-section (1A) also be exercised by Revenue Commissioner in the revenue division under his charge.

(2) (i) The power of making, altering or rescinding rules under Cls. (a), (b) and (c) of sub-section (1) shall be subject to the control of the State Government

. (ii) The power of making, altering, or rescinding rules under the remaining clauses of sub-section (1) shall be subject to the previous sanction of that Government.

(3) Every rule made under Cl. (v) of sub-section (1) with respect to the use of a place for the disposal of the dead shall be framed with due regard to ordinary and established usages and to the necessities of prompt disposal of the dead in individual cases

(4) Every rule promulgated under the authority of Cl. (l) of sub-section (1) shall, if made in relation to 1 [any area which is not under the charge of a Commissioner] be forthwith 2 [reported to the Revenue Commissioner and the State Government].

(5) If any rule or order made or promulgated under this section relates to any matter with respect to which there is a provision in any law, rule or bye-law of any municipal or local authority in relation to the public health, convenience or safety of the locality, such rule or order shall be subject to such law, rule or bye-law of the municipal or local authority, as the case may be

. (6) The power of making, altering or rescinding rules under this section shall be subject to the condition of the rules being made, altered or rescinded after previous publication, and every rule made or alteration or rescission of a rule made under this section shall be published in the Official Gazette and in the locality affected thereby by affixing copies thereof in conspicuous places near to the building, structure, work or place, as the case may be, to which the same specially relates or by proclaiming the same by the beating of drum or by advertising the same in such local newspapers in English or in the local language, as the authority making, altering or rescinding the rule may deem fit or by any two or more of these means or by any other means it may think suitable: Provided that any such rules may be made, altered or rescinded without previous publication if the 3 [Revenue Commissioner], or the District Magistrate, as the case may be, is satisfied that circumstances exist which renders it necessary that such rules or alterations therein or rescission thereof should be brought into force at once.

(7) Notwithstanding anything hereinbefore contained in this section or which may be contained in any rule made thereunder, it shall always be lawful for the competent authority to refuse a licence for, or to prohibit the keeping of any place of public amusement or entertainment 4 [or to refuse a certificate of registration for or to prohibit the keeping of any eating-house, as the case may be] by a person of notoriously bad character.

(8) It shall be the duty of all persons concerned to conform to any order duly made as aforesaid so long as the same shall be in operation,

#### **Competent authority may authorise erection of barriers on streets.(u/s34)**

The Commissioner and the District Superintendent in areas under their respective charges may, whenever in his opinion such action is necessary, authorise such Police officer as he thinks fit to erect barriers on any street for the purpose of stopping temporarily vehicles driven on such street and satisfy himself that the provisions of any law for the time being in force have not been contravened in respect of any such vehicle or by the driver of or the person in charge of such vehicle. The said authority may also make such orders as it deems fit for regulating the use of such barriers.

#### **Power to make rules prohibiting disposal of the dead except at places set apart.(u/s.35)**

(1) A competent authority may from time to time, make rules prohibiting the disposal of the dead, whether by cremation, burial or otherwise at places other than those set apart for such purpose: Provided that no such rules shall be made in respect of any such town or place in which places have not been so set apart: Provided further that the competent authority or any officer authorized by it in this behalf may, in its or his discretion on an application made to it or him by any person, grant to such person permission to dispose of the corpse of any deceased person at any place other than a place so set apart, if in its or his opinion such disposal is not likely to cause obstruction to traffic or disturbance of the public peace or is not objectionable for any other reason.

(2) Any rules made under sub-section (1) shall specify the places set apart for the disposal of the dead of different communities or sections of communities.

(3) All such rules shall be subject to the condition of previous publication and the date to be specified under Cl. (c) or Sec. 24 of the Bombay General Clauses Act, 1904 (Bom. I of 1904), shall not be earlier than two months from the date on which the draft of the proposed rules is published

. Explanation. For the purposes of this section, a place set apart for the disposal of the dead means a place set apart for such purpose under any custom, usage or law for the time being in force.

### **Power of Commissioner or the District Superintendent and of other officers to give direction to the public(u/s.36)**

In areas under their respective charges the Commissioner, and subject to his orders every Police officer not inferior in rank to an Inspector, and the District Superintendent and subject to his orders any Police officer of not lower than such rank as may be specified by the State Government in that behalf, may, from time to time as occasion may arise, but not so as to contravene any rule or order under Sec. 33 give all such orders either orally or in writing as may be necessary to

- (a) direct the conduct of, and behaviour or action of persons constituting processions or assemblies on or along the streets;

(b) prescribe the routes by which and the times at which any such processions may or may not pass;

(c) prevent obstructions on the occasion of all processions and assemblies and in the neighbourhood of all places of worship during the time of worship and in all cases when any street or public place or place of public resort may be thronged or liable to be obstructed;

(d) keep order on and in all streets, quays, wharves, and at and within public bathing, washing and landing places, fairs, temples and all other places of public resort;

(e) regulate and control the playing of music or singing, or the beating of drums, tom-toms and other instruments and the blowing or sounding of horns or other noisy instruments, in or near any street or public place;

1 [(ea) regulate and control the use of loudspeakers in or near any public place or in any place of public entertainment,]

- (e) make reasonable orders subordinate to and in furtherance of any order made by a competent authority under Secs. 33, 35, 37 to 40, 42, 43 and 45 of this Act. 37. Power to prohibit certain for prevention of disorder
- (f) . (1) The Commissioner and the District Magistrate in areas under their respective charges, may whenever and for such time as he shall consider necessary for the preservation of public peace or public safety by a notification publicly promulgated or addressed to individuals, prohibit at any town, village or place or in the vicinity of any such town, village or place-
- (a) the carrying of arms, cudgels, swords, spears, bludgeons, guns, knives, sticks or lathis, or any other article, which is capable of being used for causing physical violence;
  - (b) the carrying of any corrosive substance or of explosives;
  - (c) the carrying, collection and preparation of stones or other missiles or instruments or means of a casting or impelling missiles;
  - (d) the exhibition of persons or corpses of figures or effigies thereof;
  - (e) the public utterance of cries, singing of songs, playing of music
- ; (f) delivery of harangues, the use of gestures or mimetic representations, and the preparation, exhibition or dissemination of pictures, symbols, placards or any other object or thing which may in the opinion of such authority offend against decency of morality or undermine the security of or tend to overthrow the State.
- (2) If any person goes armed with any such article or carries any corrosive substance or explosive or missile in contravention of such prohibition, he shall be liable to be disarmed or the corrosive substance or explosive missile shall be liable to be seized from him by any Police officer, and the article, corrosive substance, explosive or missile so seized shall be forfeited to the State Government.
- (3) The authority empowered under sub-section (1) may also by order in writing prohibit any assembly or procession whenever and for so long as it considers such prohibition to be necessary for the preservation of the public order: Provided that no such prohibition shall remain in force for more than fifteen days without the sanction of the State Government.
- (4) The authority empowered under sub-section (1) may also by public notice temporarily reserve for any public purpose any street or public place and prohibit persons from entering the area so reserved, except under such conditions as may be prescribed by such authority.

**Power to prohibit, etc. continuance of music, sound or noise(u/s38).**

- (1) If the Commissioner or District superintendent is satisfied from the report of an officer in charge of a Police Station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk or annoyance, disturbance, discomfort or injury to the public or to any persons who dwell or occupy property in the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating-
- (a) the incidence or continuance in or upon any premises of-

(i) any vocal or instrumental music

, (ii) sounds caused by the playing, beating, clashing, blowing or use in any manner whatsoever of any instrument, appliance or apparatus or contrivance which is capable of [producing or reproducing sound], or

(c) the carrying on, in or upon, any premises or any trade, avocation or operation resulting in or attended with noise

. (2) The authority empowered under sub-section (1) may, either on its own motion or on the application of any person aggrieved by an order made under sub-section (1), either rescind, modify or alter any such order: Provided that before any such application is disposed of, the said authority shall afford to the applicant an opportunity of appearing before it either in person or by pleader and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.

### **Issue of orders for prevention of riot, etc(u/s.39)**

(1) In order to prevent or suppress any riot or grave disturbance of peace, the Commissioner and the Superintendent, in areas under their respective charges, may temporarily close or take possession of any building or place, and may exclude all or any persons therefrom, or may allow access hereto to such persons only and on such terms as he shall deem expedient. All persons concerned shall be bound to conduct themselves in accordance with such orders as the authority making orders may make and notify in exercise of, the authority hereby vested in it.

. (2) Compensation to lawful occupier of building or place closed or taken possession of. If lawful occupier of such building or place suffers substantial loss or injury by reason of the action taken under sub-section

(1) he shall be entitled, on application made to the authority concerned within one month from the date of such action, to receive reasonable compensation for such loss or injury, unless such action was in the opinion of such authority rendered necessary either by the use to which such building or place was put or intended to be put or by the misconduct of persons having access thereto

. (3) Disputes as to compensation to be settled. In the event of any dispute in any case under subsection (2) the decision of the Chief Presidency Magistrate or the District Magistrate, shall be conclusive as to the amount (if any) to be paid, and as to the person to whom it is to be paid.

### **Issue of orders for maintenance of order at religious ceremonies, etc(u/s.40)**

(1) In any case of an actual or intended religious or ceremonial or corporate display or exhibition or organised assemblage in any street or public place, as to which or the conduct of or participation in which it shall appear to a competent authority that a dispute or contention exists which is likely to lead to grave disturbance of the peace, such authority may give such orders as to the conduct of the persons concerned towards each other and towards the public as it shall deem necessary and reasonable under the circumstances, regard being had to the apparent legal rights and to any established practice of the parties

and of the persons interested. Every such order shall be published in the town or place wherein it is to operate, and all persons concerned shall be bound to conform to the same.

(2) Any order under sub-section (1) shall be subject to a decree, injunction or order made by a court having jurisdiction and, shall be recalled or altered on its being made to appear to the authority making the order that such order is inconsistent with a judgment, decree, injunction or order of such court, on the complaint, suit or an application of any person interested, as to the rights and duties of any persons affected by the order aforesaid.

**Police to provide against disorder, etc. at places of amusement and public meetings(u/s.41)**

(1) For the purpose of preventing serious disorder or breach of the law or manifest and imminent danger to the persons assembled at any public place of amusement or at an assembly or meeting to which the public are invited or which is open to the public, the senior Police officer of highest rank superior to that of constable, present at such place of amusement or such assembly or meeting may, subject to such rules and orders as may have been lawfully made, give such reasonable directions as to the mode of admission of the public to, and for securing the peaceful and lawful conduct of the proceedings and the maintenance of the public safety at such place of amusement or such assembly or meeting, as he thinks necessary and all persons shall be bound to conform to every such reasonable direction.

(2) Police to have free access thereto- The Police shall have free access to every such place of amusement, assembly or meeting, for the purpose of giving effect to the provisions of sub-section

**District Magistrate may take special measures to prevent outbreak of epidemic disease at fair, etc(u/s.43)**

(1) Whenever it shall appear to the Commissioner or District Magistrate that any place in the areas under their respective charges, at which, on account of a pilgrimage, fair or other such occurrence, large bodies of persons have assembled or are likely to assemble is visited or will probably be visited with an outbreak of any epidemic disease, he may take such special measures and may by public notice prescribe such regulations to be observed by the residents of the said place and by persons present thereat or repairing thereto or returning therefrom as he shall deem necessary to prevent the outbreak of such disease or they spread thereof.

(2) It shall be lawful for the District Magistrate or for the Collector or the Chief Presidency Magistrate on the requisition of the Commissioner or the District Magistrate to assess and levy such reasonable fees on persons falling under the provisions of sub-section

(1) as will provide for the expenses of the arrangements for sanitation and the preservation of order at and about the place of assemblage.

(3) When the place of assemblage is within the limits of a municipality or corporation such sums as shall be necessary for the purposes aforesaid may be recovered from the municipality or corporation. .

### **Destruction of stray dogs(u/s.44)**

(1) The Commissioner and the District Superintendent in areas under their respective charges, may, from time to time, by public notice, proclaim that any stray dogs found, during such period as may be specified in the said notice, wandering in the streets or in any public place may be destroyed, and any dog so found within such period may be destroyed accordingly

. (2) The authority empowered under sub-section (1) may by public notice require that every dog, while in any street or public place and not led by some persons, shall be muzzled in such a manner as effectually to prevent it from biting, while not obstructing its breathing or drinking, and the Police may, so long as such notice remains in force, destroy, or take possession of and detain, any dog found loose without muzzle in any street or place beyond the premises of the owner thereof: Provided that any dog so found, wearing a collar on which an apparently genuine name and address of an owner is inscribed, shall not, unless it is rabid, be forthwith destroyed, but information of the detention thereof shall forthwith be sent by post or otherwise to such owner.

(3) Any dog which has been detained under sub-section (2) for a period of three clear days without the owner providing a muzzle and paying all expenses connected with such detention may be destroyed or sold with the sanction and under the orders of the competent authority.

(4) The proceeds of the sale of any dog under sub-section (3) shall be applied, as far as may be, in discharge of the expenses incurred in connection with its detention, and the balance, if any, shall form part of the consolidated fund of the State

(5) Any expenses incurred in connection with the destruction or detention of any dog under this section shall, subject to the provisions of sub-section (4), be recoverable from the owner thereof upon a warrant issued by the competent authority as if it were a warrant under Sec. 386 of the Code of Criminal Procedure, 1898 (V of 1898)

### **Destruction of suffering or unfit animals(u/s.45)**

(1) Any Police officer who in any street or public place other than a place of worship, finds any animal other than a bull or a cow so diseased, or so severely injured, and in such a physical condition, that in his opinion it cannot without cruelty be removed, shall, if the owner is absent or refuses to consent to the destruction of the animal at once summon the Veterinary Practitioner in charge of the area in which the animal is found and, if the Veterinary Practitioner certifies that the animal is mortally injured, or so severely injured, or so diseased, or in such a physical condition, that it is cruel to keep it alive, the Police officer may, without the consent of the owner, destroy the animal or cause it to be destroyed:

Provided that if in the opinion of the Veterinary Practitioner the animal can be removed from the place where it is found without causing it great suffering, and, if the owner or person in charge of the animal or in their absence any other person on the spot is willing and offers to remove the animal to a veterinary Hospital or Pinjrapole within such time as the Veterinary Practitioner considers



reasonable, the Veterinary Practitioner shall allow the animal to be removed by such owner, person in charge of the animal or other person. If the owner or person in charge of the animal or such other person is unwilling or fails so to remove the animal, the Veterinary Practitioner may direct the Police officer to remove the animal before it is destroyed from the place where it is found to such other place as he may think fit ; Provided further that when the animal is destroyed in any street or public place it shall, as far as possible, be screened from the public gaze while it is being destroyed

. (2) The State Government may appoint such persons as it thinks fit to be Veterinary Practitioners and may declare the areas of which they shall be in charge for the purposes of this Act.

#### **46. Powers under this Chapter to be exercised by District Superintendent subject to the control of District Magistrate and Commissioner and by District Magistrates subject to the control of State Government(u/s.46)**

Every power conferred by this Chapter on a District Superintendent not specially empowered by the State Government to exercise that power or on any officer subordinate to him shall be exercised by him subject to the orders of the District Magistrate and all rules, regulations and orders made under this Chapter shall, if made by the 1 [Revenue Commissioner] be governed by such rules and orders as the State Government may, from time to time, make in this behalf and, if made by the District Magistrate or the District Superintendent specially empowered in that behalf, shall be subject to the provisions of Sec. 17. C

#### **Special measures for maintenance of public order and safety of State**

##### **Employment of additional Police, recovery of cost thereof and of riot compensation-its assessment and recovery**

##### **Employment of additional Police on application of a person(u/s.47)**

(1) The Commissioner or District Superintendent may, on the application of any person, depute any additional number of Police to keep the peace, to preserve order or to enforce any of the provisions of this or any other Act in respect of any particular class or classes of offences or to perform any other Police duties at any place in the area under his charge.

(2) Such additional Police shall be employed at the cost of the person making the application, but shall be subject to the orders of the Police authorities and shall be employed for such period as the appointing authority thinks fit.

(2) If the person upon whose application such additional Police are employed shall at any time make a written requisition to the appointing authority to which the application for the employment of additional Police was made, for the withdrawal of the said Police, he shall be relieved for the cost thereof at the expiration of such period not exceeding one month from the date of the delivery of such requisition, as the State Government or the appointing authority, as the case may be, shall determine.

**Employment of additional police at large works and when apprehension regarding behaviour of employees exists(u/s.49)**

(1) Whenever it appears to the State Government or a competent authority that-

(a) any large work which is being carried on or any public amusement which is being conducted is likely to impede the traffic or to attract a large number of people, or

(b) that the behaviour or a reasonable apprehension of the behaviour, of the persons employed on any railway, canal or other public work, or in or upon any manufactory or other commercial concern under construction or in operation at any place, necessitates the employment of additional police at such place, the State Government or the competent authority may depute such additional Police to the said place as it shall think fit and keep the said Police employed at such place for so long as such necessity shall appear to it to continue.

(2) Such additional Police shall be employed at the cost of the person by whom the work, amusement, manufactory or concern is being constructed, conducted or carried on and the said person shall pay the costs therefore at such rates as the State Government or the competent authority, as the case may be, shall from time to time require.

**Recovery of cost of additional police employed under Secs. 47 and 48. In case of any dispute under Sec(u/s.49)**

47 or 48 the decision of Chief Presidency Magistrate in Greater Bombay and the District Magistrate, in the district shall be conclusive as to the amount to be paid and as to the person by whom it is to be paid and the sum, so ascertained may, on the requisition of the Chief Presidency Magistrate or the District Magistrate, be recovered by the Collector as if it were an arrear of land revenue due by the person found to be answerable therefore.

**Employment of additional police in cases of special danger public peace(u/s.50)**

(1) If in the opinion of the State Government any area is in a disturbed or dangerous condition or in which the conduct of the inhabitants or of any particular section of the inhabitants renders it expedient temporarily to employ additional Police, it may by notification in the official Gazette specify.

(a) the area (hereinafter called “the disturbance area”) in which the additional Police is to be employed;

(b) the period for which the additional Police is to be employed ; Provided that the period fixed under Cl. (b) may be extended by the State Government from time to time, if in its opinion it is necessary to do so in the general interest of the public. The cost of the additional Police shall be a tax imposed under this section and shall be recovered in the manner prescribed in the succeeding sub-sections.

(2) The decision of the State Government under Cls. (a) and (b) of sub. section (1) shall be final

- . (3) On the issue of such notification. the State Government may require,
- (a) in any disturbance area which is within the limits of a Corporation, the Municipal Commissioner, the Collector or any other authority
  - ; (b) in any disturbance area which is within the limits of a municipality, the municipality, the Collector or any other authority;
  - (c) in any disturbance area which is outside the areas specified in Cls. (a) and (b), the Collector or any other authority, to recover, whether in whole or in part, the cost of such additional Police geneta!ly from all persons who are inhabitants of the disturbance area of specially from any particular section or sections, or class or classes to such persons, and in such proportion as the State Government may direct: Provided that where the Municipal Commissioner or the Municipality is directed to recover such cost, an additional sum not exceeding 3 per cent of the amount of such cost shall also be recoverable.
- (4) (i) The State Government may require the Municipal Commissioner or the Municipality to recover such cost and the additional sum by an addition to the general or property tax which shall be imposed and levied in all or such of the municipal wards, sub-wards or sections thereof, as the State Government may direct. Every addition to the general or property tax imposed under this sub-section shall be recovered by the Municipal Commissioner or the Municipality from each person liable therefore in the same manner as the general or property tax due from him. The provisions of the relevant Municipal Act shall apply to any such addition as if it were part of the general or property tax levied under the said act. Such addition shall be a charge along with the general or property tax, on the properties, in such Municipal wards or sub-wards or sections.
- (ii) The State Government may also require the Municipal Commissioner or the Municipality to recover such cost and the additional sum from each person liable therefor under sub-section (3) in such manner as the State Government may direct. (iii) Where the Municipal Commissioner or a Municipality makes default in imposing and levying any such tax or in making such recovery, the State Government may direct the Collector to impose and levy such tax or to make such recovery.
- (5) Every amount recoverable by the Collector or other authority under this section shall be recoverable as if it were an arrear of land revenue due by the person liable therefor.
- (6) It shall be lawful for the State Government by order to exempt any person from liability to bear any portion of the cost of such additional Police.
- (7) Out of the total amount recovered by the Municipal Commissioner or by a Municipality under subsection (4) or (5) whether before or after the coming into operation of this Act the amount of the cost shall be paid to the State Government and the balance, if any, shall be credited to the municipal

fund constituted under the relevant Municipal Act. Such amount of cost shall be paid to the State Government every three months

**. Explanation.- In this section the expression “inhabitants” when used with reference to any area includes persons who themselves by their agents or servants occupy or hold land or other immovable property within such area and landlords who themselves or by their agents or servants collect rent from holders or occupiers of land in such area notwithstanding that they do not actually reside therein.**

**Compensation for injury caused by unlawful assembly, how recover able-Date to be fixed for liability(u/s.51)**

(1) When any loss or damage is caused to any property or when death results or grievous hurt is caused to any person or persons, by anything done in the prosecution of the common object of an unlawful assembly, the State Government may, by notification in the official Gazette, specify-

(a) the area (hereinafter called “the disturbance area”), in which in its opinion such unlawful assembly was held;

(b) the date on which or the period during which such unlawful assembly was held. The decision of the State Government under Cls. (a) and (b) of sub-section (1) shall be final.

(3) On the issue of a notification under sub-section (1), the Chief Presidency Magistrate in Greater Bombay the District Magistrate in Districts 1 [with the previous sanction of the Revenue Commissioner], may, after such inquiries he deems necessary, determine the amount of the compensation which, in his opinion, should be paid to any person or persons in respect of the loss or damage or death or grievous hurt aforesaid. The amount of compensation shall be a tax imposed under this section and shall be (covered in the manner prescribed in the succeeding sub-sections

. (4) The Chief Presidency Magistrate or the District Magistrate may require-

(a) in any disturbance area which is within the limits of a Corporation, the Municipal Commissioner, the Collector or another authority

(b)

; (b) in any disturbance area which is within the limits of a municipality, the municipality, the Collector or any other authority; and

(c) in any disturbance area which is outside the area specified in Cls. (a) and (b), the Collector or any other authority. . to recover the amount (hereinafter called “the compensation amount”) as determined under subsection (3) either in whole or in part and where the Municipal Commissioner or the Municipality is required to recover such amount. an additional sum not exceeding three per cent of the compensation amount (hereinafter referred to as “the Municipal recovery cost”), generally from all persons who were inhabitants of the disturbance area or specially from any

particular section or sections, or class or classes of such persons in the said area, and in such proportion as the Chief Presidency

Magistrate or the District Magistrate may direct.

(5) (1) The Chief Presidency Magistrate or the District Magistrate may require the Municipal Commissioner or the Municipality concerned to recover the compensation amount and the Municipal recovery cost by an addition to the general or property tax which shall be imposed and levied in the disturbance area. Every addition to the general or property tax imposed under this sub section shall be recovered by the Municipal Commissioner or the Municipality concerned from each person liable therefor in the same manner as the general or property tax due from him. The provisions of the relevant Municipal Act shall apply to any such addition as if it were part of the general or property tax levied under the relevant Municipal Act. Such addition shall be charged along with the general or property tax on the properties in the area aforesaid. (ii) The Chief Presidency Magistrate or the District Magistrate as the case may be, may also require the Municipal Commissioner or the Municipality concerned to recover the compensation amount and the municipal recovery cost from each person liable therefor under sub-section (4) in such manner as he may direct.

(6) Where a Municipal Commissioner or a Municipality makes a default in imposing and levying any such tax or in making any such recovery, the State Government may direct the Collector to impose and levy such tax or to make such recovery.

(7) Every amount recoverable by the Collector or other authority under this section shall be recoverable as if it were an arrear of land revenue due by the person liable therefor.

(8) Out of the total amount recovered by the Municipal Commissioner or by a Municipality under subsection (5) or (7), whether before or after the coming into operation of this Act, the proportionate amount of the municipal recovery cost shall be deducted therefrom and the amount not exceeding the compensation amount determined by the Chief Presidency Magistrate or the District Magistrate as the case may be under sub-section (3) shall be paid to him for the payment of compensation to the persons entitled thereto and the balance, if any, shall be credited to the Municipal fund constituted under the relevant Municipal Act. Such amount shall be paid to the Chief Presidency Magistrate or the District Magistrate as the case may be every three months.

(9) It shall be lawful for the Chief Presidency Magistrate or the District Magistrate as the case may be by order, to exempt any persons from liability to pay any portion of the compensation amount. .

(10) The State Government may, (a) on its own motion, or (b) on an application made by a person within a period of thirty days from the date of the order of the Chief Presidency Magistrate or the District Magistrate as the case may be granting or refusing to grant an exemption thereunder, set aside or modify such order

**. Explanation. In this section the expression “inhabitants” when used with reference to any disturbance area includes persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area and landlords who themselves or by their agents or servants collect rent from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein.**

**Chief Presidency Magistrate or District Magistrate to award or apportion compensation(u/s.52)**

(1) It shall be lawful for the District Magistrate 3 [with the previous sanction of the Revenue Commissioner] to award or apportion all or any moneys recovered as compensation amount under sub-sections (3) to (8) of sec. 51 to any person or among all or any persons whom he considers entitled to compensation in respect of the loss or damage or death or grievous hurt aforesaid.

(2) No compensation shall be awarded under this section except upon a claim made within 45 days from the date of notification issued by the State Government under sub-section (1) of Sec. 51 and unless Chief Presidency Magistrate or the District Magistrate is satisfied that the person claiming compensation or where such claim is made in respect of the death of any person, that that person also has himself been free from blame in connection with the occurrences which led to the loss, damage, death or grievous hurt as aforesaid.

(3) The compensation payable to any person under Sec. 51 in respect of death or grievous hurt shall not in any way be capable of being assigned or charged or be liable to attachment or to pass to any person other than the person entitled to it by operation of law, nor shall any claim be set off against the same.

(4) Every direction and order made by Chief Presidency Magistrate or the District Magistrate under this or the preceding section shall be subject to revision by the State Government, but save as aforesaid, shall be final

. (5) No civil suit shall be maintainable in respect of any loss or injury for which compensation has been granted under this section.

**Chief Presidency Magistrate or District Magistrate to discharge, functions under order of State Government(u/s.53)**

Chief Presidency Magistrate or the District Magistrate as the case may be, shall discharge his functions under Secs. 51 and 52 subject to any general or special orders of the State Government in this behalf.

**Proportionate recovery of the cost of additional police and compensation for loss caused by unlawful assembly.**

(1) Notwithstanding anything contained in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom LVII of 1947), 4 [or any law corresponding thereto in force in any area of the State of Bombay], where under the provisions of Sec. 50 or 51, the Municipal Commissioner, the Municipality or the Collector, as the case may be, is required to recover the cost of the additional police including the additional sum referred to in sub-section (3) of Sec. 50 (hereinafter called "the additional cost") or the compensation amount and the municipal recovery cost (hereinafter called "the riot tax") by an addition to the general or property tax, the landlord from whom any portion of the additional cost or the riot tax is recovered, in respect of any premises shall be entitled to recover 75 per cent, of such portion from the tenant in the occupation of the premises during the period fixed under sub-section (1) of Sec. 50 or on the date or during the greater part of the period specified under Cl. (b) of sub-section (1) of Sec. 51, as the case may be, in the manner specified in sub-section (2).

(2) The amount referred to in sub-section (1) and to be recovered from a tenant referred to therein, shall bear the same proportion as the rent payable by him in respect of the premises in his occupation bears to the total amount of rent recoverable for the whole premises if let, and the same shall be recoverable from the tenant in not less than four equal instalments.

(3) The provisions of sub-section (1) in so far as they relate to the recovery of the riot tax from the tenants shall not apply to Greater Bombay during the period during which Sec 10-B of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 is in force in the said area.

#### **. Dispersal of gangs and body of persons(u/s.55)**

Whenever it shall appear in Greater Bombay and in areas in which a Commissioner is appointed under Sec. 7 to the Commissioner and in a district to the District Magistrate the Sub-Divisional Magistrate or the District Superintendent specially empowered by the State Government in that behalf, that the movement or encampment of any gang or body of persons in the area in his charge is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof, such officer may, by notification addressed to the persons appearing to be the leaders or chief men of such gang or body and published by beat of drum or otherwise as such officer thinks fit, direct the members of such gang or body so to conduct themselves as shall seem necessary in order to prevent violence and alarm, or disperse and each of them to remove himself outside the area within the local limits of his jurisdiction 3 [or such area and any district, or districts or any part thereof, contiguous thereto] which in such time as such officer shall prescribe, and not to enter the area 4 [or the area and such contiguous districts, or part thereof, as the case may be], or return to the place from which each of them was directed to remove himself.

#### **Removal of persons about to commit offence(u/s.54)**

Whenever it shall appear in Greater Bombay and other areas for which a Commissioner has been appointed under Sec. 7 to the Commissioner and in other area or areas to which State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the sub. Divisional Magistrate specially empowered by the State Government in that behalf-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI, or XVII of the Indian Penal Code (XLV of 1860), or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property,

[(bb) that there are reasonable grounds for believing that such person is acting or is about to act

(1) in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980,

(2) in any manner prejudicial to the maintenance of supplies of commodities essential of the community as defined in the Explanation to sub-section (1) of Sec. 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (VII of 1980), or

(c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm 1 [or such prejudicial act] or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction 2 [or such area and any district or districts, or any part thereof, contiguous thereto] by such route and within such time as the said officer may prescribe and not to enter or return to the said area 3 [or the area and such contiguous districts, or part thereof as the case may be] from which he was directed to remove himself.

#### **Removal of persons convicted of certain offences(u/s.57)**

If a person has been convicted - (a) (i) of an offence under Chapters XII, XVI or XVII of the Indian Penal Code (XLV of 1860), or

(ii) of any offence under Secs. 65, 66-A or 68 of the Bombay Prohibition Act, 1949 (Bom. XLV of 1949), or

(iii) of an offence under Secs. 3, 4, 5, 6 or 9 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (CIV of 1956), or (iv) of an offence under Sec. 135 of the Customs Act, 1962 (52 of 1962), or (v) of an

offence under Sec. 4, or for accepting bets in any public street or thoroughfare or in any place to which the public have or permitted to have access or in any race course under Cl. (a) of Sec. 12, or under Sec 12-A of the Bombay Prevention of Gambling Act, 1867 (Bom. IV of 1867), or (b) twice or more of an offence under the



Bombay Prohibition Act, 1949 (Born XXV of 1949) not being an offence under Sees. 66, 66-A or 68, or (c) twice or more of an offence under Sec- 122 or 124 of this Act,

the Commissioner, the District Magistrate, or the Sub Divisional Magistrate specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto by such route and within such time as the said officer may prescribe and not to enter or return to the area or the areas and such contiguous district or districts or part thereof, as the case may be,

**. Removal of certain persons declared to be beggar(u/s.57-A)**

. In any area in which the Bombay Prevention of Begging Act, 1959 (Bom Act X of 1960), is in force, the Commissioner or the District Magistrate having jurisdiction in that area, on receipt of a copy of the order of the Court made under Cl. (b) of sub-section (5) of Sec. 5 of that Act, shall examine the person who has been directed to appear before him, and if the Commissioner or the District Magistrate is satisfied that such person is not likely to engage himself in the said area in any lawful profession, trade, calling or employment, such officer may by order in writing duly served on such person to remove himself outside the area or areas where the said Act is in force with in such time as may be specified in the ,order and not to enter or return to the area or areas, as the case may be, from which he was directed to remove himself:from which he was directed to remove himself.

**u/s.58. Period of operation of orders under Secs.**

5 [55, 56, 57 and 57-A]. A direction made under Secs. 55, 56 or 57 not to enter any particular area 6 [or such area and any district or districts, or any part thereof contiguous thereto, as the case may be,], shall be for such period as may be specified therein and shall in no case exceed a period of two years, 1 [from the date on which the person ren10ves himself or is removed from the area, district or districts or part aforesaid.]

**u/s. 59. Hearing to be given before order under Secs.**

1 [55, 56, 57 and 57-A] is passed. (1) Before an order under Ss. 1 [55, 56, 57 and 57-A] is passed against any person the officer acting under any of the said sections or any officer above the rank of an Inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering and explanation regarding them.

If such person makes so application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witness, unless for reasons

to be recorded in writing, the authority or officer is of opinion that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with the record of the case. Such person shall be entitled to appear before the officer proceeding under this section by an advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him.

(2) The authority or officer proceeding under sub-section (1) may, for the purpose of securing the attendance of any person against whom any order is proposed to be made under Secs. 1 [55, 56, 57 and 57-A] require such person to appear before him and to pass a security bond with or without sureties for such attendance during the inquiry. If the person fails to pass the security bond as required or fails to appear before the officer or authority during the inquiry, it shall be lawful to the officer or authority to proceed with the inquiry and thereupon such order as was proposed to be passed against him, may be passed.

**u/s.60. Appeal. 3 [(1)] Any person aggrieved by an order made under Secs.**

1 [55, 56, 57 and 57-A] may appeal to the State Government within thirty days from the date of such order.

(3) An appeal under this section shall be preferred in duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof

(3) On receipt of such appeal, the State Government may, after giving a reasonable opportunity to the appellant to be heard either personally or by a pleader advocate or attorney and after such further inquiry, if any, as it may deem necessary, confirm, vary or cancel or set aside the order appealed against, and make its order accordingly: Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the State Government otherwise directs.

(4) In calculating the period of thirty days provided for an appeal under this section, the time taken for granting a certified copy of the order appealed against, shall be excluded.

**u/s.61. Finality of order passed by State Government in certain case. Any order passed under Secs.**

1 [55, 56, 57 and 57-A] or by the State Government under Sec. 60 shall not be called in question in any Court except on the ground that the authority making the order or any officer authorised by it had not followed the procedure laid down in sub-section (1) of Sec. 59 or that there was no material before the authority concerned upon which it could have based its order on the ground that the said authority was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made under Sec. 56

**. 61. Procedure on failure of person to leave the area and his entry therein after removal**

. 2 [(1)] If a person to whom a direction has been issued under Secs. 2 [55, 56, 57 and 57-A] to remove himself from an area (i) fails to remove himself as directed, or (ii) having so removed himself, except with the permission in writing of the authority making the order 3 [as provided in sub-section (2)], enters the area within the period specified in the order, the authority concerned may cause him to be arrested and removed in police custody to such place outside the area as the said authority may in each case prescribe.

**Temporary permission to enter or return to the area from which a person was directed to remove himself(u/s.62).**

- (1) The State Government 6 [or any officer specially empowered by the State Government in that behalf] may, by order, permit any person in respect of whom an order has been made under Secs. 1 [55, 56, 57 and 57-A] to enter or return for a temporary period to [the area, or such area and any contiguous districts or part thereof, as the case may be, from which he was directed to remove himself, subject to such conditions as it 8 [or he] may by general or special order specify, and which such person accepts and may, at any time, revoke any such permission
- (2) . (2) In permitting a person under sub-section (1) to enter or return to 3 [the area or such area and any contiguous districts, or part thereof, as the case may be], from which he was directed to remove himself, the State Government or such officer may require him to enter into bond with or without surety for the observance of the conditions imposed.
- (3) (3) Any person permitted under sub-section (1) to enter or return to the area or such area and any contiguous districts. or part thereof, as the case may be, from which he was directed to remove himself shall surrender himself at the time and place and to the authority specified in the order or in the order revoking the said order, as the case may be.

Executive Powers and Duties of the Police

**64. Duties of a Police officer. It shall be the duty of every Police officer(u/s.64)**

- (a) promptly to serve every summons and obey and execute every warrant or other order lawfully issued to him by competent authority, and to endeavour by all lawful means to give effect to the lawful commands of his superior;
- (b) to the best of his ability to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences, and to lay such information and to take such other steps, consistent with law and with the orders of his superiors as shall be best calculated to bring offenders to justice or to prevent the commission of cognizable offences and within his view of non-cognizable offences;
- (c) to prevent to the best of his ability the commission of public nuisances;

(d) to apprehend without unreasonable delay all persons whom he is legally authorised to apprehend and for whose apprehension there is sufficient reason ;

(e) to aid another Police officer when called on by him or in case of need in the discharge of his duty, in such ways as would be lawful and reasonable on the part of the officer aided;

(f) to discharge such duties as are imposed upon him by any law for the time being in force.

**Power to enter places of public resort(u/s.65)**

(1) Every Police officer may, subject to the rules and orders made by the State Government or by a person lawfully authorized, enter for any of the purposes referred to in Sec. 64 without a warrant, and inspect any place of public resort which he has reason to believe is used as drinking shop, or a shop for the sale of intoxicating drugs or a place of resort of loose and disorderly characters.

(2) Power to search suspected persons in a street. When in a street or a place of public resort a person has possession or apparent possession of any article which a Police officer in good faith suspects to be stolen property, such Police officer may search for and examine the same and may require an account thereof, and should the account given by the possessor be manifestly false or suspicious, may detain such article and report the facts to a Magistrate who shall thereon proceed according to Secs. 523 and 525 of the Code of Criminal Procedure, 1898 (V of 1898), or other law in force. 66. Duties of Police officers towards the public. It shall be the duty of every Police officer-

(a) to afford every assistance within his power to disabled or helpless persons in the streets, and to take charge of intoxicated persons and of lunatics at large who appear dangerous or incapable of taking care of themselves;

(b) to take prompt measures to procure necessary help (or any person under arrest or in custody, who is wounded or sick and whilst guarding, or conducting any such person, to have due regard to his condition ;

(c) to arrange for the proper sustenance and shelter of every person who is under arrest or in custody;

(d) in conducting searches, to refrain from needless rudeness and the causing of unnecessary annoyance ;

(e) in dealing with women and children to act with strict regard to decency and with reasonable gentleness;

(f) to use his best endeavours to prevent any loss or damage by fire;

(g) to use his best endeavours to avert any accident or danger to the public.

**67. Police to regulate traffic, etc., in streets. It shall be the duty of a Police officer(u/s67)-**

(a) to regulate and control the traffic in the streets, to prevent obstructions therein and to the best of his ability to prevent the infraction of any rule or order made under this Act or any other law in force for observance by the public in or near the streets;

(b) to keep order in the streets and at and within public bathing, washing and landing places, fairs, temples and all other places of public resort and in the neighbourhood of places of public worship during the time of public worship;

(c) to regulate resort to public bathing, washing and landing places, to prevent overcrowding thereat and in public ferry-boats and, to the best of his ability, to prevent the infraction of any rule or order lawfully made for observance by the public at any such place or on any such boat.

#### **Persons bound to conform to reasonable orders of Police(u/s.68)**

All persons shall be bound to conform to the reasonable directions of a Police officer given in fulfilment of any of his duties under this Act.

#### **Power of Police officers to restrain or remove, etc(u/s.69)**

A Police officers may restrain or remove any person resisting or refusing or omitting to conform to any direction referred to in Sec. 68 an I may either take such person before a Magistrate or, in trivial cases, may release him when the occasion is past.

**(u/s. 70). Enforcement of orders issued under Secs. 37, 38 or 39. Whenever a notification has been duly issued under Sec.s 37 or an order has been made under Sec. 38 or 39, it shall be lawful for any Magistrate in a District or Police officer to require any person acting or about to act contrary thereto to desist or to abstain from so doing, and, in case of refusal or disobedience, to arrest the person offending. Such Magistrate or Police officer may also seize any object or thing use or about to be used in contravention of such notification or order as aforesaid, and the thing seized shall be disposed of according to the order of any District Magistrate having jurisdiction at the place.**

**( u/s.71) Duty of Police to see orders issued under Secs. 43, 55, 56, 1 [57, 57-A or 63-AA] are carried out.** It shall be the duty of the Police to see that every regulation and direction made by any authority under Secs. 43, 55, 56 1 [57, 57-A or 63-AA], is duly obeyed, to warn persons who from ignorance fail to obey the same and to arrest any person who wilfully disobeys the Slime

#### **When Police officer may arrest without warrant.(u/s. 72)**

. Any police officer may, without any order from a Magistrate and without a warrant, arrest-

(1) any person who has been concerned in an offence punishable under Sec 121 or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists, of his having been concerned in such offence;

(2) any person who contravenes a rule or order under Cl. (x) of sub-section (1) of Sec. 33 or an order or notification under Secs. 36, 37, 56, [57, 57-A or 63-AA] ; 2 [(2-A) any person who contravenes any

order made under sub-section (1) of Sec. 63-A ; (3) any person who commits an offence punishable under Sec. 122 or Sec. 136.

**. When Police may arrest without a warrant (u/s.73).**

Any Police officer may, without an order from a Magistrate and without a warrant, arrest any person committing in his presence any offence.

**“73-A. Extension of Sec. 6-B of Act XI of 1890 as in force in pre-Reorganisation State to rest of State for the purposes of Secs.**

74 to 77.- Section 6-B of the Prevention of Cruelty to Animals Act, 1890 (XI of 1890), as in force in the Bombay area of the State of Gujarat (hereinafter in this section and in Secs. 74, 75 and 77 referred to as the said ‘Act’) is, for the purposes of Secs. 74 to 77 (both inclusive), hereby extended to, and shall be in force in the remaining areas of the (State of Gujarat) and in consequence thereof, any provisions corresponding thereto or dealing with the like matter, in force in any such areas of the State shall be deemed to have been substituted by the aforesaid provision of the said Act.”

**(u/s 74) Powers with regard to offences under 5 [Act 49 of 1960] and corresponding laws.**

. When in respect of an animal an offence under 6 [sub-section (1) of Sec. 11 or Sec. 12 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter in this section and in Secs. 75 and 77 referred to as “the said Act”)] has been committed, or, when there is a reasonable ground for suspecting that such offence has been committed, a Police officer may-

- (a) take the animal to a Magistrate, or
- (b) if the accused person so requires, take the animal to a Veterinary officer, if any, empowered by the State Government, in this behalf, or
- (c) take the animal to an infirmary appointed under 7 [Sec. 35] of the said Act for treatment and detention therein, pending direction of Magistrate under 8 [\* \* \*] of the said section, or
- (d) when the animal is in such a physical condition that it cannot be taken to a Veterinary officer or a Magistrate, draw up a report of the condition of the animal in the presence of two or more respectable persons describing such wounds, sores, fractures, bruises or other marks of injury as may be found on the body of the animal: Provided that in the cases falling under Cl. (b) or (d) the Police officer may direct that the animal shall be sent for detention in a dispensary or any suitable place approve, by the State Government by general or special order and be there detained until its production before a Magistrate;

**Powers of Magistrate to return animal to person from whose possession it was taken(u/s.75)**

When an animal is brought before a Magistrate under Sec. 74, the Magistrate may direct the animal to be returned to the person from whose possession it was taken, on such person giving security to the satisfaction of the Magistrate, binding himself to produce the animal when required, or may direct that the animal shall be sent for treatment and care to an infirmary and be there detained as provided in 2 [Sec 35] of the said Act or may make such order as he thinks fit regarding the disposal or custody and production of the animal.

**Veterinary officer to examine the animal. The Veterinary officer before whom an animal is brought under Sec(u/s 76).**

Sec.74 shall with all convenient speed examine the same and draw up a report of such examination. A copy of the report shall be delivered free of charge to the accused person if he applies for it.

**Animal to be dealt with under 3 [Act 49 of 1960] When under Sec(u/s.77)**

Sec.74 a Police officer directs that an animal shall be sent for detention in a dispensary or any suitable place before its production before a Magistrate or under Sec. 7 a Magistrate directs that an animal shall be sent for treatment and care to an infirmary and be detained therein, the provisions of sub-sections 4 [Sec. 35] of the said Act shall, so far as may be, apply.

**Powers of Police officer to unsaddle the animal or unload(u/s.78)**

When a Police officer in good faith suspects that any animal being employed in any work or labour is, by reason of any sore, unfit to be so employed, he may require the person in charge of such animal to unsaddle or unload it for the purpose of ascertaining whether any sore exists and, if any person refuses to do so, may himself unsaddle or unload the animal or may cause the same to be unsaddled or unloaded. 5

**Power of police to arrest without warrant when certain offence committed in his presence(u/s.79)**

Any Police officer may, without an order from a Magistrate and without a warrant, arrest any person committing in his presence any offence punishable under Sec. 117 or Sec. 125 or Sec. 130 or subclause (i), (iv) or (v) of Sec. 131 or Cl (i) of Sec. 135 in respect of contravention of any order made under Sec. 39 or 40.]

**Other powers of arrest(u/s.80)**

. (1) Any Police officer specially empowered in this behalf by a competent authority may arrest without warrant for an offence specified in Sec. 110.

(2) Any Police officer may, on the information of any person in possession or charge of any dwellinghouse, private premises, or land or ground attached thereto, arrest without warrant any person.

### **Refusal to obey warning or to accompany Police(u/s.81)**

. A Police officer may arrest without warrant any person committing in his presence in any street or public place any non cognizable offence punishable under this Act, or under any rule thereunder and for which no express provision has been made elsewhere or under any other law for the time being in force, if such person (i) after being warned by a Police officer persists in committing such offence, or (ii) refuses to accompany the Police officer to a Police Station on being required so to do.

### **Police to take charge of unclaimed property.(u/s. 82).**

(1) The Police shall take temporary charge –

(a) of all unclaimed property found by, or made over to them, and also;

(b) of all property found lying in any public street, if the owner or person in charge of such property on being directed to remove the same, refuses or omits to do so.

(2) In Greater Bombay the property of which the Police have taken charge under sub-section (1) shall be handed over to the Commissioner.

### **Intestate property over four hundred rupees in value(u/s.83)**

(1) [In any area for which a Commissioner has been appointed if any property of the nature referred to in Sec. 82 appears to have been left by a person who has died intestate, and not to be under four hundred rupees in value, the Commissioner shall communicate with the Administrator-General, with a view to its being dealt with under the provisions of the Administrator-Generals Act, 1913 (11 of 1913) or other law for the time being in force

(2) In area outside the charge of a Commissioner the property shall be delivered to the police-patel, if any, of the town or village in which the same was found, and a receipt therefor taken from police-patel, who shall forward such property to the Magistrate, to whom such police- patel is subordinate. If in any such case there be no police-patel of such town or village, the Police shall forthwith report to such Magistrate as the Magistrate of the district shall, from time to time, appoint in this behalf, and act thereafter as the said first mentioned Magistrate shall direct.

### **Intestate property over four hundred rupees in value(u/s.84)**

s If the property regarding which a report is made to a Magistrate under Sec. 83 or under Sec. 19 of the Bombay Village Police Act, 1867 (Bom. VIII of 1867), 3 [or of that Act as in the Kutch area of the State of Bombay, or under Sec. 21 of the Saurashtra Village Police Ordinance, 1949 (Sau. Ord. XXXII of 1949)] appears to such Magistrate to have been left by a person who has died intestate and without known heirs and to be likely, if sold in public auction, to realise more than four hundred rupees net proceeds, he shall communicate with the District Judge with a view to its being dealt with under the provisions of Sec. 10



Regulation to provide for the formal recognition of heirs, etc.) or other law in force.

**Procedure in other cases(u/s.85)**

(1) In any case not covered by Sec. 83 or 84 the Commissioner or the Magistrate concerned, as the case may be, shall issue a proclamation specifying the articles of which such property consists and requiring any person who may have a claim thereto to appear before himself or some other officer whom he appoints in this behalf and establish his claim within six months from the date of such proclamation.

(2) Power to sell perishable property at once. If the property, or any part thereof, is subject to speedy and natural decay, or consists of live-stock, or if the property appears to be of less value than five rupees, it may be forthwith sold by auction under the orders of the Commissioner, or the Magistrate concerned, as the case may be, and the net proceeds of such sale shall be dealt with in the same manner as is hereinafter provided for the said property.

**Delivery of property to person entitled(u/s.86)**

(1) The Commissioner or the Magistrate concerned, as the case may be, shall, on being satisfied of the title of any claimant to the possession or administration of the property specified in the proclamation issued under sub-section (1) of Sec. 85, order the same to be delivered to him, after deduction or payment of the expenses properly incurred by the Police in the seizure and detention thereof.

(2) Power to take security. The Commissioner or the Magistrate concerned, as the case may be, may, at his discretion. before making any order under sub-section (1), take such security as he may think proper from the person to whom the said property is to be delivered and nothing hereinbefore contained shall affect the right of any person to recover the whole or any part of the same from the person to whom it may have been delivered pursuant to such order.

**In default of claim, property to be at disposal of State Government(u/s.87).**

If no person establishes his claim to such property within the period specified in the proclamation, it shall be at the disposal of the State Government and the property, or such part thereof as has not already been sold under sub-section (2) of Sec. 85, may be sold by auction under the orders of the Commissioner, or the Magistrate concerned, as the case may be.

**(u/s.88) Procedure not affected by Indian Succession Act or Administrator-Generals Act or Regulation VIII of 1827 1 [or corresponding laws]. Nothing in the Indian Succession Act, 1925 (XXXIX of 1925), or in the Administrator-Generals Act, 1913 (III of 1913), shall apply to intestate property which is dealt with by the Commissioner, under sub-section.**

(1) of Sec. 85, nor shall the provisions of Sec. 10 of Regulation VIII of 1827 [or of any corresponding law in force] likewise be deemed to apply to instate property which is dealt with by a Magistrate under sub-section (1) of Sec. 85.

**Police officer may take charge of the stray cattle(u/s.89)**

In any area outside the charge of a Commissioner, a Police officer may take charge of any animal falling under the provisions of the Cattle Trespass Act, 1871 (I of 1871) or as the case may be under the Hyderabad Cattle Trespass Act which may be found straying in a street, and may take or send the same to the nearest pound, and the owner and other persons concerned shall thereon become subject to the provisions of the relevant Act

**Power to establish Cattle-pounds and appoint pound-keepers(u/s.90).**

(1) 5 [In any area 6 [other than Greater Bombay] under the charge of a Commissioner] the Commissioner shall, from time to time, appoint such places as he thinks fit to be public pounds, and may appoint to be keepers of such pounds Police officers of such rank as may be approved by the State Government.

(2) Every pound-keeper so appointed shall, in the performance of his duties, be subject to the direction and control of the Commissioner,

**Penalty for allowing cattle to stray in street or to trespass upon private or public property (90-A).**

. (1) Whoever in 10[any area 11[other than Greater Bombay] under the charge of a Commissioner] allows any cattle which are his property or in his charge to stray in any street or to trespass upon any private or public property shall, on conviction, be punished

- (i) for the offence, with imprisonment for a term which may extend to one month or with fine which may extend to three hundred rupees or with both;
- (ii) for the second or subsequent offence, with imprisonment for a term “which may extend to six months or with fine which may extend to five hundred rupees, or with both.

(2) The Magistrate trying the offence under sub-section (1) may order,-

(a) that the accused shall pay such compensation, not exceeding two hundred and fifty rupees as the Magistrate considers reasonable, to any person for any damage proved to have been caused to his property or to produce of land by the cattle under the control of the accused trespassing on his land; and also

(b) that the cattle in respect of which an offence has been committed shall be forfeited to the State Government.

(3) Any compensation awarded under sub-section (2) may be recovered as if it were a fine imposed under this section.

(4) An offence under this section shall be cognizable.]

**Impounding of cattle(u/s.91).**

It shall be the duty of every Police officer, and it shall be lawful for any other person, to seize and take to any such public pound for confinement therein, any cattle found straying in any street or trespassing upon any private or public property in 1 [any area 2 [other than Greater Bombay under the charge of a Commissioner.

**Delivery of cattle claimed(u/s.92).**

If the owner of the cattle impounded under Sec. 91 or his agent appears and claims the cattle, the pound-keeper shall deliver them on payment of the pound-fees and expenses chargeable in respect of such cattle under Sec. 94.

**Sale of cattle not claimed(u/s.93)**

(1) If within ten days after an animal has been impounded, no person appearing to be the owner of such animal offers to pay the pound-fee and expenses chargeable under Sec. 94, such animal shall be forthwith sold by auction and the surplus remaining after deducting the fee and expenses aforesaid from the proceeds of the sale shall be paid to any person who, within fifteen days after the sale, proves to the satisfaction of such officer as the Commissioner authorises in this behalf that he was the owner of such animal, and shall in any other case, form part of the consolidated fund of the State.

(2) No police officer or pound-keeper shall, directly or indirectly, purchase any cattle at a sale under subsection (1).

**Rate to be fixed by notification(u/s.94)**

(1) The pound-fee chargeable shall be such as the State Government may, from time to time by notification in the official Gazette, specify for each kind of animal

(2) The expenses chargeable shall be at such rates for each day during any part of which an animal is impounded, as shall from time to time be fixed by the Commissioner in respect of such animal.

**Powers as to inspection, search and seizure of false weights and measures(u/s.95)** (1) Notwithstanding anything contained in Sec. 153 of the Code of Criminal Procedure, 1898 [V of 1898], any Police officer generally or specially deputed, in 6 [any area under the charge of a Commissioner] by the Commissioner and elsewhere, by the District Superintendent or any other officer specially empowered in that behalf by the State Government,

(2) If he finds in such shop or premises weights, measures or instruments for weighing or measuring which he has reason to believe are false, he may seize the same and shall forthwith give information of such seizure to the Magistrate having jurisdiction,

(3) Weights and measures purporting to be of the same denomination as weights and measures, the standards whereof are kept under any law from time to time in force shall, if they do not correspond with the standards,

**Procedure to be followed by officers and Magistrates in certain cases(u/s.96)**

(1) Notwithstanding anything contained in Secs. 129, 130, sub-section (2) of Sec. 167, and Sec. 173 of the Code of Criminal Procedure, 1898 (V of 1898)-

(i) the powers and duties of a Magistrate under Secs. 129. and 130 of that Code may, in 1 [any area under the charge of a Commissioner], be exercised and performed by the Commissioner.

(ii) the Presidency Magistrate in Greater Bombay to whom an accused person is forwarded under sub-section (9) of Sec. 167 of the Code, may, whether he has or has not jurisdiction to try the case,

(iii) the officer in charge of the Police station shall forward his report under Sec. 173 of the Code to the Commissioner or such other officer as the Commissioner may direct in that behalf.

(3) Nothing contained in Sec. 62 of the Code of Criminal Procedure, 1898 (V of 1898), shall operate to require any officer-in-charge of a Police Station

(3) Sections 127 and 128 of the Code of Criminal Procedure, 1898 (V of 1898), in their application to Greater Bombay 3 [any other area for which a Commissioner has been appointed] shall be amended as follows :-

(a) in Sec. 127, for the words “police station” the words “section or any police officer not below the rank of a sub-inspector authorised by the State Government in this behalf” shall be substituted;

(b) in Sec. 128, for the words “police station whether within or without the presidency-towns” the words and figures “section or any police officer authorised under Sec. 127” shall be substituted.

**A superior Police officer may himself perform duties imposed on inferior etc(u/s.97)**

A Police officer of rank superior to that of constable may perform any duty assigned by law or by a lawful order to any officer subordinate to him; and in case of any duty imposed on such subordinate, a superior where it shall appear to him necessary, may aid, supplement, supersede or prevent any action of such subordinate by his own action or that of any person lawfully acting under his command or authority, whenever the same shall appear necessary or expedient for giving more complete or convenient effect to the law or for avoiding an infringement thereof.

**Emergency of duties of Police(u/s.98)**

(1) The State Government may, by notification in the official Gazette, declare any specified service to be an essential service to the community: Provided that such notification shall remain in force for one month in the first instance, but may be extended, from time to time, by a like notification.

(2) Upon a declaration being made under sub-section (1) and so long as it remains in force, it shall be the duty of every Police officer to obey any order given by any superior officer in relation to employment upon or in connection with the service specified in the declaration; and every such order shall be deemed to be a lawful order within the meaning and for the purposes of this Act.

### **Offences and Punishments**

#### **Disregarding the rule of the road. No person shall(u/s. 99).**

1- (a) when driving a vehicle along a street and except in cases of actual necessity or of some sufficient reason, for deviation, fail to keep on the left side of such street and when passing any other vehicle proceeding in the same direction fail to keep on the right side of such vehicle; or

(b) Leaving cattle, etc., insufficiently tended. Leave in any street or public place insufficiently tended or secured any animal or vehicle.

#### **Causing obstruction or mischief by animal.(u/s.100)**

No person shall cause obstruction, damage, injury, danger, alarm or mischief in any street or public place-

(i) by misbehaviour, negligence or ill-usage in the driving, management, treatment or care of any animal or vehicle ; or

(ii) by driving any vehicle or animal laden with timber, poles, or other unwieldy articles through a street or public place contrary to any regulation made in that behalf and published by a competent authority.

#### **Exposing animal for hire or sale etc(u/s.101)**

No person shall in any street or public place expose for hire or sale any animal or vehicle, clean any furniture or vehicle, or clean or groom any horse or other animal, except at such times and places as a competent authority permits, or shall train or break in any horse or other animal or make any vehicle or any part of a vehicle, or except when in the case of an accident repairing on the spot is unavoidable, repair any vehicle or part of a vehicle or carryon therein any manufacture or operation so as to be a serious impediment to traffic or a serious annoyance to residents or to the public.

#### **Causing any obstruction in a street(u/s102)**

No person shall cause obstruction in any street or public place by allowing any animal or vehicle which has to be loaded or unloaded, or to take up or set down passengers, to remain or stand therein longer than may be necessary for such purpose, or by leaving any vehicle standing or fastening any cattle therein. or using any part of a street or public place as a baiting place for vehicles or cattle, or by leaving any box, bale, package or other thing whatsoever in or upon a street for an unreasonable length of time or contrary to

any regulation made and published by a competent authority by exposing anything for sale setting out anything for sale in or upon any stall, booth, board, casket or in any other way whatsoever.

**Obstructing a footway. No person shall drive, ride, lead, propel or leave on any footway any animal so that the same can stand across or upon such footway(u/s.103)**

**Exhibiting mimetic, music or other performances(u/s.104)**

etc. No person shall exhibit, contrary to any regulation made and notified by the [Revenue Commissioner] or a District Magistrate, as the case may be, any mimetic, musical or other performances of a nature to attract crowds, or carry or place bulky advertisements, pictures, figures or emblems in any street or public place whereby all obstruction to passengers or annoyance to the inhabitants may be occasioned.

**Doing offensive acts on or near street or public place(u/s.105)**

No person shall slaughter any animal, clean a carcass or hide, or bathe or wash his person in or near to and within sight of a street or public place (except at a place set apart for the purpose by order of a competent authority) so as to cause annoyance to the neighbouring residents or to passersby.

**Letting loose horse, etc. and suffering ferocious dogs to be large(u/s106).** No person shall in any street or public place

(A) negligently let loose any horse or other animal, so as to cause danger, injury, alarm or annoyance, or suffer a ferocious dog to be at large without a muzzle, or

(B) set on or urge a dog or other animal to attack, worry or put in fear any person or horse or other animal.

**Bathing or washing in places riot set apart for those purpose(u/s.107).** No person shall bathe or wash in or by the side of a public well, tank or reservoir not set apart for such purposes by order of a competent authority, or in or by the side of any pond, pool, aqueduct, part of a river, stream, nala or other source or means of water-supply in which such bathing or washing is forbidden by order of the competent authority.

**Defiling water in public wells, etc.(u/s.108)**

No person shall defile or cause to be defiled, the water in any public well, tank, reservoir, pond, pool aqueduct or part of a river, stream, nala or other source or means of water supply, so as to render the same less fit for any purpose for which it is set apart by the order of competent authority.

**Obstructing bathers(u/s.109)**

No person shall obstruct or incommode a person bathing at a place set apart for the purpose by the order of the competent authority under Sec. 107 by wilful intrusion or by using such place for any purpose for which it is not so set apart

**Behaving indecently in public(u/s.110).**

No person shall willfully and indecently expose his person in any street or public place or within sight of, and in such manner as to be seen from any street or public place, whether from within any house or building or not, or use indecent language or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office station or station house.

**Obstructing or any annoying passengers in the street(u/s.111)**

No person shall willfully push, press, hustle or obstruct any passenger in a street or public place or by violent movements, menacing gestures, want personal annoyance, screaming, shouting, willfully frightening horses or cattle or otherwise disturb the public peace or order

**Misbehaviour with in rent to provoke a breach of the peace(u/s.112)**

No person shall use in any street or public place any threatening abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

**Prohibition against flying kite(u/s 113).**

No person shall fly a kite so as to cause danger, injury or alarm to pe114. Begging and exposing offensive ailments. Repealed by Bom. Act X of 1960, Sec. 1 (4), Schedule

**Committing nuisance in or near street. etc.(u/s.114)**

No person shall in or near to any street, public place or place of public resort-

(a) commit a nuisance by easing himself, or

(b) having the care or custody of any child under seven years of age suffer such child to commit a nuisance as aforesaid

(c) spit or throw any dust, ashes, refuse or rubbish ; so as to cause annoyance to any passerby.]

**Disregard of notice in public building(u/s.115)**

. No person shall, in any court, Police Station, police Officer, building occupied by Government or building occupied by any public body, smoke or spit in contravention of a notice by a competent authority in charge of such place and affixed to such court, Station, office or building.

**Penalty for failure to keep in confinement cattle, etc(u/s.118)**

(1) In any local area in which the State Government by notification in the official Gazette brings this section into force, whoever through neglect otherwise fails to keep in confinement or under restraint between one hour after sunset and Sunrise any cattle which are his property or in his charge shall, on conviction,

(i) for the first offence, with imprisonment for a term which may extend to one month or with fine which may extend to three hundred rupees or with both;

(ii) for the second or subsequent offence, with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both].

**Explanation. Cattle shall not be deemed to be kept in confinement within the meaning of this subsection unless they are effectively confined within a fence, wall or other enclosure and shall not be deemed to be kept under restraint within the meaning of this sub-section unless they are restrained by means of a rope or other attachment.**

**Punishment for cruelty to animals(u/s.119).**

Whoever in any place 2 [in any area for which a Commissioner has not been appointed] cruelly beats, goads, overworks, ill-treats or tortures or causes or procures to be cruelly beaten, goaded, over-worked, ill-treated or tortured any animal, shall, on conviction, be punished with imprisonment which may extend to one month or with fine which may extend to one hundred rupees, or with both.

**. Wilful trespass(u/s.120)**

Whoever without satisfactory excuse willfully enters or remains in or upon any dwelling-house or premises or any land or ground attached thereto, or on any ground, building, monument or structure belonging to Government or appropriated to public purposes, or on any boat or vessel, shall, on conviction, whether he causes any actual damage or not, be punished with fine which may extend to twenty rupees.

**False alarm of fire or damage to fire-alarm(u/s.121)**

. Whoever knowingly gives or causes to be given a false alarm of fire to the fire brigade of a municipality or corporation or to any officer or fireman thereof whether by means of a street fire-alarm, statement, message or otherwise, or, with intent to give such false alarm, wilfully breaks the glass of, or otherwise damages a street fire-alarm, shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees, or with both.

**Being found under suspicious circumstances between sunset and sunrise(u/s.122)**

Whoever is found between sunset and sunrise-

(a) armed with any dangerous instrument with intent to commit an offence, or

(b) having his face covered or otherwise disguised with intent to commit an offence, or (c) in any dwelling-house or other building, or on board any vessel or boat without being able satisfactorily to account for his presence there, or

(d) lying or loitering in any street, yard or other place, being a reputed thief and without being able to give a satisfactory account of himself, or



(e) having in his possession without lawful excuse (the burden of proving which excuse shall be on such person 3 [any implement of house-breaking shall, on conviction, be punished with imprisonment which may extend to one year, but shall not, except for reasons to be recorded in writing be less than one month and shall also be liable to fine which may extend to five hundred rupees).

### **123. Carrying weapon without authorit(u/s.123)**

Whoever not being a member of the armed forces of the Union and acting as such or a Police officer, goes armed with any sword, spear, bludgeon, gun or other offensive weapon or with any explosive or corrosive substance in any street or public place unless so authorised by lawful authority, shall be liable to be disarmed by any Police officer, and the weapon or substance so seized shall be forfeited to the State Government, unless redeemed within two months by payment of such fine not exceeding five hundred rupees as the Commissioner or the District Magistrate in areas under their respective charges imposes.

**Possession of property of which no satisfactory account can be given(u/s.123)** Whoever has in his possession or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe is stolen property or property fraudulently obtained, shall, if he fails to account for such possession or to act to the satisfaction of the Magistrate, on conviction, be punished with imprisonment for a term which may extend to three months or with fine 1 [which may extend to one year but shall not except for reasons to be recorded in writing, be less than one month and shall also be liable to fine which may extend to five hundred rupees.

### **125. Taking spirits into public hospital or into barracks or on boards or vessels of war**

. Whoever- (a) takes or introduces, or attempts to take or introduce, any spirits or spirituous or fermented liquors or intoxicating drugs or preparations into any public hospital without the permission of a medical officer of such hospital, or

(b) not being amenable to the Articles of War takes or introduces, or attempts to take or introduce, any such spirits, liquors, drugs or preparations not belonging to any person above the rank of a non commissioned officer,

(i) into the barracks or buildings occupied by the troops composing the Garrison of Bombay into any military barracks, guard-rooms or encampments, or

(ii) (ii) on board or alongside of any vessel of war belonging to Government, shall, on conviction, be punished with imprisonment for a term which may extend to two months, or with fine which may extend to one hundred rupees, or with both and such spirits, liquor, drugs or preparations and the vessels containing the same, shall be forfeited to the State Government.

**126. Omission by pawn-brokers, etc. to report, to Police possession or tender of property suspected to be stolen.**

Whoever, being a pawn-broker, dealer in second-hand property, or worker in metals, or reasonably believed by the Commissioner, or District Superintendent in the areas under their respective charges to be such a person, and having received from a police officer written or printed information that the possession of any property suspected to have been transferred by any offence mentioned in Sec. 410 of the Indian Penal Code (XLV of 1860) or by any offence punishable under Sec. 417, 418, 419 or 420 of the said Code, is found in possession or thereafter comes into the possession.

- (i) he forthwith gives information to the Commissioner, or the District Superintendent, as the case may be, or at a Police station of such possession or offer and takes all reasonable means to ascertain and to give information as aforesaid of the name and address of the person from whom the possession or offer was received, or (ii) the property being, as an article of common wearing apparel or otherwise, incapable of identification from the written or printed information given, has been in no way concealed after the receipt of such information, on conviction, be punished with fine which may extend to fifty rupees in respect of each such article of property so in his possession or offered to him.

**Melting, etc. of such property(u/s.127).**

Whoever, having received such information as is referred to in Sec. 126, alters, melts, defaces or puts away or causes or suffers to be altered, melted, defaced or put away without the previous permission of the Police, any such property, shall, on proof that the same was stolen property within the meaning of Sec. 410 of the Indian Penal Code (XLV) of 1860), or property in respect of which any offence punishable under Sec. 417, 418, 419 or 420 of the said Code has been committed, be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

**Taking pledge from child(u/s.128)**

Whoever takes from any child not appearing to be above the age of fourteen years any article whatsoever as a pawn pledge or security for any sum of money lent, advanced or delivered to such child, or without the knowledge and consent of the owner of the article buys from such child any article whatsoever, shall, on conviction, be punished with fine which may extend to one hundred rupees.

**Permission of disorderly conduct at places of public amusement etc(u/s129).** Whoever, being the keeper of any place of public amusement or entertainment, knowingly permits drunkenness or other disorderly behaviour or any gaming whatsoever, in such place, shall, on conviction be punished with a fine which may extend to one hundred rupees.

**Cheating at games(u/s.130).**

Whoever, by any fraud or unlawful device or malpractice in playing at or with cards, dice or other game, or in taking a part in the stakes or wagers, or in betting on the sides or bands of the players, or in wagering on the event of any game, sports, pastime or exercise, wins from any other person, for himself or any other or others, any sum of money or valuable thing, shall be deemed guilty of cheating within the meaning of Sec. 415 of the Indian Penal Code (XLV of 1960), and be liable to punishment accordingly.

**Penalty for contravening rules. Etc(u/s.131)**

under Sec. 33. 23 Save as provided in Sec. 131-A, whoever-

(a) contravenes any rules or order made under Sec. 33 or any of the conditions of a licence issued under such rule or order, o

(b) (b) abets the commission of any offence under Cl. (a) shall, on conviction be punished

(i) if the rule or order under which the said licence was issued was made under Cls. (d), (g), (h), (i), sub-clauses (i) and (ii) of Cl. (r) or Cl. (u) of sub-section (1) of Sec. 35, with imprisonment for a term, which may extend to eight days or with fine which may extend to fifty rupees or with both;

(ii) if the rule or order contravened was made under Cl. (x) of sub-section (1) of Sec. 33, with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both;

(iii) if the rule or order contravened or the rule or order under which the said licence was issued was made under Cls. (n) and (o) of sub-section (1) of Sec. 33 with fine which may extend to two hundred rupees;

(iv) (iv) if the rule or order contravened was made under Cl. (b) of sub-section (1) of Sec. 33 and prohibits the sale or exposure for sale of any goods on any street or portion thereof so as to cause obstruction to traffic or inconvenience to the public-

(a) for the first offence with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees or with both; an

(b) for a subsequent offence with imprisonment for a term which may extend to six months and with fine which may extend to five hundred rupees; and

(v) if the rule or order contravened or the rule or order under which the said licence was issued 1 [was made under any clause of sub-section (1) of Sec. 33 .

(2) Any court trying any such offence shall in addition direct that the person keeping the place of public entertainment [or the eating house] in respect of which the offence has been committed shall close such place 6 [or eating house] until he obtains a licence or fresh licence [or a certificate of registration or fresh registration certificate] as the case may be, in respect thereof and thereupon such person shall forthwith comply with such direction.

(3) If the person fails to comply with any such direction he shall, on conviction be punished with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 200 or with both (4)

Without prejudice to any action taken under sub-section (3) on the failure of such person to comply with the direction of the Court any Police officer authorized by the Commissioner or the District Magistrate.

**Sec. 131 committed by his servant or other agent acting with his express or implied permission on his behalf, as if he himself had committed the same, unless he establishes that all due and reasonable precautions were taken by him to prevent the commission of such offence.**

**132. Penalty for disobedience or order under Sec.**

Whoever contravenes, disobeys, opposes, or fails to conform to an order under Sec. 31 requiring him to vacate any premises, shall, on conviction be punished with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both

**. 133. Penalty for contravening rules etc.**

under Sec. 35. Whoever contravenes any rule made under Sec. 35 shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees or with both.

**Penalty for contravention of rule, etc.(u/s.134)**

under Sec. 36. Whoever, contravenes, disobeys, opposes or fails to conform to any order given by a Police officer under Sec. 36 shall, on conviction, be punished with fine which may extend to two hundred rupees;

**135. Penalty for contravention of rule or directions(u/s.135)**

under Sec. 37, 39 or 40. Whoever disobeys an order lawfully made from Sec. 37, 39 or 40 or abets the disobedience thereof shall, on conviction, be punished,

( i) if the order disobeyed or of which the disobedience was abetted was made under sub-section (1) of Sec. 37 or under Sec. 39, or Sec. 40, with imprisonment for a term which may extend to one year but shall not except for reasons to be recorded in writing, be less than four months and shall also be liable to fine, and

(iii) if the said order was made under sub-section (2) of Sec. 37 with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees, and

- (iv) if the said order was made under sub-section (3) of Sec. 37, with fine which may extend to one hundred rupees.

**Penalty for contravening rules etc(u/s.136)**

., made under Sec. 38. Whoever disobeys any direction lawfully made under Sec. 38 or abets the disobedience thereof shall, on conviction , be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

**Penalty for contravening rules, etc(u/s.137)**

. made under Sec., 41. Whoever opposes or fails to conform to any direction given by the Police under Sec. 41, shall on conviction be punished with fine which.

**Penalty for contravention of a regulation mad(u/s.139),**

under Sec. 43. Whoever contravenes or abets the contravention of any regulation, made under Sec. 43 shall on conviction be punished with imprisonment which may extend to three months or with fine which may extend to two hundred rupees, or with both.

140. Penalty for contravening directions under Sec. 68. Whoever opposes, or fails to conform to any direction given by the Police under Sec. 68 or abets the opposition or failure to do so shall, on conviction, be punished with fine which may extend to fifty rupees.

**Penalty for contravention of directions under Secs (u/s.141)**

. 55, 56 2 [57, 57-A or 63-AA]. Whoever opposes or disobeys or fails to conform to any direction issued under Secs. 55, 56 3 [57, 57-A or 63- AA] or abets opposition to or disobedience of any such direction shall, on conviction, be punished with imprisonment which may extend to one year but shall not, except for reasons to be recorded in writing, be less than four months, and shall also be liable to fine. 3

**[142. Penalty for entering without permission area from which a, person is directed to remove himself or overstaying when permitted to, return temporarily.** Without prejudice to the power to arrest and remove a person in the circumstances and in the manner provided in Sec. 62, any person who- (a) in contravention of a direction issued to him under Secs. 55, 56, 4 [57, 57-A or 63-AA] enters or returns without permission to the area, or any district or districts or part thereof, from which he was directed to remove himself;

(b) enters or returns to any such area or district aforesaid or part thereof with permission granted under sub-section

(2) of Sec. 62, but fails, contrary to the provisions thereof, to remove himself outside such area at the expiry of the temporary period for which he was permitted to enter or return or on the

earlier revocation of such permission, or having removed himself at the expiry of such temporary period or on revocation of the permission, enters or returns thereafter without fresh permission, shall on conviction, be punished with imprisonment for a term which may extend to two years, but shall not, except for reasons to be recorded in writing, be less than six months, and shall also be liable to fine 143. Penalty for failure in surrender in accordance with sub-section

(3) of Sec. 3. Whoever fails without sufficient cause to surrender in accordance with sub-section (3) of Sec. 63 shall, on conviction, be punished with imprisonment which may extend to two years and shall also be liable to fine.

**[143-B. Dangerous performances.**

(1) No person shall without the previous permission of the Commissioner or the District Magistrate as the case may be, and except in accordance with any conditions subject to which such permission is granted, hold or give, in any place which is likely to cause an assembly of persons, any performance in which or during which he buries himself underground, or seals himself in any room or receptacle or other thing, in such manner as to prevent all access of air to him and for such time as would ordinarily result in death by suffocation.

(2) If any person contravenes or attempts to contravene the provisions of this section, he shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine, or with both.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the offence punishable under this section shall be cognizable.]

**145. Penalty for making false statement, etc., and for misconduct of Police officers.** (1) Any person who makes a false statement or uses a false document for the purpose of obtaining employment or release from employment as a Police officer, or (2) any Police officer who

(a) is guilty of cowardice, or

(b) resigns his office or withdraws himself from duties thereof in contravention of Sec. 29, or

(c) is guilty of any wilful breach or neglect of any provision of law or of any rule or order which as such Police officer, it is his duty to observe or obey, or (d) is guilty of any violation of duty for which no punishment is expressly provided by any other law in force, shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.

**u/s. 146. Penalty failure to deliver up certificate of appointment or of office or other article.** Any Police officer, who wilfully neglects or refuses to deliver up his certificate of

appointment or of office or any other article, in accordance with the provision of sub-section (1) of Sec. 30 shall, on conviction, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

**(u/s. 147). Vexatious entry, search, arrest, etc., by Police officer.** Any Police officer who-

- (a) without lawful authority or reasonable cause enters or searches or causes to be entered or searched, any building, vessel, tent or place;
- (b) vexatiously and unnecessarily seizes the property of any person;
- (c) vexatiously and unnecessarily detains, searches or arrests any person;
- (d) offers any unnecessary personal violence to any person in his custody; or (e) holds out any threat or promise not warranted by law; shall for every such offence, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

**Penalty for vexatious delay in forwarding a person arrested(u/s.148)**

Any Police officer who vexatiously and unnecessarily delays forwarding any person arrested to a Magistrate or to any other authority to whom he is legally bound to forward such person, shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

**Penalty for opposing or not complying with direction given (u/s.149)**

under Sec. 70. Whoever opposes or fails forthwith to comply with any reasonable direction given by a Magistrate or a Police officer under Sec.70 or abets opposition thereto or failure to comply therewith, shall on conviction be punished with imprisonment for a term which may extend to one year but shall not except for reasons to be recorded in writing be less than four months and shall also be liable to fine.

**Penalty for unauthorised use of Police uniform (u/s.149-A.).**

If any person not being a member of the Police Force, wears, without the permission of an officer authorised by the State Government in this behalf by a general special order for any area in the (State of Maharashtra) the uniform of the Police Force or any dress having the appearance or bearing any of the distinctive marks of that uniform, he shall, on conviction, be punished fine which may extend to two hundred rupees.

**Jurisdiction when offender is a Police officer above the rank of constable(u/s.150)**

. Offences against this Act, when the accused person or anyone of the accused persons is a Police officer above the rank of a constable, shall not be cognizable except by a Presidency Magistrate or a Magistrate not lower than second class Magistrate.

**Prosecution for certain offences against the Act to be in the discretion of the Police(u/s151)**

It will not except in obedience to a rule or order made by the State Government or by the competent authority, be incumbent on the Police to prosecute for an offence punishable under Sec. 117, 119, 131, 134, 137, 139, 140 or 144 when such offence has not occasioned serious mischief and has been promptly desisted from on warning given.

**Summary disposal of certain cases.(u/s.151-A)**

A Court taking cognizance of an offence punishable under Sec. 117, or under paragraph (iii), (iv) or (v) of Sec. 131], may state upon the summons to be served on the accused person that he may, by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum, not exceeding twenty-five rupees, as the Court may specify.

(2) Where an accused person pleads guilty and remits the sum specified no further proceeding in respect of to offence shall be taken against him).

**152. Prosecution for offences under other enactments not affected.** Nothing in this Act shall be construed to prevent any person from belong prosecuted and punished under any other enactment for any offence made punishable by this Act or from being prosecuted and punished under this Act for an offence punishable under any other enactment.



## MODULE 2

### THE PREVENTION OF CURRUPTION ACT ,1988

#### INTRODUCTION

The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abets them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants. This Act envisages widening the scope of the definition of the expression "public servant", incorporation of offences under sections 161 to 165-A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial Court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

Since the provisions of sections 161 to 165-A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.

The act consists of 5 chapters spread across 31 sections.<sup>[2]</sup>

#### Preliminary

This chapter contains sections describing title, territorial extent, basic definitions, etc. Two of the main definitions are "public servant" and "undue advantage". Following are some sections:

#### **Definitions:**

The most important definitions are that of :

- Public duty
- Public servant

#### 1) Public Duty:

It means a duty that is done for the benefit of the State, the public or the community at a large. In this context, State would mean:

- a) A corporation established by or under a Central, Provincial or State Act.
- b) An authority or a body owned controlled or aided by the Government company as defined in Sec. 617 of the Companies Act, 1956.

## 2) Public Servant:

It is a unique term in Anti-corruption law, being the deciding factor at the threshold, of one's liability, depending on his being a public servant. The term 'Public Servant' was not defined under the PCA, 1947 and the Act adopted the definition of the term under sec. 21 of the Indian Penal Code. The PCA of 1988 provides a wider definition in the Act itself under clause (c) of sec. 2.

### **the following are the salient aspects of the new definition:**

- a) Under cl (c) of Sec. 2 of the PC, the emphasis is on public duty and not on the Authority remunerating.
- b) The definition is enlarged so as to include the office-bearers of the registered co-operative societies receiving any financial aid from the Government, or from a Government corporation or company, the employees of universities, public service commissions and banks etc.

### **The following genres of persons fall within the ambit of 'public servant':**

- a) Any person who is paid by the government or local authority or remunerated by way of fees or commission for the performance of or is in the service of a corporation established by or under a Central, Provincial or State Act, or an authority or body owned or controlled or aided by the Government company as defined in the Companies Act, 1956.
- b) Any Judge or any person authorized by a court of justice to perform any duty, in connection with the administration of justice or any arbitrator to whom any cause or matter has been referred for decision or report by a court of justice or report by a court of justice or by a competent public authority.
- c) Any person who holds an office result to which he is empowered to prepare, publish maintain or revise an electoral roll or to conduct an election or part of an election, or is authorized or required to perform any public duty.
- d) Any person who is the president, secretary or other office bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central or

State Government or any authority or body owned, controlled or aided by Government or Government company as defined in Sec. 617 of the Companies Act, 1956.

e) Any person who is a chairman, member or employee of any service commission or Board or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on their behalf.

f) Any person who is the Vice-Chancellor or member of any governing body, professor, reader or lecturer of any University and any person whose services have been availed of by a University.

g) An office-bearer or an employee of an educational, scientific, social, cultural or other institution receiving or having received any financial assistance from the Central or State government or local or other public authority.

Explanation 1 states that it is immaterial whether the person falling within the periphery of the above clauses is appointed by Government or not.

Explanation 2 states that a person who is actually holding the position of the situation of public servant irrespective of the fact that he might not have the right to hold that situation shall be deemed to be 'public servant'.

### **Appointment of special Judges Section 3:**

Power To Appoint Special Judges: The Central and the State Government is empowered to appoint Special Judges by placing a Notification in the Official Gazette, to try the following offences: · Any offence punishable under this Act. · Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the Act. The qualification for the Special Judge is that he should be or should have been a Session Judge or an Additional Session Judge or Assistant Session Judge under the Code of Criminal Procedure, 1973

### **Cases triable by special Judges Section 4:**

The offences punishable under this act can be tried by special Judges only. When [trying](#) any case, the special Judge is empowered to [try](#) any offence other than an offence punishable under this act, with which the accused may be charged at the same trial. It is recommended that the special Judge should hold the [trial](#) daily.

Case Trial By Special Judges: Every offence mentioned in Section 3(1) shall be tried by the Special Judge for the area within which it was committed. When trying any case, a Special Judge may also try any offence other than what is specified in S. 3, which the accused may be, under Cr.P.C. be charged at the same trial. The

Special Judge has to hold the trial of an offence on day-to-day basis. However, while complying with foretasted, it is to be seen that the Cr.P.C. is not bifurcated.

### **Procedure and powers of special Judge Section 5:**

The following are the powers of the Special Judge: He may take cognizance of the offences without the accused being commissioned to him for trial. In trying the accused persons, shall follow the procedure prescribed by the Cr.P.C. for the trial of warrant cases by Magistrate. he may with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, tender pardon to such person provided that he would make full and true disclosure of the whole circumstances within his knowledge or in respect to any person related to the offence.

Except as for S. 2(1), the provisions of Cr.P.C. shall apply to the proceedings before a Special Judge. Hence, the court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor. The provisions of secs. 326 and 475 of the Cr.P.C. shall apply to the proceedings before a Special Judge and for purpose of the said provisions, a Special Judge shall be deemed to be a magistrate.

A Special Judge may pass a sentence authorized by law for the punishment of the offence of which a person is convicted. A Special Judge, while trying any offence punishable under the Act, shall exercise all powers and functions exercised by a District Judge under the Criminal Law Amendment Ordinance, 1944.

Power to try summarily: Where a Special Judge tries any offence specified in Sec. 3(1), alleged to have been committed by a public servant in relation to the contravention of any special order referred to in Sec.12-A(1) of the Essential Commodities Act, 1955 or all orders referred to in sub-section (2)(a) of that section then the special judge shall try the offence in a summarily way and the provisions of s. 262 to 265 (both inclusive) of the said code shall as far as may be apply to such trial. Provided that in the case of any conviction in a summary trial under this section this shall be lawful for the Special Judge to pass a sentence of imprisonment for a term not exceeding one year. However, when at the commencement of or in the course of a summary trial it appears to the Special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or it is undesirable to try the case summarily, the Special judge shall record all order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear and re-hear the case in accordance with the procedure prescribed by the said code for the trial of warrant cases by Magistrates. Moreover, there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Judge passes a sentence of imprisonment not exceeding one month and of fine not exceeding Rs. 2000.

### **Offences and penalties**

### **1) Offence relating to public servant being bribed – SEC.7**

public servant who,—

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

shall be punishable with imprisonment 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.

### **2) Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence – SEC.7A.**

Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment 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.

### **3) Offence relating to bribing of a public servant –SEC 8.**

. (1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—

(i) to induce a public servant to perform improperly a public duty; or

(ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

## Exception

if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.

### **4) Offence relating to bribing a public servant by a commercial organization -9**

(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—

(a) to obtain or retain business for such commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

## **Defence**

Defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

Person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.

“commercial organisation” means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

The offence under sections 7A, 8 and this section shall be cognizable.

### **5) Person in charge of commercial organization to be guilty of offence –SEC. 10.**

Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment 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.

**6) Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant SEC.11.**

shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

**7) Criminal misconduct by a public servant –SEC. 13.**

A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 3[four years] but which may extend to 4[ten years] and shall also be liable to fine.

**Presumption**

A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

“known sources of income” means income received from any lawful sources

**8) Punishment for habitual offender.—SEC. 14.**

Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine.

**9) Punishment for attempt.— SEC. 15.**

Whoever attempts to commit an offence referred to in clause (a) of sub-section (1) of section 13 shall be punishable with imprisonment for a term [which shall not be less than two years but which may extend to five years] and with fine.

## **10) Matters to be taken into consideration for fixing fine.—SEC. 16.**

Where a sentence of fine is imposed under section 7 or section 8 or section 9 or section 10 or section 11 or sub-section (2) of section 13 or section 14 or section 15, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (b) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

## **11) Forfeiture of Property**

The new Section 18A also introduces a provision for special courts to confiscate and attach the property acquired through corrupt practices.

## **12) Enhancement of Punishment**

Punishment has been increased from a minimum imprisonment term of 6 (six) months to 3 (three) years, and from a maximum of 5 (five) years to 7 (seven) years, with or without fine.

### **Time Frame for Trial**

To ensure speedy justice, the Amendment Act now prescribes that the courts shall *endeavor* to complete the within 2 (two) years. This period can be extended by 6 (six) months at a time and up to a maximum of 4 (four) years in aggregate subject to proper reasons for the same being recorded.

### **Investigation**

Investigation shall be done by a police officer not below the rank of:

- In case of Delhi, of an Inspector of Police.
- In metropolitan areas, of an Assistant Commissioner of Police.
- Elsewhere, of a Deputy Superintendent of Police or an officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a magistrate of first class, or make any arrest therefore without a warrant.



If a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may investigate such offence without the order of a Metropolitan Magistrate or Magistrate of First class or make arrest therefor without a warrant.

Provided further that an offence referred to sec 13.1.e shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. Any such investigation without the order of a SP or above rank will be dismissed see Umesh Kumar Choubey vs State of Madhya Pradesh.

**Previous Sanctions:**

Previous sanction is required in following cases:

When an offence is punishable under secs. 7, 10, 11, 13 and 15 of the Act.

In case of a person who is employed in connection with the affairs of the Union or State and is not removable from his office save by or with the sanction of the Central or State Government as the case may be. In case of any other person, of authority competent to remove him from his office.

**Previous sanction is required, if the court feels that a failure has occurred in the administration of justice, to do the following:**

reversal or alteration by the Court of Appeal of any findings, or any sentence or order passed by a Special Judge. stay the proceedings on the ground of error, omission or irregularity. revision of any interlocutory order passed in inquiry, trial, appeal or proceedings.

**Accused: A Competent Witness:**

Any person charged with an offence punishable under this Act, shall be a competent witness for the defense and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that-

- (a) He shall not be called as a witness except at his own request;
- (b) His failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-
  - (i) The proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
  - (ii) He has personally or by his pleader asked any question of any witness for the prosecution with a view to

establish his own good character, or has given evidence of his good character, or the nature or conduct of the defense is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) He has given evidence against any other person charged with the same offence.

### **Appeal And Revision:**

The High Court has given all power of appeal and revision that are provided to it through Cr.P.C. as if the Court of Special Judge were a Court of Session trying cases within the local limits of the High Court.

## MODULE 3

### THE MAHARASHTRA CONTROL OF ORGANISED CRIME ACT 1999

#### 1. INTRODUCTION

This act was brought in the year of 1999 with the main purpose to regulate and control the increase in organised crime & terrorism which has seen an upsurge in the economic capital of India by providing a special framework to combat criminal activities like murders of tycoons related to film industry as well by builders, extortion of money from businessmen, abduction etc. which clearly purported the existence of organised gangs in Mumbai, as well as in entire State of Maharashtra.

The extended jurisdiction to the National Capital Territory of Delhi in 2002 of this Act, constitutes one of the peculiar features apart from the power to intercept wires, electronic or oral communication means, admissibility of confessions before senior officials, no provision for anticipatory bail within 6 months to the accused from the date of commission of offence etc.

Thus, to strengthen the existing legal framework and to cope with the increasing use of technology for committing organised crime, in the eyes of Governor of Maharashtra it was necessary to promulgate an ordinance to this effect, which was passed on 24<sup>th</sup> February, 1999 with the title as ‘Maharashtra Control of Organised Crimes Ordinance 1999’, as both the houses of State Legislature were not in session.

#### **Object and purpose**

The statement of object and preamble of the Act, makes it clear that the Act was enacted to achieve the following purpose:

- To make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang;
- It was necessary and expedient to replace the 1999 Ordinance by an Act of the State Legislature for effective implementation and proper adjudication of the offences thereby;
- As Organised Crimes knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc which required a special law to deal with such increasing mal practices;

- The possibility of organised crime being operating in the State which was fostering narco terrorism and aiding the terrorist gangs by illegal funding of wealth and black money, required immediate State action for which the Ordinance to this effect which was replaced by the full-fledged Act was needed.

### **Application of this Act**

The Act was already in force by virtue of the Ordinance promulgated to the effect from 24<sup>th</sup> February 1999 and Section- 1 of the Act clearly specifies that it shall have retrospective effect and deemed to have come into force from such date itself. Moreover, the Act got the assent of the President on 23<sup>rd</sup> April 1999 and was first published in Maharashtra Government Gazette on 24<sup>th</sup> April 1999.

The Act extends to the whole State of Maharashtra and by virtue of 2002 order of Union Ministry of Home Affairs, it also extends to the National Capital Territory of Delhi.

### **‘Organised Crime’, ‘Organised Crime Syndicate’ and ‘Continuing unlawful activity’**

The interpretation or definition clause of the Act u/s, 2 defines these terms which are as follows:

- Section 2(e) defines ‘Organised Crime’ which means

“any **continuing unlawful activity** by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency”;

- Section 2(f) defines ‘Organised Crime Syndicate’ which means

“a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime”

To fully understand the meaning of Organised Crime, it is necessary to study the definition of ‘continuing unlawful activity’ which is defined as follows in the Act, so as to have clear interpretation of the former term:

- **Section 2(d) ‘continuing unlawful activity’** means

“an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have

been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence”.

### **MCOCA 1999 has an overriding effect on other State and Central Acts, and what brings this Act at par with a Central Legislation?**

There are two reasons why MCOCA is seen at par with the Central Legislation and in some cases have an overriding effect on State as well as Central Acts:

- *Firstly*, that being a State Act it has received the assent of the President of India; and
- *Secondly*, by virtue of Section-25 of the Act which unequivocally quotes while initiating with Non-obstante clause that, anything contained in this Act or any rule or any order made under such rule shall have effect over anything inconsistent therewith contained in any other law for the time being in force and any instrument which is having force of law.

### **Punishments for the Commission of Organised Crimes**

#### **Section-3: Punishment for Organised Crimes**

1. (a) If commission of organised crime results in death of any person

Punishable with Death or Life Imprisonment and fine (min. of ₹1lakh)

(b) If commission of organised crime doesn't result in death of any person

Imprisonment with may extend to LI but not less than 5 years and fine (min. of ₹5lakhs)

2. Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime

Imprisonment with may extend to LI but not less than 5 years and fine (min. of ₹5lakhs)

3. Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate

Imprisonment with may extend to LI but not less than 5 years and fine (min. of ₹5lakhs)

4. Any person who is a member of an organised crime syndicate

Imprisonment with may extend to LI but not less than 5 years and fine (min. of ₹5lakhs)

5. Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds

Imprisonment with may extend to LI but not less than 3 years and fine (min. of ₹2lakhs)

**6. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate  
Section 4-**

If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for

Imprisonment with may extend to 10 years but not less than 3 years and fine (min. of ₹1lakh) and the property shall be liable for attachment & forfeiture per the procedure of Section 20 of MCOCA 1999.

**7. Interception and disclosure of wire, electronic or oral communications prohibited Section 16-**

Any Police Officer who intentionally or with malafide intention intercepts & disclosed wired or oral communication shall be punished

Imprisonment for a term which may extend to one year and with fine up to ₹50 thousand

**8. Punishment for public servants failing in the discharge of their duties Section 24-**

A Public Servant who renders any help or support in any manner in the commission of organised crime as defined in clause (e) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect

Imprisonment of either description which may extend to 3 years and also with fine.

**The special courts constituted under MCOCA 1999 and its jurisdiction & qualification to preside over them as a judge**

Literally, Special Court as defined u/s. 2(g) of the Act states as follows: “Special Court” means the Special Court constituted under section 5. Thus, specific reliance is to be made to Section 5 of the Act for elaborative sphere of Special Court.

**Section-5** of the Act provides that the State Government, by notification in the official gazette, constitute one or more special courts for such area/areas and for such cases/group of cases which it notifies in the gazette itself.

The special court shall preside over by a judge who is to be appointed by the State Government in concurrence with the Chief Justice of Bombay High Court and State Govt. can also appoint such additional judges to exercise the power of the Special Court, only with the concurrence of the Chief Justice of Bombay High Court. Moreover, the decision of the State Govt. is final as to the jurisdiction exercised by the Special Court.

Further, the State Govt shall also appoint Public Prosecutor & Additional Public Prosecutor for every Special Court who has been practising as an Advocate for not less than 10 years. (Section-8)

#### **Qualification as to preside over the judge of Special Court:**

- Immediately before his appointment as the judge of Special Court, he shall be a Sessions Judge or an Additional Sessions Judge. [Section 5(4)]

#### **Jurisdiction of the Special Court:**

- The Special Court shall try all the offences under this Act which has been committed within its jurisdiction or as the case maybe by the Special Court constituted for trying such offence under sub-section (1) of section 5. [Section 6]

#### **Public Prosecutor.sec.8**

(1) For every Special Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that, the State Government may also appoint for any case or group of cases, a Special Public Prosecutor

(2) A Person shall not be qualified to be appointed as a Public Prosecutor, an Additional Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an Advocate for not less than ten years.

(3) Every person appointed as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor, under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

#### **The power and procedure exercised by the special court**

The Special Courts have following powers as has been conferred on it by the Act:

- While trying an offence under this Act, the Special court may also try any other offence committed by the accused under this Act or under any other Act, if it is related to that offence and may sentence the same accordingly. [Section 7]
- Special Court may take cognizance of offence under this Act against any person, even if it has not been committed to it, either on receiving the complaint or police report, as the case maybe. [Section 9(1)]
- When an offence is triable by a Special Court under this Act not exceeding the prescribed punishment beyond 3 years of imprisonment or fine or both, he can summarily try the case in accordance with the procedure prescribed in the Code of Criminal Procedure, 1973 (hereinafter referred as 'CrPC') u/s. 263 to 265.

If the Special Court is of the opinion that it is undesirable to try a case in summary way, then he may dispense with such summary procedure and rehear the case, as if he is the magistrate to try that case in a trial and abide by the provisions of CrPC. [Section 9(2)]

Moreover, while summarily trying a case, Special Court may sentence an imprisonment for a term not exceeding 2 years.

The Procedure for taking cognizance and investigation thereto, under MCOCA is as follows:

- Section 23 of the Act clearly provides for a mandatory action of taking approval of the police officer not below the rank of the Deputy Inspector General of Police for recording the information by the Police officer of the commission of offence under MCOCA and no investigation shall be undertaken by any police officer below the rank of Deputy Superintendent of Police.
- Furthermore, Section 23 also postulates that Special Court shall not take cognizance without the previous sanction of the police officer not below the rank of Additional Director General of Police.

#### **other**

1. The Act provides for the establishment of Special Courts for the purpose of effective adjudication of cases pertaining to Organised Crime and Terrorism.
2. Provides for the appointment of Competent Authority for the purpose of interception of wires, and medium of electronic or oral communication. [Section 13-14]
3. Constitution of Review Committee to review every order of Competent Authority in relation to authorisation of interception etc. [Section- 15].
4. Special rules of evidence to apply in the cases tried by Special Court under MCOCA wherein the CrPC and Evidence Act's applicability is restricted. [Section-17]
5. Confession recorded by a police officer not below the rank of Superintendent of Police shall be admissible in the trial of such person, co-accused, abettor or conspirator. [Section- 18]



6. Specified provisions for the protection of witnesses of the offences under this Act. [Section- 19]
7. Provisions for forfeiture and attachment of property of the accused and which is specified in the order by the Special Court. [Section-20]
8. Section 438 not to apply under this Act and the words ‘15 days’ and ‘60 days’ shall be construed as ‘30 days’ and ‘90 days’, respectively u/s. 167 CrPC. [Section- 21]
9. Every Offence committed under this Act shall be a cognizable offence. [Section- 21]
10. Special powers of High Court and State Government to make rules u/s. 28 and 29 of the Act.
11. Extreme difficult provisions for securing bail.
12. Causation of Annual Reports of Interceptions by State Government with the particulars as provided u/s. 27 of MCOCA, etc.

### **The presumptions as to offences committed**

Section 22 provides for the presumption as to commission of the offence by the accused person if the following are proved and contrary is not established:

- That any unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reason to believe that the same have been used in the commission of the offence;
- That the evidence of the expert shows that the fingerprint of the accused was found from the crime scene and materials used in commission of the offence under this Act; and
- That the accused has rendered any financial support or aid to the person accused or any suspect of offence committed under this Act.

### **SECTION 13: APPOINTMENT OF COMPETENT AUTHORITY.**

The State Government may appoint any of its officer, in Home Department not below the rank of Secretary to Government, to be the Competent Authority for the purposes of section **14**.

### **SECTION 14: AUTHORIZATION OF INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATION.**

(1) A Police Officer not below the rank of Superintendent of Police supervising the investigation of an organised crime under this Act may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when such interception may provide or has provided evidence of any offence involving an organised crime.

(2) Each application shall include the following information:

- (a) the identity of the investigative or law enforcement officer making the application, and the head of the department authorising the application;
- (b) a statement of the facts and circumstance, relied upon by the applicant, to justify his belief that an order should be issued, including
- (i) details as to the offence of organised crime that has been, is being, or is about to be committed;
  - (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
  - (iii) a particular description of the type of communications sought to be intercepted; and
  - (iv) the identity of the person, if known, committing the offence of organised crime whose communications are to be intercepted;
- (c) a statement as to whether or not other modes of enquiry or intelligence gathering have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;
- (d) a statement of the period of time for which the interception is required to be maintained. If the nature of the enquiry is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to be believe that additional communications of the same type, will occur thereafter;
- (e) a statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to the Competent Authority for authorization to intercept; or for approval of interceptions of, wire electronic or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the Competent Authority on each such application; and
  - (f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.
- (3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.
- (4) Upon such application, the Competent Authority may after recording the reasons in writing reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority on the basis of the facts submitted by the applicant that
- (a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under section 3 and 4 of this Act;
  - (b) there is a probable cause for belief that particular communications concerning that offence will be obtained through such interception;

(c) normal modes of enquiry and intelligence gathering have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;

(d) there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted or be used or are about to be used, in connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.

(5) Each order by the Competent Authority authorizing or approving the interception of any wire, electronic or oral communication under this section shall specify

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(6) The Competent Authority shall immediately pass the order under sub-section (4), but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 15 along with all the relevant underlying papers, records and his own findings, etc. in respect of the said order, for consideration and approval of the order by the Review Committee.

(7) An order authorizing the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communications are to be intercepted.

(8) No order issued under this section may authorize or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than sixty days. Such sixty days period shall begin on the day immediately preceding the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier. Extension of an order may be granted, but only upon an application for an extension is made in

accordance with sub-section (1) and the Competent Authority making the findings required by sub-section (4). The period of extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable and shall be conducted in such a way or manner as to minimize the interception of communications not otherwise subject to interception under this section and must terminate upon attainment of the authorized objective, or in any event on expiry of the period of the order. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this section may be conducted in whole or in part by public servant, or by an individual operating under a contract with the State Government, acting under the supervision of the investigative or law enforcement officer authorized to conduct the interception.

(9) Whenever an order authorizing interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the Competent Authority may require.

(10) Notwithstanding anything contained in any other provision of this section, an officer not below the rank of Additional Director General of Police who reasonably determines that -

(a) an emergency situation exists that involves.

(i) immediate danger of death or serious physical injury to any person;

(ii) conspiratorial activities threatening the security or interest of the State; or

(iii) conspiratorial activities, characteristic of organized crime, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be issued under this section to authorize such interception, may authorise, in writing, the investigating Police Officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) within forty-eight hours after the interception has occurred, or begins to occur.

(11) In the absence of an order approving the interception made under sub-section (10), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier. In the event where an application for permitting interception is rejected under sub-section (4) or an application under sub-section (10) for approval is rejected, or in any other case where the interception is terminated without an order having

been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

(12)(a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this section shall, if possible, be recorded on tape or wire or other comparable device. Recording of the contents of any wire, electronic or oral communication under this sub-section shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of order, or extension thereof, such recordings shall be made available to the Competent Authority issuing such order and shall be sealed under this directions. Custody of the recordings shall be wherever the Competent Authority orders. They shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(b) Applications made and orders issued under this section shall be sealed by the Competent Authority. Custody of the applications and orders shall be wherever the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

The Competent Authority upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the Competent Authority determines to be in the interest of justice.

(13) Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this section shall be admissible as evidence against the accused in the Court during the trial of a case.

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this section or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each party, not less than ten days before trial, hearing or proceeding, has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved:

Provided further that, this ten days period may be waived by the judge, trying the matter, if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

Explanation - For the purposes of this section-

(a) 'wire communication' means any aural transfer made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication;

- (b) 'oral communication' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;
- (c) 'electronic communication' means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include
- (i) The radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit;
- (ii) any wire or oral communication;
- (iii) any communication made through a tone only paging device; or
- (iv) any communication from a tracking device;
- (d) 'intercept' means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device.

## **SECTION 15: CONSTITUTION OF REVIEW COMMITTEE FOR REVIEW OF AUTHORISATION ORDERS.**

- (1) There shall be a Review Committee to review every order passed by the Competent Authority under section 14.
- (2) The Review Committee shall consist of the following ex officio members namely:
- (i) the Chief Secretary to Government....Chairman.
- (ii) the additional Chief Secretary or the senior most Principal Secretary as the case may be, in the Home Department ... Member.
- (iii) Principal Secretary or Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department ... Member.
- (3) Every order passed by the Competent Authority under section 14, placed before the Review Committee, shall be considered by the Review Committee within ten days after its receipt, to decide whether the order, authorising or approving the application under sub-section (4) of section 14, for interception or disapproving the interception made under sub-section (10) of that section in emergency situation, passed by the Competent Authority was necessary, reasonable and justified.
- (4) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed an issue order disapproving by the same. On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued. The intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

## **SECTION 16: INTERCEPTION AND DISCLOSURE OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS PROHIBITED.**

Except as otherwise specifically provided in section 14, any police officer who -

- (a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;
- (b) intentionally uses; endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when
  - (i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or
  - (ii) such device transmits communications by radio, or interferes with the transmission of such communication;
- (c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section;
- (d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section; or
- (e)(i) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, intercepted by means authorized by section 14;
- (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation under this Act;
- (iii) having obtained or received the information in connection with a criminal investigation; and
- (iv) with intent to improperly obstruct, impede, or interfere with a duly authorised criminal investigation; or
- (f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (4) of section 15, shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine upto rupees fifty thousand.

### **Some of the landmark rulings of the Courts on MCOCA:**

□ Hon'ble Supreme Court of India in the case of **State of NCT of Delhi v. Brijesh Singh**, [2017 SCC OnLine SC 1206] has categorically observed that, ‘‘*Organised crime is not an activity restricted to a particular State which is apparent from a perusal of the Statement of Objects and Reasons. A restrictive reading of the words ‘‘competent Court’’ appearing in Section 2 (1)(d) of MCOCA will stultify the object of the Act and therefore*

*charge sheets in other states can also be taken into account.*”Bombay High Court in the case of **Saquib Abdul Hamid Nachan v. Superintendent, Central Jail**, [2017 SCC OnLine Bom 738] has held that, *“Undertrial detention under MCOCA cannot be set-off against the sentence imposed in Prevention of Terrorism Act 2002 (POTA).”*

Delhi High Court while acquitting 8 accused in a murder case by Additional Sessions Judge Gautam Manna, while stating that *“police shall not invoke MCOCA without strict proof of the accused working as members of an organised crime syndicate and not merely on the basis of their previous involvement in criminal cases.”*

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## MODULE 4

### **The Narcotic Drugs and Psychotropic Substances Act, 1985,**

The **Narcotic Drugs and Psychotropic Substances Act, 1985**, commonly referred to as the **NDPS Act**, is an Act of the Parliament of India that prohibits a person to produce/manufacture/cultivate, possess, sell, purchase, transport, store, and/or consume any narcotic drug or psychotropic substance. The Narcotic Drugs and Psychotropic Substances Bill, 1985 was introduced in the Lok Sabha on 23 August 1985. It was passed by both the Houses of Parliament, received assent from then President Giani Zail Singh on 16 September 1985, and came into force on 14 November 1985. The NDPS Act has since been amended thrice - in 1988, 2001 and 2014. The Act extends to the whole of India and it applies also to all Indian citizens outside India and to all persons on ships and aircraft registered in India.

Under one of the provisions of the act, the Narcotics Control Bureau was set up with effect from March 1986. The Act is designed to fulfill India's treaty obligations under the Single Convention on Narcotic Drugs, Convention on Psychotropic Substances, and United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

### **Background**

India had no legislation regarding narcotics until 1985. Cannabis smoking in India has been known since at least 2000 BC<sup>[1]</sup> and is first mentioned in the *Atharvaveda*, which dates back a few hundred years BC. The Indian Hemp Drugs Commission, an Indo-British study of cannabis usage in India appointed in 1893, found that the "moderate" use of hemp drugs was "practically attended by no evil results at all", "produces no injurious effects on the mind" and "no moral injury whatever". Regarding "excessive" use of the drug, the Commission concluded that it "may certainly be accepted as very injurious, though it must be admitted that in many excessive consumers the injury is not clearly marked". The report the Commission produced was at least 3,281 pages long, with testimony from almost 1,200 "doctors, coolies, yogis, fakirs, heads of lunatic asylums, bhang peasants, tax gatherers, smugglers, army officers, hemp dealers, ganja palace operators and the clergy."

Cannabis and its derivatives (marijuana, hashish/charas and bhang) were legally sold in India until 1985, and their recreational use was commonplace. Consumption of cannabis was not seen as socially deviant behaviour, and was viewed as being similar to the consumption of alcohol. Ganja and charas were considered by upper class Indians as the poor man's intoxicant, although the rich consumed bhang during Holi. The United States began to campaign for a worldwide law against all drugs, following the adoption of the Single Convention on Narcotic Drugs in 1961. However, India opposed the move, and withstood American pressure to make cannabis illegal for nearly 25 years. American pressure increased in the 1980s, and in 1985, the Rajiv Gandhi government succumbed and enacted the NDPS Act, banning all narcotic drugs in India.

## Preliminary

The short title for the Act is the Narcotic Drugs and Psychotropic Substances Act, 1985. It extends to the whole of India. It came into force after the Central Government notified it in the Gazette of India on 14 November 1985.<sup>[7]</sup>

### . Definitions

Section 2 of the Act defines the various terms used in it, unless the context otherwise requires. Some of the definitions are listed below. Words and expressions used in the Act, and not defined, but defined in the Code of Criminal Procedure, 1973 have the meanings respectively assigned to them in that Code.

- "cannabis (hemp)" means: (a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish; (b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and (c) any mixture, with or without any neutral material, of any of the above forms of cannabis or a drink prepared there from;
- "cannabis plant" means any plant of the genus cannabis.
- "coca derivative" means: (a) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine; (b) ecgonine and all the derivatives of ecgonine from which it can be recovered; (c) cocaine, that is, methyl ester of benzoyl-ecgonine and its salts; and (d) all preparations containing more than 0.1 per cent. of cocaine
- "coca leaf" means: (a) the leaf of the coca plant except a leaf from which all ecgonine cocaine and any other ecgonine alkaloids have been removed; (b) any mixture thereof with or without any neutral material, but does not include any preparation containing not more than 0.1 per cent. of cocaine; (vii) "coca plant " means the plant of any species of the genus *Erythroxylon*;
- "Controlled substance" means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substances.
- "conveyance" means a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel;
- "illicit traffic", in relation to narcotic drugs and psychotropic substances, means: (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from

India or transshipment, of narcotic drugs or psychotropic substances; (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or (v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under this Act, or any rule or order made or any condition of any license, term or authorization issued, thereunder, and includes: (1) financing, directly or indirectly, any of the aforementioned activities; (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and (3) harboring persons engaged in any of the aforementioned activities.

- "manufacture", in relation to narcotic drugs or psychotropic substances, includes: (1) all processes other than production by which such drugs or substances may be obtained; (2) refining of such drugs or substances; (3) transformation of such drugs or substances; and (4) making of preparation (otherwise than in a pharmacy on prescription) with or containing such drugs or substances.
- "manufactured drug" means: (a) all coca derivatives, medicinal cannabis, opium derivative and poppy straw concentrate; (b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug; but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug.
- "medicinal cannabis". that is, medicinal hemp, means any extract or tincture of cannabis (hemp).
- "narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs.
- "opium" means: (a) the coagulated juice of the opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent. of morphine; (xvi) \*"opium derivative" means: (a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials; (b) 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; (c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts; (d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; and (e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;
- "opium poppy" means: (a) the plant of the species *Papaver somniferum* L.; and (b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the

Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

- "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted there from;
- "poppy straw concentrate" means the material arising when poppy straw has entered into a process for the concentration of its alkaloids;
- "preparation", in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;
- "production" means the separation of opium, poppy straw, coca leaves or cannabis from the plants from which they are obtained;
- "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;
- "use", in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption.

For the purposes of clauses "coca derivative", "coca leaf", "opium" and "opium derivative" the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one milliliter of substances, if liquid, is contained in every one hundred milliliter of the preparation and so on in proportion for any greater or less percentage, provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribe, by rules, any other basis which it may deem appropriate for such calculation.

### **Authorities And Officers**

- 1) Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc.sec. 4.

Subject to the provisions of this Act, the Central Government can take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic. These measures include with respect to all or any of the following matters, namely

- coordination of actions by various officers, State Governments and other authorities under this Act, or under any other law for the time being in force in connection with the enforcement of the provisions of this Act.
- obligations under the International Conventions.

- assistance to the concerned authorities in foreign countries and concerned international organizations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances; (d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts.
- such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

The Central Government may also by order, published in the Official Gazette, constitute an authority or a hierarchy of authorities by such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to above as may be mentioned in the order, and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers and take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and take such measures.<sup>[7]</sup>

## **2) Officers of the Central Government sec. 5.**

The Central Government appointed a Narcotics Commissioner under this section of the Act, and may also appoint such other officers with such designations as it thinks fit for the purposes of this Act. The Narcotics Commissioner shall, either by himself or through officers subordinate to him, exercise all powers and perform all functions relating to the superintendence of the cultivation of the opium poppy and production of opium and shall also exercise and perform such other powers and functions as may be entrusted to him by the Central Government. The appointed officers are subject to the general control and direction of the Central Government, or, if so directed by that Government, also of the Central Board of Excise and Customs or any other authority or officer.<sup>[7]</sup>

## **3) The Narcotic Drugs and Psychotropic Substances Consultative Committee sec. 6.**

The Central Government may constitute, by notification in the Official Gazette, an advisory committee to be called "The Narcotic Drugs and Psychotropic Substances Consultative Committee" (hereafter in this section referred to as the Committee) to advise the Central Government on such matters relating to the administration of this Act as are referred to it by that Government from time to time. The Committee shall consist of a Chairman and such other members, not exceeding twenty, as may be appointed by the Central Government. The Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure. The Committee may, if it deems it necessary so to do for the efficient discharge of any of its functions, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person (including a non-official) who is not a

member of the Committee. The term of office of, the manner of filling casual vacancies in the offices of and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint a person who is not a member of the Committee as a member of any of its sub-committees, shall be such as may be prescribed by rules made by the Central Government.

#### **4) Officers of State Government sec. 7.**

The State Government may appoint such officers with such designations as it thinks fit for the purposes of this Act. The appointed officers are subject to the general control and direction of the State Government, or, if so directed by that Government, also of any other authority or officer.<sup>[7]</sup>

### **Prohibition, Control And Regulation**

#### **8. Prohibition of certain operations**

This section prohibits any person from cultivating any coca plant or gathering any portion of coca plant; or cultivating the opium poppy or any cannabis plant; or producing, manufacturing, possessing, selling, purchasing, transporting, ware-housing, using, consuming, import inter-State export inter-State import into India, exporting from India or transshipment of any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of license, permit or authorization also in accordance with the terms and conditions of such license, permit or authorization.<sup>[7]</sup>

Nothing in this section applies to the export of poppy straw for decorative purposes.<sup>[7]</sup>

#### **9. Power of Central Government to permit, control and regulate.**

Subject to the provisions of section 8, the Central Government may, by rules, permit, regulate and prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified below:

- the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves
- the cultivation (such cultivation being only on account of Central Government) of the opium poppy
- the production and manufacture of opium and production of poppy straw

- the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists
- the manufacture of manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess
- the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;
- the import into India and export from India and transshipment of narcotic drugs and psychotropic substances.<sup>[7]</sup>

In particular and without prejudice to the generality of the foregoing power, such rules may:

- empower the Central Government to fix from time to time the limits within which licenses may be given for the cultivation of the opium poppy;
- require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers. authorized in. this behalf by the Central Government;
- prescribe the forms and conditions of licenses for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged therefor; the authorities by which such licenses may be granted, withheld, refused or cancelled and the authorities before which appeals against the order of withholding, refusal or cancellation of licenses shall lie;
- prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorized in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;
- empower the Central Government to fix from time to time the price to be paid to the cultivators for the opium delivered;
- provide for the weighment, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighment, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;
- require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorized in this behalf
- prescribe the forms and conditions of licenses for the manufacture of manufactured drugs, the authorities by which such licenses may be granted and the fees that may be charged therefor
- prescribe the forms and conditions of licenses or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licenses or permits may be granted and the fees that may be charged therefor

- prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transshipped; the forms and conditions of certificates, authorizations or permits, as the case may be, for such import, export or transshipment; the authorities by which such certificate, authorizations or permits may be granted and the fees that may be charged therefor.<sup>[7]</sup>

#### **9A. Power to control and regulate controlled substances**

If the Central Government is of the opinion that, having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein. An order made thereunder may provide for regulating by licenses, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any controlled substance.<sup>[7]</sup>

#### **10. Power of State Government to permit, control and regulate Subject to the provisions of section 8, the State Government may, by rules, permit, regulate, and prescribe any other matter requisite to render effective the control of the State Government over any of the matters specified below:**

1. the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw.
2. the possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of opium;
3. the cultivation of any cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of cannabis (excluding charas);
4. the manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;
5. the possession, transport, purchase, sale, import inter-State, export inter-State, use or consumption of manufactured drugs other than prepared opium and of coca leaf and any preparation containing any manufactured drug;
6. the manufacture and possession of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption

Provided that save in so far as may be expressly provided in the rules made under points 4 and 5, nothing in section 8 shall apply to the import inter-State, export inter-State, transport, possession, purchase, sale, use or consumption of manufactured drugs which are the property and in the possession of the Government, provided further that such drugs as are referred to in the preceding proviso shall not be sold or otherwise delivered to any



person who, under the rules made by the State Government under the aforesaid sub-clauses, is not entitled to their possession.<sup>[7]</sup>

In particular and without prejudice to the generality of the foregoing power, such rules may:

- empower the State Government to declare any place to be a warehouse wherein it shall be the duty of the owners to deposit all such poppy straw as is legally imported inter-State and is intended for export inter-State or export from India; to regulate the safe custody of such poppy straw warehoused and the removal of such poppy straw for sale or export inter-State or export from India; to levy fees for such warehousing and to prescribe the manner in which and the period after which the poppy straw warehoused shall be disposed of in default of payment of fees
- provide that the limits within which licenses may be given for the cultivation of any cannabis plant shall be fixed from time to time by or under the orders of the State Government;
- provide that only the cultivators licensed by the prescribed authority of the State Government shall be authorized to engage in cultivation of any cannabis plant;
- require that all cannabis, the produce of land cultivated with. cannabis plant, shall be delivered by the cultivators to the officers of the State Government authorized in this behalf;
- empower the State Government to fix from time to time, the price to be paid to the cultivators for the cannabis delivered;
- prescribe the forms and conditions of licenses or permits for the purposes specified in points 1 to 4 of the previous list in this section, and the authorities by which such licenses or permits may be granted and the fees that may be charged therefor.<sup>[7]</sup>

#### **11. Narcotic drugs and psychotropic substances, etc., not liable to distress or attachment**

Notwithstanding anything to the contrary contained in any law or contract, no narcotic drug, psychotropic substance, coca plant, the opium poppy or cannabis plant shall be liable to be detained or attached by any person for the recovery of any money under any order or decree of any court or authority or otherwise.<sup>[7]</sup>

#### **12. Restrictions over external dealings in narcotic drugs and psychotropic substances**

No person shall engage in or control any trade whereby a narcotic drug or psychotropic substance is obtained outside India and supplied to any person outside India save with the previous authorization of the Central Government and subject to such conditions as may be imposed by that Government in this behalf.<sup>[7]</sup>

#### **13. Special provisions relating to coca plant and coca leaves for use in the preparation of flavoring agent**

Notwithstanding anything contained in section 8, the Central Government may permit, with or without conditions, and on behalf of Government, the cultivation of any coca plant or gathering of any portion thereof

or the production, possession, sale, purchase, transport, import inter-State, export inter-State or import into India of coca leaves for use in the preparation of any flavoring agent which shall not contain any alkaloid and to the extent necessary for such use.<sup>[7]</sup>

#### **14. Special provision relating to cannabis**

Notwithstanding anything contained in section 8, Government may, by general or special order and subject to such conditions as may be specified in such order, allow cultivation of any cannabis plant for industrial purposes only of obtaining fiber or seed or for horticultural purposes.<sup>[7]</sup>

#### **Offences And Penalties**

Chapter IV describes offences under the Act, and the punishments to be applied for contravening provisions of the Act. The various sections under this chapter prescribe a minimum term of rigorous imprisonment of 10 years, which may extend to 20 years for offenders, and also a fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. In all cases, the court may impose a higher fine, for reasons to be recorded in the judgment.

##### **1) Punishment for contravention in relation to poppy straw sec. 15.**

Any person who contravenes any provision of this Act, or any rule or order made or condition of a license granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. The court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

##### **2) Punishment for contravention in relation to coca plant and coca leaves sec. 16.**

Any person who contravenes any provision of this Act, or any rule or order made or condition of license granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

##### **3) Punishment for contravention in relation to prepared opium sec.17.**

Any person who contravenes any provision of this Act, or any rule or order made or condition of license granted thereunder manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

**4) Punishment for contravention in relation to opium poppy and opium sec. 18.**

Any person who contravenes any provision of this Act, or any rule or order made or condition of license granted thereunder cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

**5) Punishment for embezzlement of opium by cultivator sec. 19.**

Any cultivator licensed to cultivate the opium poppy on account of the Central Government who embezzles or otherwise illegally disposes of the opium produced or any part thereof, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

**6) Punishment for contravention in relation to cannabis plant and cannabis sec. 20.**

Any person who contravenes any provision of this Act or any rule or order made or condition of license granted thereunder, cultivates any cannabis plant; or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable:

- where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;
- where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees.

**7) Punishment for contravention in relation to manufactured drugs and preparations.sec. 21.**

Any person who contravenes any provision of this Act, or any rule or order made or condition of license granted thereunder manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable with

rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

**8) Punishment for contravention in relation to psychotropic substances.sec. 22.**

Any person who contravenes any provision of this Act or any rule or order made or condition of license granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, export inter-State, or uses any psychotropic substance shall be punishable with rigorous imprisonment for a term which shall not be less than ten year but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

**9) Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.sec. 23.**

Any person who contravenes any provision of this Act or any rule or order made or condition of license or permit granted or certificate or authorization issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but may extend to two lakh rupees.

**10) Punishment for external dealings in narcotic drugs and psychotropic substances in contravention of section 12 -sec24.**

Whoever engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorization of the Central Government or otherwise than in accordance with the conditions (if any) of such authorization granted under section 12, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but may extend to two lakh rupees.

**11) Punishment for allowing premises, etc., to be used for commission of an offence sec. 25.**

Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

12) Punishment for contravention of orders made under section 9A—sec. 25A.

If any person contravenes an order made under section 9A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees.

**13) Punishment for certain acts by licensee or his servants sec. 26.**

If the holder of any license, permit or authorization granted under this Act or any rule or order made thereunder or any person in his employ and acting on his behalf:

- omits, without any reasonable cause, to maintain accounts or to submit any return in accordance with the provisions of this Act, or any rule made thereunder;
- fails to produce without any reasonable cause such license, permit or authorization on demand of any officer authorized by the Central Government or State Government in this behalf;
- keeps any accounts or makes any statement which is false or which he knows or has reason to believe to be incorrect; or
- willfully and knowingly does any act in breach of any of the conditions of license, permit or authorization for which a penalty is not prescribed elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

**14) Punishment for illegal possession in small quantity for personal consumption of any narcotic drug or psychotropic substance or consumption of such drug or substance. sec. 27.**

Any person who contravenes any provision of this Act, or any rule or order made or permit issued thereunder, possesses in a small quantity, any narcotic drug or psychotropic substance, which is proved to have been intended for his personal consumption and not for sale or distribution, or consumes any narcotic drug or psychotropic substance, shall, notwithstanding anything contained in this Chapter, be punishable:

- where the narcotic drug or psychotropic substance possessed or consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the Official Gazette, with imprisonment for a term which may extend to one year or with fine or with both; and
- where the narcotic drug or psychotropic substance possessed or consumed is other than those specified in or under the previous point, with imprisonment for a term which may extend to six months or with fine or with both.

For the purposes of this section "small quantity" means such quantity as may be specified by the Central Government by notification in the Official Gazette. If a person is found to be in possession of a small quantity

of a narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption of such person and not for sale or distribution, shall lie on such person.

#### **15) Punishment for financing illicit traffic and harboring offenders sec. 27A.**

Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of clause (viii) of section 2 or harbors any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

#### **16) Punishment for attempts to commit offences sec. 28.**

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

#### **17) Punishment for abetment and criminal conspiracy. Sec. 29.**

Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence. A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning for this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which would constitute an offence if committed within India; or under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances 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 India.

#### **18) Preparation. Sec. 30.**

If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of section 15 to section 25 (both inclusive) and from the circumstances of the case it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if

any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid.

19) Enhanced punishment for certain offences after previous conviction. Sec. 31.

If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under section 15 to section 25 (both inclusive) is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under:

- section 15 to section 19, section 20 (except for cultivation of cannabis) and section 21 to section 25 (both inclusive), he shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which shall not be less than fifteen years but which may extend to thirty years and shall also be liable to fine which shall not be less than one lakh fifty thousand rupees but which may extend to three lakh rupees.
- (b)section 20 (except for cultivation of cannabis), he shall be punished for the second and every subsequent offence for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees.

Where any person is convicted by a competent court of criminal jurisdiction outside India under any law corresponding to the provisions of section 15 to section 25 (both inclusive), section 28 and section 29, such person, in respect of such conviction, shall be dealt with for the purposes of point 1 as if he had been convicted by a court in India.

20) Death penalty for certain offences after previous conviction sec. 31A.

21) Punishment for offence for which no punishment is provided. Sec. 32.

Any person who contravenes any provision of this Act or any rule or order made, or any condition of any license, permit or authorization issued thereunder for which no punishment is separately provided in this Chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

No suspension, remission or commutation in any sentence awarded under this Act sec. 32A.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force but subject to the provisions of section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted.

**Application of section 360 of the Code of Criminal Procedure, 1973 and of the Probation of Offenders Act, 1958.sec. 33.**

Nothing contained in section 360 of the Code of Criminal Procedure, 1973 or in the Probation of Offenders Act, 1958 shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age or that the offence for which such person is convicted is punishable under section 26 or section 27.

**Sec.34. Security for abstaining from commission of offence.**

Whenever any person is convicted of an offence punishable under any provision of Chapter IV and the court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of any offence under this Act, 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 commission of any offence under Chapter IV during such period not exceeding three years as it think fit to fix. The bond shall be in such form as may be prescribed by the Central Government and the provisions of the Code of Criminal Procedure, 1973, shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code. If the conviction is set aside on appeal or otherwise, the bond so executed shall become void. An order under this section may also be made by an appellate court or by the High Court or Sessions Judge when exercising the powers of revision.

**Sec.35. Presumption of culpable mental state.**

In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

**Special Courts**

**1) Constitution of Special Courts Sec.36.**

The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification. A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court. In this section, "High Court" means the High Court of the State in which the Session Judge or the Additional Sessional Judge of a Special Court was



working immediately before his appointment as such Judge. A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge.

## **2) Offences triable by Special Courts Sec.36A.**

All offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government. When a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate, provided that where such Magistrate considers when such person is forwarded to him as aforesaid; or upon or at any time before the expiry of the period of detention authorized by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction.

The Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section. A Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorized in the behalf, take cognizance of that offence without the accused being committed to it for trial. When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

## **Appeal and revision sec. 36B.**

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

## **36C. Application of Code to proceedings before a Special Court.**

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

### **36D. Transitional provisions**

Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, until a Special Court is constituted under section 36, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session, provided that offences punishable under sections 26, 27 and 32 may be tried summarily. Nothing in this section shall be construed to require the transfer to a Special Court of any proceedings in relation to an offence taken cognizance of by a Court of Session and the same shall be heard and disposed of by the Court of Session.

### **37. Offences to be cognizable and non-bailable**

Every offence punishable under this Act shall be cognizable and no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The limitations on granting of bail are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

### **38. Offences by companies.**

If an offence under Chapter IV 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 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.

Notwithstanding anything contained above, where any offence under Chapter IV 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 (in relation to a firm, means a partner in the firm), manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **39. Power of court to release certain offenders on probation.**

When any addict is found guilty of an offence punishable under section 27 and if the court by which he is found guilty is of the opinion, regard being had to the age, character, antecedents or physical or mental condition of the offender, that it is expedient so to do, then, notwithstanding anything contained in this Act or any other law for the time being in force, the court may, instead of sentencing him at once to any imprisonment, with his consent, direct that he be released for undergoing medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognized by Government and on his entering into a bond in the form prescribed by the Central Government, with or without sureties, to appear and furnish before the court within a period not exceeding one year, a report regarding the result of his medical treatment and, in the meantime, to abstain from the commission of any offence under Chapter IV. If it appears to the court, having regard to the report regarding the result of the medical treatment furnished under this section, that it is expedient so to do, the court may direct the release of the offender after due admonition on his entering into a bond in the form prescribed by the Central Government, with or without sureties, for abstaining from the commission of any offence under Chapter IV during such period not exceeding three years as the court may deem fit to specify or on his failure so to abstain, to appear before the court and receive sentence when called upon during such period.

### **Procedures**

#### **41. Power to issue warrant and authorisation.-**

(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed:

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed

forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section

(1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section

(2) shall have all the powers of an officer acting under section

#### **42. Power of entry, search, seizure and arrest without warrant or authorisation.**

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: Provided that if such officer has reason to believe that a search warrant or authorisation 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, conveyance 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 subsection (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

#### **43. Power of seizure and arrest in public place.-**

Any officer of any of the departments mentioned in section 42 may,

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company. Explanation.-For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public. 44. Power of entry, search, seizure and arrest in offences relating to coca plant, opium poppy and cannabis plant.

-The provisions of sections 41, 42 and 43, shall so far as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance, 1[or controlled substance], shall be construed as including references to coca plant, the opium poppy and cannabis plant

**45. Procedure where seizure of goods liable to confiscation not practicable.**

Where it is not practicable to seize any goods (including standing crop) which are liable to confiscation under this Act, any officer duly authorised under section 42 may serve on the owner or person in possession of the goods, an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

**46. Duty of land holder to give information of illegal cultivation.**

-Every holder of land shall give immediate information to any officer of the police or of any of the departments mentioned in section 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment.

**47. Duty of certain officers to give information of illegal cultivation.-**

Every officer of the Government and every panch, sarpanch and other village officer of whatever description shall give immediate information to any officer of the Police or of any of the departments mentioned in section 42 when it may come to his knowledge that any land has been illegally cultivated with the opium poppy, cannabis plant or coca plant, and every such officer of the Government, panch, sarpanch and other village officer who neglects to give such information, shall be liable to punishment.

**48. Power of attachment of crop illegally cultivated.-**

Any Metropolitan Magistrate, Judicial Magistrate of the first class or any Magistrate specially empowered in this behalf by the State Government 2[or any officer of a gazetted rank empowered under section 42] may order attachment of any opium poppy, cannabis plant or coca plant which he has reason to believe to have been illegally cultivated and while doing so may pass such order (including an order to destroy the crop) as he thinks fit.

**49. Power to stop and search conveyance.-**

Any officer authorised under section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance [or controlled substance], in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and-

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon. 50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy two hours send a copy thereof to his immediate official superior.

## **Punishment**

Anyone who contravenes the NDPS Act will face punishment based on the quantity of the banned substance.

- where the contravention involves a *small quantity*, with rigorous imprisonment for a term which may extend to 1 year, or with a fine which may extend to ₹10,000 or both;
- where the contravention involves a quantity lesser than *commercial quantity* but greater than a *small quantity*, with rigorous imprisonment for a term which may extend to 10 years and with fine which may extend to ₹1 lakh
- where the contravention involves a *commercial quantity*, with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to 20 years and also a fine which shall not be less than ₹1 lakh but which may extend to ₹2 lakh

**Some of the important citations:**

(1) **Iqbal Moosa Patel Versus State of Gujarat** 2011(1) RCR (Criminal) 473 (SC)- Sections 21, 29, 8(c) NDPS Act, 1985, Sections 103, 102 Indian Evidence Act, 1872-

It was held by Hon'ble apex Court that “proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice.”

(2) **Jagdish Rai Vs. State of Punjab** AIR 2011 SC 1568-Sections 35,54-

“Appellant driving motorcycle. On intercepted by the police, appellant tried to turn away and flee. It can be presumed that appellant was conscious of the fact that pillion rider is carrying opium.”

(3) **Roop Singh Vs. State of Punjab** 1996(1) R.C.R. (Cr.) 146 (P&H) (Division Bench)-

“Giving up of independent witness by the prosecution in the present day situation prevailing in the society is fully justified and no adverse inference can be drawn against the prosecution.”

(4) **Davinder Kumar Vs. State of Punjab** 2012(2) R.C.R. (Cr.) 600 (DB)-Sections 42,43-

“when recovery of contraband is effected from the vehicle in transit, Section 43 of the Act shall apply and not Section 42”.

(5) **Dharampal Singh Vs. State of Punjab** (2010) 9 SCC 608- Sections 18,35,54- Under

Section 18- “Once possession is established, accused who claims that it was not a conscious possession, has to establish that it was not, because it is with in his special knowledge”.

(6) **Akmal Ahmed Versus State of Delhi** 1999 Criminal Law Journal, 2041 (SC)-“The evidence

of search or seizure, made by the police, will not become vitiated solely for the reasons that the same was not supported by an independent witness”.

(7) **State of Punjab Versus Baldev Singh** 1999(6) SCC 172-“drug abuse is a social malady.

While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illegal activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affecting the economic policies of the State, corrupts the system and is detrimental to the future of a country”.



(8) **State of Himachal Pradesh Versus Pawan Kumar** 2005(2) RCR (Criminal) 621- “those who indulge in this kind of nefarious activities should not go Scot free on technical pleas which come handy to their advantage in a fraction of second”.

(9) It is held in **Arif Khan @ Agha Khan Vs. State of Uttarakhand** 2018(2) R.C.R. (Criminal) 931 by Hon'ble apex Court that “it is mandatory on the part of authorized officer to make suspect aware of existence of his right to be searched before Gazetted Officer or Magistrate, if so required by him and this requires strict compliance. Evidence adduced by prosecution neither suggested nor proved that search and recovery made in presence of magistrate or gazetted officer. Accused entitled for benefit of doubt.”

10. In **State of Haryana Versus Jarnail Singh**, 2004(2) RCR Criminal 960, Hon'ble Apex Court held that Section 50 is applicable only when personal search of accused is made. When search is made from vehicle Section 50 has no applicability.

11. In **Ajmer Singh Versus State of Haryana**, 2010(3) SCC 746, it was held by Honorable Apex Court that search and recovery from a bag, briefcase, container etc. does not come within ambit of Section 50.

12. Recently, in **Mohan Lal Versus State of Punjab**, Criminal Appeal No. 1880 of 2011, decided on 16.8.2018, A three judge bench of Hon'ble Apex Court held that “fair investigation which is the very foundation of a fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof. If an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation therefore, be a foregone conclusion.

## MODULE 5

### Juvenile Justice( Care and Protection of Children) Act 2015

#### Objects,

The Children constitute almost half of the world's population. They are the future of mankind and asset of the nation. They inherit past and they The reasons behind a Juvenile to become criminal can be many. This may be beyond the control of the immature youngster. In all these cases, giving punishment to the juvenile themselves the future. They own the right to live and grow as children. However, as the children themselves are not aware of their rights, they become the victims of abuse or delinquent.

The Articles 15(3), 39 (e) and (f), 45 and 47 of the Constitution of India confer powers and impose duties on the State to ensure that all the needs of the children are met and their basic rights are fully protected. It was the need of the time to re-enact the Juvenile Justice Act, 2000 taking into consideration various international conventions. The concept of juvenile in India, until passing of Children Act, 1960 there was no uniformity regarding age limitation of juvenile delinquent. Bombay Children Act 1948, Haryana Children Act defined “Child” to mean a boy who has not attained the age of sixteen years or girl who has not attained age of eighteen years.

Juvenile Justice Act, 1986 defined a juvenile or child to be a person who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age. The was repealed by 2000 Act and the distinction with regard to age between male and female juveniles has been done away with by the Government of India in performance of its obligation to the international obligations. Now age of juvenile in conflict with law for male and female has been fixed at 18 years.

#### Definition:-

The provisions of this new enactment is basically generally highlighted only for the aspect of a much contemplated change in the definition of a child in conflict in law and making classification based on age and understanding of offence. This would be indeed injustice to the legislators and the makers of this excellent legislation relating to child welfare. Therefore, the Act, 2015 has been enacted.

#### (1) “abandoned child”

means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry; (2) “adoption” means the process through which the

adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child;

(2) **“adoption regulations”**

means the regulations framed by the Authority and notified by the Central Government in respect of adoption;

(4) **“administrator”**

means any district official not below the rank of

Deputy Secretary to the State, on whom magisterial powers have been conferred;

(5) **“aftercare”**

means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society;

(5) **“authorised foreign adoption agency”**

means a foreign social or child welfare agency that is authorised by the Central Adoption Resource Authority on the recommendation of their Central Authority or Government department of that country for sponsoring the application of non-resident Indian or overseas citizen of India or persons of Indian origin or foreign prospective adoptive parents for adoption of a child from India;

(7) **“Authority”**

means the Central Adoption Resource Authority constituted under section 68; Short title, extent, commencement and application.

(8) **“begging” means—**

(i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, under any pretence; (ii) 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;

(9) **“best interest of child”**

means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development;

(10) **“Board”**

means a Juvenile Justice Board constituted under section 4; (11) “Central Authority” means the Government department recognised as such under the Hague Convention on Protection of Children and Cooperation in Inter-country Adoption (1993); (12) “child” means a person who has not completed eighteen years of age; (13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence; (14) “child in need of care and protection” means a child— (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or (iii) who resides with a person (whether a guardian of the child or not) and such person— (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage; (

15) “child friendly” means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child; (16) “child legally free for adoption” means a child declared as such by the Committee after making due inquiry under section 38; (17) “Child Welfare Officer” means an officer attached to a Children’s Home, for carrying out the directions given by the Committee or, as the case may be, the Board with such responsibility as may be prescribed; (18) “Child Welfare Police Officer” means an officer designated as such under sub-section (1) of section 107; (19) “Children’s Home” means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50; (20) “Children’s Court” means a court established under the Commissions for

Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the

### **General principle of care and protection of children.**

3] As per section section 3 of the new Act The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

- (i) Principle of presumption of innocence
- (iii) Principle of participation
- . (iv) Principle of best interest.
- (v) Principle of family responsibility.
- (vi) Principle of safety
- . (vii) Positive measures.
- (viii) Principle of non-stigmatising semantics.
- (ix) Principle of non-waiver of rights
- . (x) Principle of equality and non-discrimination
- . (xi) Principle of right to privacy and confidentiality.
- (xii) Principle of institutionalisation as a measure of last resort.
- (xiii) Principles of natural justice.

#### **(1) Principle of presumption of innocence**

Any child shall be presumed to be an innocent of any malafide or criminal intent up to the age of eighteen years. This principle presumes that anything done by the child or the child in conflict with law has been done without mensrea or malafide intention. This principle operates right from the initiation of the proceedings and Sends at the aftercare programme. It simply states that whatever be the act committed and whatever be the circumstances and whether it is done by himself or under the control of the adults or with the influence of peer group should always be considered that the said Act has been committed without mensrea i.e. the Principle of presumption of innocence should be applied for all those activities which has been covered or explicitly stated in the Rule.

#### **(2)principle of dignity and worth**

All human beings shall be treated with equal dignity and rights. This principle mandates

the agencies involved in the JJ Act are to treat the child with dignity and worth and not to label, stigmatize or discriminate the child. It also mandates the authorities to respect the personal identity and such other things relating to the child right from initial apprehension till the aftercare is over.

### **(3) Principle of participation**

Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child. Children's right to be heard shall include creation of developmentally appropriate tools and processes of interacting with the child, promoting children's active involvement in decisions regarding their own lives and providing opportunities for discussion and debate.

### **. (4) Principle of best interest.**

All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. Children differ from adults in their physical and psychological development and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders

### **(5) Principle of family responsibility.**

In a family, a child is introduced to emotions like love and security. The social values and cultural aspects of the community are inculcated in the child within the family background i.e. the primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be. Though many functions of family like education, health, recreation etc. are being taken up by other social institutions, the family retains its importance as a constituent entity and building block of all societies and communities. Thus, the principle of family responsibility plays a vital role in the administration of juvenile justice as an informal care and all authorities functioning under the JJA should take all the necessary decisions of the child with the active involvement of the family of the children, who are in conflict with law.

#### **(6) Principle of safety**

All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter. It also mandates that the state shall not use restrictive measures in the name of safety of the child.

#### **. (7) Positive measures.**

All resources are to be mobilized including those of family and community, for promoting the well - being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act. The term positive measures include the - avenues for health, education, relationships, livelihoods, leisure, creativity and play. The Principle wants to achieve the objective of facilitation in establishing the personal identity of the child and to enable the child to equip himself to achieve the developments in all the processes relating to the individual growth.

#### **(8) Principle of non-stigmatising semantics**

. Adversarial or accusatory words are not to be used in the processes pertaining to a child. For example, it mandates to avoid the following wordings in the process of administration of Justice relating to children, who are in conflict with law. It includes the following - arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail

**(9) Principle of non-waiver of rights.** No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

#### **. (10) Principle of equality and non-discrimination.**

No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

#### **. (11) Principle of right to privacy and confidentiality.**

Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process. In other words, no report in any newspaper, magazine, news - sheet or audio - visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime. No staff/stakeholder should divulge/ disclose any details to any one regarding any case of CNCP ( Child in Need of Care and Protection) or CCL or identification of the same.

(12) Principle of institutionalisation as a measure of last resort.

Deprivation of liberty has negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. Deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured. A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The principle objective of institutionalization and detention in the juvenile justice system should be to ensure that the offender is free of criminal behaviour as soon as possible.

(13) Principles of natural justice. Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

### **JUVENILE JUSTICE BOARD**

( u/s. 4). (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act

. (2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.



**(3) No social worker shall be appointed** as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for atleast seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

**(4) No person shall be eligible for selection as a member of the Board, if he –**

- (i) has any past record of violation of human rights or child rights;
- (ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
- (iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government; (iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

**(6) The State Government shall ensure**

that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment. Juvenile Justice Board.

(6) The term of office of the members of the Board and the manner in which such member may resign shall be such, as may be prescribed.

(7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he —

- (i) has been found guilty of misuse of power vested under this Act; or
- (ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or (iii) fails to attend less than three-fourths of the sittings in a year; or
- (iv) becomes ineligible under sub-section

(4) during his term as a member. (b) ensuring that the child’s rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions

; (d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

- (g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;
- (h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;
- (i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;
- (j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;
- (l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;
- (m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and
- (n) any other function as may be prescribed.

### **Child Welfare Committee:-**

Child Welfare Committee (CWC) is the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs. Powers exercised by CWC: The Committee functions as a bench of Magistrates with the powers of a metropolitan Magistrate) or a Judicial Magistrate of the first class. The committee is the final authority with regard to cases for the care, protection, treatment,) development and rehabilitation of children and to provide for their basic needs and protection of human rights.

Chapter 5 of the act provides for constitution of a Child Welfare Committee for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitization of all members of the committee is provided within two months from the date of notification Welfare measure.

for 'child in need of care and protection' 2(14) new categories (14 ) "child in need of care and protection" includes like missing child , a child who is to be married 2(5) Recognition of support after 18 years also (5 ) "aftercare" means making provision of support, financial or otherwise, to persons, who have

completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society;

**NEW Statutory Definition** of best interest child friendly (9 ) “best interest of child” means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development; (15 ) “child friendly” means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child; New concept of Aid created (58 ) “sponsorship” means provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child; New welfare institutions established

**Sections 43 and 44** provide for the constitution of open shelters and foster homes respectively by the State Government for care and protection of the child.

**Section 47** of the act enables the State Government to establish such observation homes in every district as it deems fit for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act.

Several rehabilitation and social reintegration measures have been provided for children in conflict with law and those in need of care and protection. Under the institutional care, children are provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counselling, etc to help them assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child’s biological family, which is to be selected, qualified, approved and supervised for providing care to children. Section 48 of the act enables the State Government to establish such safety homes in every district as deems fit for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board.

## **PROCEDURE IN RELATION TO CHILDREN IN NEED OF CARE AND PROTECTION**

31. (1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely:—

- (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;
- (ii) any public servant

; (iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;

(iv) Child Welfare Officer or probation officer;

(v) any social worker or a public spirited citizen;

(vi) by the child himself; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home: Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children's home or fit facility or fit person, as the case may be, during the period of the inquiry.

**32. (1) Any individual or a police officer or any functionary of any organisation or a nursing**

home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be.

(2) The information regarding a child referred to in sub-section (1) shall be mandatorily uploaded on a portal as may be specified by the Central Government or the Committee or the District Child Protection Unit or the child care institution, as the case may be.

**33. If information regarding a child as required**

under section 32 is not given within the period specified in the said section, then, such act shall be regarded as an offence

34. Any person who has committed an offence under section 33 shall be liable to imprisonment up to six months or fine of ten thousand rupees or both.

**35. (1) A parent or guardian, who for physical,** emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee. (2) If, after prescribed process of inquiry and counselling, the Committee is satisfied, a surrender deed shall be executed by the parent or guardian, as the case may be, before the Committee. (3) The parents or guardian who surrendered the child, shall be given two months time to reconsider their decision and in the intervening period the Committee shall either allow, after due inquiry, the child to be with the parents or guardian under supervision, or place the child in a Specialised Adoption Agency, if he or she is below six years of age, or a children's home if he is above six years.

36. (1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section

(2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer:

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available. Mandatory reporting regarding a child found separated from guardian. Offence of nonreporting. Penalty for nonreporting. Surrender of children. Inquiry

(2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

(3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years:

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

(4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5) After review under sub-section (4), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required:

Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7) In case of any delay in the constitution of a new Committee under sub-section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

### **Children in Need of Care and Protection**

.u/s. 37.(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child

Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:—

- (a) declaration that a child is in need of care and protection;
- (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- (c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
- (d) placement of the child with fit person for long term or temporary care;
- (e) foster care orders under section 44;
- (f) sponsorship orders under section 45;
- (g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or Orders passed regarding a child in need of care and protection. 21 behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;
- (h) declaration that the child is legally free for adoption under section 38

. (2) The Committee may also pass orders for —

- (i) declaration of fit persons for foster care;
- (ii) getting after care support under section 46 of the Act; or (iii) any other order related to any other function as may be prescribed.

A **child in need of care and protection** is to be produced before the **Child Welfare Committee** within 24 hours. The Act provides for mandatory reporting of a **child** found separated from his/her guardian. Non reporting has been treated as a punishable offence.

### **Adoption.**

u/s.(3) "adoption regulations" means the regulations framed by the Authority and notified by the Central Government in respect of adoption;

the act deals with provisions with respect to Eligibility of adoptive parents and the procedure for adoption.

To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively. Separate chapter (VIII) on Adoption provides for detailed provisions relating to adoption and

punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption. 2(1) 2(42) 2(60) Various categories of child recognised to regularise and ease the process of adoption (1) “abandoned child” means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry; (42) “orphan” means a child— (i) who is without biological or adoptive parents or legal guardian; or (ii) whose legal guardian is not willing to take, or capable of taking care of the child; (60) “surrendered child” means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee; 2 2(2) (2) “adoption” Legitimate changed to lawful rights of child recognised not relationship 3 2(3) Adoption rules (3) “adoption regulations” new statutory recognition given to adoption rules SUMMARY CRIMINAL LAW JJ ACT 2015 16/20 Sec 57 New category of adoptive parents recognised 2. Adoptive parents should be financially mentally and physically sound and highly motivated for upbringing child. A single or divorced person may adopt a child. A single male may not adopt a girl child. It has also tried to make the adoption process of orphaned, abandoned and surrendered children, more streamlined, while adopting some of the concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption.

### **Rehabilitation and Social Re-integration .**

The process of child’s rehabilitation and social reintegration is carried out, based on the individual care plan, preferably through family based care such as: by restoration to family or guardian with or without supervision ;• and sponsorship, adoption or foster care

• Adoption Adoption means the process through which the adopted child is permanently separated from his/her biological parents and become the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child. Who can adopt? single or divorced person; parents interested to adopt a child of the same sex irrespective of the number of living biological sons or daughters; or childless couple. Which children out of CNCP can be adopted? Orphaned and abandoned

- Surrendered children
- Eligibility of a CNCP to be adopted: Child should be declared legally free for adoption after completion of enquiry by Child Welfare Committee.

### **Procedure in case of a orphaned/abandoned child :**

- Report and produce the child before CWC within 24 hours along with a report containing the particulars and circumstances under which child was received and photograph to CWC and Local Police. - File a copy of the report with the local police station in whose jurisdiction the child was found abandoned within the same period.

–

The CWC shall issue an order for the interim care of the child, pending inquiry.

The Specialised Adoption Agency (SAA), on admission of the child, shall enter the details of the child and photograph of the child online in the Child Adoption Resource Information and Guidance System in the prescribed format within seventy two hours of receiving the child, after obtaining permission of CWC for the same. –

The photograph of the child shall be changed every six months in Child Adoption Resource Information and Guidance System. –

The District Child Protection Unit shall advertise the particulars and photograph of an abandoned child in a State level newspaper with wide circulation within seventy two hours from the time of receiving the child for tracing out the biological parents or the legal guardian(s). –

The District Magistrate shall get such advertisement issued in case District Child protection Unit (DCPU) is not functional. –

The SAA shall submit a report to the Child Welfare Committee immediately after thirty days from the date of production of the child before the Child Welfare Committee about no-claimant for the child including any information revealed by the child during his interim care. - Above Steps shall be taken within a period of sixty days for a child below two years and four months for children above two years from the time when the child is found. - After observing all the above steps, CWC shall declare the child legally free for adoption and such order shall be signed by any two members of the Child Welfare Committee and issued within a period of two months in case of a child upto two years of age and within four months for a child above two years of age, from the date of production of the child before the Child

#### **Welfare Committee. –**

The child study report and medical examination report of an orphan or abandoned child shall be prepared and posted in the Child Adoption Resource Information and Guidance System by the specialised adoption agency within ten days from the date the child is declared legally free for adoption. - DCPU shall coordinate and facilitate the process of uploading the information of the child on Child Adoption Resource Information and Guidance System. Procedure in case of surrendered child

: The details of the child along with his photograph shall be entered online in the Child Adoption

- Resource Information and Guidance System by the specialised adoption agency within seventy two hours from the time of receiving the child. The following information shall be submitted by specialised adoption agency to the Child.

- Welfare Committee along with any other information specific to the case.

- (a) the name of the child, date of birth or age and place of birth along with birth record or certificate, if available;



(b) the names, address and identity proof of the biological parents or accompanying adult, if the surrendering parent is a minor;

(c) details of close relatives of the biological parent(s), if available;

(d) details of sibling(s), if any;

(e) known medical history of the child and biological parent(s); (f) circumstances of the child which may include reasons for surrender and social background. The counselling sessions shall be arranged by SAA or CWC to encouraging the parents to retain

- the child as well explaining that the process of surrender is irrevocable. Two months reconsideration will be given to the biological parents to reclaim the child after.

- surrender of the child. After due inquiry and completion of sixty days reconsideration period, CWC shall declare the

- surrendered child legally free for adoption. Counselling the parents in terms of explaining the consequences of adoption and exploring the

- possibilities of parents retaining the child and if, the parents are unwilling to retain, then, such children shall be kept initially in foster care or arranged for their sponsorship. The deed of surrender shall be executed in the presence of any two members of the Child Welfare Committee. In case of unmarried mother, the deed may be executed in the presence of any single member

- preferably female member of the Child Welfare Committee. In case of married couple, surrendering their child, deed of surrender shall be signed by both

- parents, in case one of them is dead, proof of death needs to be furnished. In case of a child born out of wedlock, only the mother can surrender the child and if the mother

- is a minor, the deed of surrender shall be signed by an accompanying adult as witness. If the surrender is by a person other than the biological parents who is not appointed as a

- guardian by the court, the child shall be treated as abandoned, then such procedure prescribed for orphan and abandoned should be followed. If the surrendering parents do not turn up to claim the child on completion of reconsideration

- period of sixty days from the date of surrender, the same should be intimated to CWC. No public notice or advertisement shall be issued in the case of a surrendered child.
  - The Child Welfare Committee shall issue an order signed by any two members declaring the surrendered child as legally free for adoption after the expiry of sixty days from the date of surrender.
- Eligibility Criteria for Prospective Adoptive Parents (PAPs) the prospective adoptive parents should be physically, mentally and emotionally stable; financially capable; motivated to adopt a child; and should not have any life threatening medical condition; any prospective adoptive parent, irrespective of his marital status and whether or not he has his own biological son or daughter, can adopt a child; single female is eligible to adopt a child of any gender; single male person shall not be eligible to adopt a girl child; in case of a couple, the consent of both spouses shall be required; no child shall be given in adoption to a couple unless they have at least two years of stable marital relationship; the age of prospective adoptive parents as on the date of registration shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups.

### **Others offences against children.**

#### Child Abuse

Description of the broad crime against any type of child cruelty, including child

endangerment and neglect, plus links to state and national child abuse laws and information

clearinghouses.

- Child Pornography

Description of laws prohibiting the production, possession, distribution, or sale of

pornographic material involving a minor child, including links to state and federal

laws related to child sexual exploitation.

- Statutory Rape

**Basics overview of statutory rape, which does not require the victim to have been forced**

**into having sex with an adult, only that the victim was below the age of consent**

In-depth explanation of what constitutes child abandonment in most states, consequences for physically or emotionally abandoning a child, safe-haven laws, mandatory reporting laws, and other matters related to child abandonment.

Crimes against children punishable under the Indian Penal Code (IPC) are: a) Murder (302 IPC) b) Foeticides (Crime against a foetus) Section 315 & 316 IPC. c) Infanticides (Crime against newborn child) (0 to 1 year) Section 315 IPC. d) Abetment to Suicide (abetment by other persons for commitment of suicide by children) Section 305 IPC.

#### 1. INCIDENCE OF CRIME AGAINST CHILDREN DURING 2010

## MODULE-6

### INTRODUCTION TO CYBER CRIME- RELEVANT PROVISION UNDER THE INFORMATION TECHNOLOGY ACT,2000

#### Objectives of the Act

The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions.

This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.

Further, this act amended the Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers' Books Evidence Act 1891, and the Reserve Bank of India Act 1934. The objectives of the Act are as follows:

- i. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- ii. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- iii. Facilitate the electronic filing of documents with Government agencies and also departments
- iv. Facilitate the electronic storage of data
- v. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions
- vi. Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

#### Features of the Information Technology Act, 2000

- a. All electronic contracts made through secure electronic channels are legally valid.
- b. Legal recognition for digital signatures.
- c. Security measures for electronic records and also digital signatures are in place
- d. A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized
- e. Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
- f. An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
- g. Digital Signatures will use an asymmetric cryptosystem and also a hash function
- h. Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.

- i. The Act applies to offences or contraventions committed outside India
- j. Senior police officers and other officers can enter any public place and search and arrest without warrant
- k. Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

## **Applicability and Non-Applicability of the Act**

### **Applicability**

According to Section 1 (2), the Act extends to the entire country, which also includes Jammu and Kashmir. In order to include Jammu and Kashmir, the Act uses Article 253 of the constitution. Further, it does not take citizenship into account and provides extra-territorial jurisdiction.

Section 1 (2) along with Section 75, specifies that the Act is applicable to any offence or contravention committed outside India as well. If the conduct of person constituting the offence involves a computer or a computerized system or network located in India, then irrespective of his/her nationality, the person is punishable under the Act.

Lack of international cooperation is the only limitation of this provision.

### **Non-Applicability**

According to Section 1 (4) of the Information Technology Act, 2000, the Act is not applicable to the following documents:

1. Execution of Negotiable Instrument under Negotiable Instruments Act, 1881, except cheques.
2. Execution of a Power of Attorney under the Powers of Attorney Act, 1882.
3. Creation of Trust under the Indian Trust Act, 1882.
4. Execution of a Will under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
5. Entering into a contract for the sale of conveyance of immovable property or any interest in such property.
6. Any such class of documents or transactions as may be notified by the Central Government in the Gazette.

## **Offences & Penalties under the Information Technology Act, 2000**

The increase rate of technology in computers has led to enactment of Information Technology Act 2000. The converting of the paper work into electronic records, the storage of the electronic data, has led tremendous changes in the scenario of the country. The Act further amends the Indian Penal Code, 1860, The Evidence Act, 1872, The Banker's Book's Evidence Act, 1891 and The Reserve Bank of India Act, 1934.

**The offences included in the IT Act 2000 are as follows:**

1. Tampering with the computer source documents.
2. Hacking with computer system.
3. Publishing of information which is obscene in electronic form.
4. Power of Controller to give directions
5. Directions of Controller to a subscriber to extend facilities to decrypt information
6. Protected system
7. Penalty for misrepresentation
8. Penalty for breach of confidentiality and privacy
9. Penalty for publishing Digital Signature Certificate false in certain particulars
10. Publication for fraudulent purpose
11. Act to apply for offence or contravention committed outside India
12. Confiscation
13. Penalties or confiscation not to interfere with other punishments.
14. Power to investigate offences.

**Offences Under The It Act 2000:**

**Section 65. Tampering with computer source documents:**

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer Programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the being time in force, shall be punishable with imprisonment up to three year, or with fine which may extend up to two lakh rupees, or with both.

*Explanation:* For the purpose of this section "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

**Object:** The object of the section is to protect the "intellectual property" invested in the computer. It is an

attempt to protect the computer source documents (codes) beyond what is available under the Copyright Law

**Essential ingredients of the section:**

1. knowingly or intentionally concealing ,
2. knowingly or intentionally destroying,
3. knowingly or intentionally altering,
4. knowingly or intentionally causing others to conceal,
5. knowingly or intentionally causing another to destroy,
6. knowingly or intentionally causing another to alter.

This section extends towards the Copyright Act and helps the companies to protect their source code of their programmes.

Penalties: Section 65 is tried by any magistrate.

This is cognizable and non- bailable offence.

**Penalties:** Imprisonment up to 3 years and / or

**Fine:** Two lakh rupees.

**Section66. Hacking with the computer system:**

(1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.

(2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

*Explanation:* The section tells about the hacking activity.

**Essential ingredients of the section:**

1. Whoever with intention or knowledge.
2. Causing wrongful loss or damage to the public or any person.
3. Destroying or altering any information residing in a computer resource.
4. Or diminishes its value or utility or.
5. Affects it injuriously by any means.

**Penalties:** Punishment: Imprisoned up to three years and

**Fine:** which may extend up to two lakh rupees.Or with both.

## **Section 67. Publishing of obscene information in electronic form:**

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is 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, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

### **Essential ingredients of this section:**

1. Publishing or transmitting, or causing to be published, pornographic material in electronic form.

**Penalties:** Punishment: (1) On first conviction --- imprisonment which may extend up to five years.

**Fine:** up to on first conviction which may extend to one lakh rupees.

(2) On second conviction ---- imprisonment up to which may extend to ten years and Fine which may extend up to two lakh rupees.

### **Case Laws:**

1. The State of Tamil Nadu v/s Suhas Katti.

**Facts:** This case is about posting obscene, defamatory and annoying message about a divorcee woman in the Yahoo message group. E-mails were forwarded to the victim for information by the accused through a false e-mail account opened by him in the name of the victim. These postings resulted in annoying phone calls to the lady. Based on the complaint police nabbed the accused. He was a known family friend of the victim and was interested in marrying her. She married to another person, but that marriage ended in divorce and the accused started contacting her once again. And her reluctance to marry him he started harassing her through internet.

**Held:** The accused is found guilty of offences under section 469, 509 IPC and 67 of IT Act 2000 and the accused is convicted and is sentenced for the offence to undergo RI for 2 years under 469 IPC and to pay fine of Rs.500/-and for the offence u/s 509 IPC sentenced to undergo 1 year Simple imprisonment and to pay fine of Rs.500/- and for the offence u/s 67 of IT Act 2000 to undergo RI for 2 years and to pay fine of Rs.4000/- All sentences to run concurrently.”

The accused paid fine amount and he was lodged at Central Prison, Chennai. This is considered the first case convicted under section 67 of Information Technology Act 2000 in India.



2. In a recent case, a groom's family received numerous emails containing defamatory information about the prospective bride. Fortunately, they did not believe the emails and chose to take the matter to the police. The sender of the emails turned out to be the girl's step-father, who did not want the girl to get married, as he would have lost control over her property, of which he was the legal guardian.

2. Avnish Bajaj (CEO of bazzee.com – now a part of the eBay group of companies) case.

**Facts:** There were three accused first is the Delhi school boy and IIT Kharagpur Ravi Raj and the service provider Avnish Bajaj.

The law on the subject is very clear. The sections slapped on the three accused were Section 292 (sale, distribution, public exhibition, etc., of an obscene object) and Section 294 (obscene acts, songs, etc., in a public place) of the Indian Penal Code (IPC), and Section 67 (publishing information which is obscene in electronic form) of the Information Technology Act 2000. In addition, the schoolboy faces a charge under Section 201 of the IPC (destruction of evidence), for there is apprehension that he had destroyed the mobile phone that he used in the episode. These offences invite a stiff penalty, namely, imprisonment ranging from two to five years, in the case of a first time conviction, and/or fines.

**Held:** In this case the Service provider Avnish Bajaj was later acquitted and the Delhi school boy was granted bail by Juvenile Justice Board and was taken into police charge and detained into Observation Home for two days.

4. DASKHINA Kannada police have solved the first case of cyber crime in the district.

A press release by Dakshina Kannada Police said here on Saturday that a Father at a Christian institution in the city had approached the Superintendent of Police with a complaint that he was getting offensive and obscene e-mails.

Police said that all the three admitted that they had done this to tarnish the image of the Father. As the three tendered an unconditional apology to the Father and gave a written undertaking that they would not repeat such act in future, the complainant withdrew his complaint. Following this, the police dropped the charges against the culprit.

The release said that sending of offensive and obscene e-mails is an offence under the Indian Information Technology Act 2000. If the charges are framed.

**Section 68. Power of controller to give directions:**

(1) The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made there under.

(2) Any person who fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two lakh rupees or to both.

Explanation: Any person who fails to comply with any order under sub section (1) of the above section, shall be guilty of an offence and shall be convicted for a term not less than three years or to a fine exceeding two lakh rupees or to both.

The under this section is non-bailable & cognizable.

**Penalties:** Punishment: imprisonment up to a term not exceeding three years

**Fine:** not exceeding two lakh rupees.

**Section 69. Directions of Controller to a subscriber to extend facilities to decrypt information:**

(1) If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence; for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource.

(2) The subscriber or any person in charge of the computer resource shall, when called upon by any agency which has been directed under sub-section,

(1), extend all facilities and technical assistance to decrypt the information.

(3) The subscriber or any person who fails to assist the agency referred to in subsection (2) shall be punished with an imprisonment for a term which may extend to seven years.

**Penalties:** Punishment: imprisonment for a term which may extend to seven years.

*The offence is cognizable and non- bailable.*

## **Section 70. Protected System:**

(1) The appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system.

(2) The appropriate Government may, by order in writing, authorize the persons who are authorized to access protected systems notified under sub-section (1).

(3) Any person who secures access or attempts to secure access to a protected system in contravention of the provision of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

**Explanation:** This section grants the power to the appropriate government to declare any computer, computer system or computer network, to be a protected system. Only authorized person has the right to access to protected system.

**Penalties:** Punishment: the imprisonment which may extend to ten years and fine.

## **Section 71. Penalty for misrepresentation:**

(1) Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any license or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or which fine which may extend to one lakh rupees, or with both.

**Penalties:** Punishment: imprisonment which may extend to two years

**Fine:** may extend to one lakh rupees or with both.

## **Section 72. Penalty for breach of confidentiality and privacy:**

Save as otherwise provide in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulation made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

*Explanation:* This section relates to any to nay person who in pursuance of any of the powers conferred by the

Act or its allied rules and regulations has secured access to any: Electronic record, books, register, correspondence, information, document, or other material.

If such person discloses such information, he will be punished with punished. It would not apply to disclosure of personal information of a person by a website, by his email service provider.

**Penalties:** Punishment: term which may extend to two years.

**Fine:** one lakh rupees or with both.

### **Section 73. Penalty for publishing Digital Signature Certificate false in certain particulars:**

(1) No person shall publish a Digital Signature Certificate or otherwise make it available to any other person with the knowledge that-

(a) The Certifying Authority listed in the certificate has not issued it; or

(b) The subscriber listed in the certificate has not accepted it; or

(c) The certificate has been revoked or suspended, unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

*Explanation:* The Certifying Authority listed in the certificate has not issued it or,

The subscriber listed in the certificate has not accepted it or the certificate has been revoked or suspended.

The Certifying authority may also suspend the Digital Signature Certificate if it is of the opinion that the digital signature certificate should be suspended in public interest.

A digital signature may not be revoked unless the subscriber has been given opportunity of being heard in the matter. On revocation the Certifying Authority need to communicate the same with the subscriber. Such publication is not an offence it is the purpose of verifying a digital signature created prior to such suspension or revocation.

**Penalties:** Punishment imprisonment of a term of which may extend to two years.

**Fine:** fine may extend to 1 lakh rupees or with both.

### **Case Laws:**

#### **1. Bennett Coleman & Co. v/s Union of India.**

In this case the publication has been stated that 'publication means dissemination and circulation'. In the

context of digital medium, the term publication includes and transmission of information or data in electronic form.

**Section 74. Publication for fraudulent purpose:**

Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which extend to one lakh rupees, or with both.

*Explanation:* This section prescribes punishment for the following acts:

Knowingly creating a digital signature certificate for any

- i. fraudulent purpose or,
- ii. unlawful purpose.

Knowingly publishing a digital signature certificate for any

- i. fraudulent purpose or
- ii. unlawful purpose

Knowingly making available a digital signature certificate for any

- i. fraudulent purpose or
- ii. unlawful purpose.

**Penalties:** Punishment: imprisonment for a term up to two years.

**Fine:** up to one lakh or both.

**Section 75. Act to apply for offence or contravention committed outside India:**

(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or

Contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

*Explanation:* This section has broader perspective including cyber crime, committed by cyber criminals, of any nationality, any territoriality.

**Section 76. Confiscation:**

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provisions of this Act, rules, orders or regulations made there under has been or is being contravened, shall be liable to confiscation :

Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules orders or regulations made there under, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, make such other order authorized by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made there under as it may think fit.

*Explanation:* The aforesaid section highlights that all devices whether computer, computer system, floppies, compact disks, tape drives or any other storage, communication, input or output device which helped in the contravention of any provision of this Act, rules, orders, or regulations made under there under liable to be confiscated.

**77. Penalties or confiscation not to interfere with other punishments:**

No penalty imposed or confiscation made under this Act shall prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.

*Explanation:* The aforesaid section lays down a mandatory condition, which states the Penalties or confiscation not to interfere with other punishments to which the person affected thereby is liable under any other law for the time being in force.

**78. Power to investigate offences:**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a police officer not below the rank of Deputy Superintendent of Police shall investigate any offence under this Act.

*Explanation:* The police officer not below the rank of Deputy Superintendent of police shall investigate the offence.

**INTERMEDIARIES NOT TO BE LIABLE IN CERTAIN CASES( u/s79.)**

### **Exemption from liability of intermediary in certain cases.—**

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections ,

(2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if—

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not— (i) initiate the transmission, (ii) select the receiver of the transmission, and (iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if—

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation.—For the purposes of this section, the expression —third party informationll means any information dealt with by an intermediary in his capacity as an intermediary.

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